Chapter Four

CREDIT, DEBT COLLECTION, & BANKRUPTCY

Credit is money, goods or services provided to an individual who promises to pay the lender at a later time. You may not be denied credit because of your sex or marital status. The standards used to determine whether someone is a good credit risk must be the same for everyone. You have the right to establish credit in your own name even if you are married. You have the right to know why you were denied credit. There are methods for seeking relief if you are in debt.

FEDERAL CREDIT REPORTING RULES

In the past, people did not have the right to know why they were denied credit. Now, under the Fair Credit Reporting Act [15 U.S.C. §§ 1681], a creditor or lender must tell you the name of the credit reporting agency that investigated you. If unfavorable information comes from another source, the creditor must tell you the nature of the information. You have the right to challenge the information in the credit report and to request an investigation. You have a right to see the contents of the report. You can request a copy of your credit report even if you have not been denied credit.

Credit bureaus report on the following matters: your credit accounts, your timeliness in paying bills, and whether you were ever sued, have filed for bankruptcy, or have had your property foreclosed on.

You have the right to receive one free copy of your credit report from each of the major credit reporting companies each year. If you detect an error or dispute the legitimacy of a report, you have the right to contact the credit reporting company and advise them of your dispute. While the dispute is being resolved, future reports issued must note that the liability is disputed.

Creditors must follow certain procedures when billing you and must advise you about how to contact them if there is an error on your statement. [15 U.S.C. §§ 1637.] The Federal Trade Commission enforces the Fair Credit Billing Act for almost all creditors except banks.

Given the widespread problems with identity theft, it is important to periodically review your credit report. If you have filed bankruptcy, it is important for you to review your report six months or so after you receive your discharge, as some creditors may still be reporting your discharged liability as a current liability or charge off. Such action is a violation of both the Fair Credit Reporting Act and the permanent stay under the Bankruptcy Code. If a credit report discloses such a claim, you can contact the company in writing and demand that they correct the report. Include a copy of your discharge order and ask for the company to provide you with an updated credit report removing the liability as current and outstanding and reporting it as discharged in bankruptcy. If the credit reporting company fails to do so, you can contact an attorney who has experience in litigating consumer law issues. You may sue in federal court for both damages and the costs of such action.

What federal protections do I have against credit discrimination?

The federal Equal Credit Opportunity Act [15 U.S.C. §§ 1691] and Regulation B [12 CFR 202.001] prohibit discrimination in credit because of race, color, religion, national origin, sex, marital status, and age. The Act says that spouses have the right to apply for separate credit reporting. If your spouse has a bad credit rating or too many debts, you may want to maintain separate credit. There can be no discrimination because a credit applicant receives public assistance. The only age discrimination permitted is that no one has to give credit to a minor under age 18.
For joint accounts, creditors must find out whether both spouses are entitled to use the account. If both spouses use the account, the creditor must report credit in each person’s name. This means that married women can establish their own credit simply by having joint accounts with their spouses.

Questions about your age or marital status are allowable by the Equal Credit Opportunity Act. One reason for this allowance is that agencies may take your marital status or age into account to give elderly or disadvantaged persons favorable treatment. Another reason is that it is reasonable for the agency to inquire about age or marital status to determine probable future income.

Many federal agencies, particularly the Federal Trade Commission, have the duty to enforce the Equal Credit Opportunity Act. If you are denied credit based on one of the prohibited categories, you have a right to action by the Federal Trade Commission, Office of the Comptroller of the Currency.

**What state protections do I have against credit discrimination?**

The Alaska Fair Credit law [AS 18.80.250] says that an institutional creditor cannot refuse credit or loans because of “sex, physical or mental disability, marital status, changes in marital status, pregnancy, parenthood, race, religion, color, or national origin.” The state law is similar to the federal laws. The state also forbids creditors from denying credit to a spouse or requiring both spouses to have a single account.

**How can I get relief from credit discrimination?**

If you are denied your rights under state or federal law, first ask the creditor for all of the information you need. Insist on correcting wrong information in your file. Complain to the agency regulating the creditor. You may then consider a suit in state or federal court. If you win in court, you can get your actual damages and attorney’s fees, and in some cases, punitive damages. You can also have the court order the creditor to extend credit.

If you believe the lender or creditor discriminated against you for improper reasons, you can also file charges with the Alaska State Commission for Human Rights. *See the Resource Directory at the end of this handbook for contact information.*

**BANKRUPTCY AND DEBT COLLECTION**

Federal laws provide a number of statutory protections to consumers from debt collectors. The Fair Debt Collection Practices Act (15 U.S.C. §§ 1692) offers protection to individuals from certain types of debt collection practices. Among the practices that are prohibited is conduct by the collector that is likely to harass, oppress, or abuse a person in connection with the collection of the debt. A debt collector may not use any false, deceptive, or misleading representations or means in their effort to collect a debt. The Act also regulates communication between the collector, the debtor, and third parties such as employers and landlords. The Act provides for civil liability and statutory damages if it is violated. If you have questions about your rights under this federal legislation, you should contact an attorney who practices in this area of the law. The Alaska Bar Association may be able to refer you to an appropriate individual to assist you if you are unable to locate a knowledgeable attorney.

If you do discuss your situation with your creditors, you may be able to resolve the situation by establishing a payment plan. Before making any payments, you should insist upon receiving a written agreement with the creditor setting forth the terms of your agreement. You may be able to negotiate a discount in the debt and interest rate if you can convince the creditor that you are in financial hardship.
However, the information you provide may be used by the collection agency to identify assets and any sources of income. You should insist that any agreement include a provision that the creditor will take no further collection action while you negotiate the debt before providing the creditor with information. You also may wish to consult with a consumer credit counselor before engaging in negotiations with your creditors or supplying them with information.

In the event you are unable to resolve your financial problems by negotiation with your creditors, you can consider bankruptcy. Federal law currently provides consumers protection against overwhelming indebtedness through two forms of bankruptcy relief. Known as Chapter 7 and Chapter 13, these two forms of bankruptcy relief are designed to give individuals a fresh start in life in terms of resolving their financial problems.

**What is Chapter 7 relief from debt?**

Chapter 7 relief is the most commonly filed petition by consumers and is known as a liquidation proceeding. A Chapter 7 case typically involves a debtor who is mired in dischargeable debt and whose income is close to or less than the debtor’s reasonable and necessary living expenses, and whose exemptions adequately protect the assets that the debtor would like to retain after the bankruptcy. Dischargeable debt – or debt that you may get rid of in Chapter 7 bankruptcy - consists of all liabilities existing before the filing of the bankruptcy petition. Non-dischargeable debt under Chapter 7 includes:

- unpaid taxes (with some exceptions);
- child support, alimony, and certain property settlement obligations;
- fines and penalties owing a government;
- debts incurred through fraudulent conduct, intentional or malicious actions that inflict bodily injury and judgments for personal injuries as a result of driving while intoxicated;
- debts incurred after the filing of bankruptcy (post petition); and
- government guaranteed student loans.

Chapter 7 relief may be denied on certain grounds, including a prior discharge in bankruptcy in a case filed within six years prior to the current filing, commission of certain fraudulent or dishonest acts, and/or inability to explain disappearance of assets.

The substantial amendments to the Bankruptcy Code became effective on October 16, 2005. Many people think that these amendments made filing bankruptcy impossible or much harder to accomplish. This is not true; however, the amendments did change the requirements for filing and placed certain burdens on individuals seeking bankruptcy that were not present under the original Bankruptcy Code.

First and foremost, individuals seeking relief from creditors in bankruptcy must now take credit counseling and debtor’s education courses. These courses require the debtor to participate in an interactive program through approved credit counseling companies to determine if you could pay your debts short of a bankruptcy filing. They also teach you financial management to avoid financial problems in the future. The credit counseling course takes approximately one to two hours to complete and generally costs about $40. Upon completion of the course, the debtor receives a certificate that must be filed with their bankruptcy pleadings to demonstrate that they have qualified to file. After the bankruptcy is filed, the debtor must complete a debtor’s education course. This takes from two to three hours to complete and costs approximately $45. Both courses may be taken online. Proof of completing this course must be filed with the court before a debtor can receive a discharge.
The other hurdle for individuals is the means test. For a debtor to qualify for a Chapter 7 proceeding she has to establish her income. If her income exceeds the median income for where she lives, she then has to go through a complicated test to establish that she qualifies for a Chapter 7. If she does not qualify for a Chapter 7, then she must file a Chapter 13. The median income level for a two person household in Alaska as of September 1, 2014 was $77,233, a three person household was $83,584, and a four person household was $86,835. These amounts get updated every few months. Most people needing Chapter 7 relief will not have to go through the means test. If you have any questions about qualifying for Chapter 7, you should contact an attorney who regularly practices in this area of the law.

What is Chapter 13 relief from debt?

Just as the amendments to the Bankruptcy Code changed parts of the law relevant to Chapter 7, the amendments also changed parts of the law relevant to Chapter 13. Chapter 13 is known as Debt Adjustment for Individuals with Regular Income. A Chapter 13 petition for relief is most often used in three situations:

1. The debtor cannot meet the means test in a Chapter 7 and needs protection from creditors.
2. The debtor has debts that are not dischargeable in a Chapter 7 proceeding.
3. The debtor has assets that exceed her exemption rights in property she wishes to keep after the bankruptcy. The amendments to the Bankruptcy Code no longer allow the debtor to use her actual reasonable and necessary living expenses to determine her net disposable income that funds a plan. The allowable living expenses are now based on guidelines that are published for each state and major urban areas within those states by the Internal Revenue Service.

A Chapter 13 plan requires the debtor to devote all of their disposable income (that amount of money remaining after all reasonable and allowable living expenses have been deducted from your income) to the Chapter 13 plan payment. The plans run from 36 months in length to 60 months depending upon the debtor’s qualifications under the means test. A Chapter 13 plan can provide for the payment of the debtor’s attorneys’ fees through the plan.

Every state and federal government recognizes that some types of property are essential for maintenance of an individual’s health, safety, and welfare. Therefore, every state has statutory exemption rights in varying amounts in those types of property deemed to be essential. The equity that is exempt in each category of property varies from state to state and from state to federal government. For example, in Alaska, AS 09.38.010(a)(3) and 8 AAC 95.030 establish an exemption amount of $72,900 in a debtor’s home. The federal exemption is $22,975 per debtor. Thus, if a debtor has substantial equity in her home, she may protect that equity up to $72,900 in a Chapter 7 bankruptcy. Similarly, Alaska protects up to $4,050 worth of equity in a debtor’s automobile, while the federal statute protects only $3,675.

What is the effect of filing Chapter 7 or Chapter 13 relief from debt on the collection efforts of creditors?

A debtor is freed from the burden of the collection efforts of creditors under either Chapter 7 or Chapter 13 bankruptcy. Creditors have to stop their efforts to collect once the debtor has filed her bankruptcy petition. The goal in every bankruptcy is for the debtor to receive a discharge. After receiving the discharge, the debtor no longer has any personal liability for the pre-petition debt that is discharged. The debt is no longer legally enforceable. The concerns and pressures of having to deal with the pre-petition indebtedness are removed, and the debtor is free of the burden of a mountain of debt that she could never repay. However, there is a cost to relief from debt through bankruptcy. Typically, credit agencies will
report your bankruptcy filing for a period from seven to ten years after the filing. You will also have to report your bankruptcy when filling out most loan applications; however, most individuals find that the benefits of the bankruptcy outweigh the costs.

Most public libraries contain materials about bankruptcy. There are individuals who successfully handle their own bankruptcies, but there are risks involved in proceeding without the assistance of an attorney. In large part it depends upon an individual’s own comfort level in learning a lot about a specialized area of the law and then acting upon that knowledge on their own. Generally, lawyers practicing in bankruptcy are well-known within their communities. The Alaska Bar Association provides a referral service to the public if you are uncertain as to whom you should contact regarding assistance in this area. See the Resource Directory at the end of this handbook for contact information.