

THE TRUTH ABOUT  
BANKRUPTCY

## THE TRUTH ABOUT BANKRUPTCY

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## LEGAL NOTICE

### This Book Is Not Legal Advice

Although I'm going to give you a lot of valuable information in this book, you must understand that this book is not legal advice. Moreover, reading this book will not establish an attorney–client relationship between us. The only way that I can give you legal advice is if you hire me. To hire me, you must sign a written agreement, called a retainer agreement, which sets forth the terms of my representation of you and the details of our attorney–client relationship, including the cost.

Only after you have hired me as your bankruptcy attorney by signing a retainer agreement, will I be able to give you legal advice. Until that time, however, I can only help you educate yourself by providing you with some useful information about bankruptcy and dealing with your creditors.

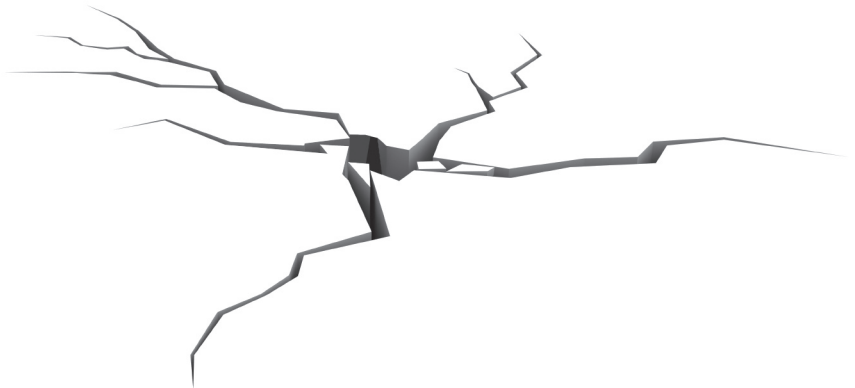
## ADVERTISEMENT

THE TRUTH ABOUT  
BANKRUPTCY

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THE ESSENTIAL GUIDE FOR ANYONE  
CONSIDERING BANKRUPTCY

Darrin T. Mish





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# Foreword



**M**y name is Darrin T. Mish, and I am an attorney. I am owner of The Tampa Bankruptcy Center, PA and I have been practicing law since 1993. I specialize in bankruptcy and tax law and I am an expert in the fields. Unlike a lot of attorneys out there who dabble and dabble, doing one or two cases a year, I handle hundreds of cases each year. I am a member of the National Association of Consumer Bankruptcy Attorneys, the Hillsborough County Bar Association, the Tax Freedom Institute and the American Bankruptcy Institute. In other words, I know what I am doing! To maintain my expertise, I continue to educate myself, staying on top of the latest trends and developments in bankruptcy law so that I can provide unparalleled service to my clients.

When I opened my law office, I decided that the best way to help my clients was to focus on tax and bankruptcy law. I selected bankruptcy law because so many people's lives are affected by unexpected events that have devastating effects on their finances. What I

understand about human nature is that many people in crisis become so overwhelmed that they go into a state of denial. Our goal is to help people address their problems by showing them there is a light at the end of the tunnel.

If you are struggling financially, this is the book for you. I want you to read this book and come away feeling empowered. I'm going to show you that there is life during and after bankruptcy.

You don't have to teeter on the precipice, wondering how you're going to pay your mortgage and car payment. You don't have to decide whether you're going to skip getting your prescriptions filled so you can pay your credit card bills. You don't have to wonder how you're going to put food on the table for your children. You don't have to deal with aggressive, belligerent, unsympathetic bill collectors who are too stupid to realize that they are only a paycheck or two away from being in the same situation that you're in. If you are facing any of this, I can help you—and I will help you.

Unfortunately, the system is against the little guy. It's against people like you who are simply trying to get by and take care of their families. It's against people who don't have a lot of money and resources. But I'm here for you. I want to be your advocate. I want to be your partner and your confidante as you navigate through the storm of debt that is drowning you. I'll fight your battles with your creditors for you, and I'll help you get the fresh start you deserve.

Keep in mind, though, that for us to become a team, you've got to be serious about finding a solution to your financial problems.



That means that you've got to work with me by answering all of my questions honestly and by giving me all of the paperwork and documentation that I request from you. You've got to make a commitment to be responsive to my calls, just as I will commit to being responsive to yours. You've got to commit to doing what I advise you to do, knowing that I have only your best interests in mind. You can't listen to your mom when she tells you what happened to her hairdresser when she filed bankruptcy, and you can't listen to Joe the plumber when he tells you that his situation was just like yours, and he couldn't file bankruptcy. Remember that no two bankruptcy cases are the same. Therefore, no one can tell you what to expect—except for an experienced bankruptcy attorney.

So, I'm going to require that you to listen to me and me alone. After all, I have the experience to help you, and I'm committed to working on your behalf to get you the best possible outcome under the circumstances.

The purpose of this book is to answer some of the most common questions that people who are considering bankruptcy have. As you read this book, I want you to consider what your current circumstances are, and how much it would mean to you to change those circumstances. What brought you to this point? Did you lose your job, get a divorce, or become ill?

Is the barrage of calls from your creditors driving you crazy? Are you about to lose your car or your home? Are you at your wit's end, wondering how you will ever get out from under the mountain of debt that's suffocating you? Well, I'm here to help you find the answers and get you back on your feet.

How much would your life change if you could just get some breathing room? A lot, right? Well, your creditors don't want you to get that breathing room. They don't want you to get the fresh start afforded by the Bankruptcy Code. Believe me, the last thing your creditors want is to help you. The collection agents calling you on behalf of Visa or the hospital or your student loan company couldn't care less about whether you've lost a job or been ill; their primary concern is getting their money, regardless of how that may impact you and your family.

Well, I want to help you, and I understand how scared and uncertain you are feeling right now. I know that you feel embarrassed about the possibility of filing bankruptcy. But I'm here to tell you, though, that the majority of people who file bankruptcy are just like you. They are good people who have fallen victim to circumstances beyond their control. They are hardworking people who just want to take care of their families and live a comfortable life. They are not trying to get over or shirk their responsibilities. On the contrary, they want to pay their bills, but find themselves in a situation that is simply too overwhelming.

As you read this book, know that you have options, and one of those options is bankruptcy. Contrary to what you may have heard, you can still file bankruptcy; people are doing it every day. Close to one million people filed last year!

# Introduction



On October 17, 2005, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) went into effect. This is arguably the most deceptively named legislation to pass in recent years. Why is it deceptively named? Because the last thing it was meant to do is protect consumers. Pushed by lobbyists for the credit card industry and written by Phil Gramm, the genius behind the sub-prime mortgage debacle, the primary goals of this legislation were to make it harder for the average consumer to file bankruptcy and to punish bankruptcy attorneys.

The main premise behind the BAPCPA is that only deadbeats file bankruptcy and that only shyster lawyers represent people who file bankruptcy. The credit card lobby took the position that anyone who filed bankruptcy was looking for an easy way out and wanted to “get over” on his or her creditors. How insulting to those who struggle each month to make ends meet, living from paycheck to paycheck, only to lose a job, suffer a debilitating illness, or go through a divorce!

Well, the breaking news is that the BAPCPA has had no effect on the number of bankruptcy filings since its inception. Ironically, between June 30, 2007, and June 30, 2008, the total number of bankruptcy filings increased by 28.4 percent. Even more ironic is that the number of Chapter 7 filings for the same period increased by 36.7 percent. You see, the intended effect of the BAPCPA was to reduce the number of Chapter 7 filings by pushing people into Chapter 13. In other words, the lobbyists behind the BAPCPA were expecting it to force already strapped consumers into paying at least a portion of their unsecured debt.

So, be assured that you are not alone. There are many, many people just like you who have sought the protection of our bankruptcy courts. I know that you want to pay your bills, but simply don't have enough money coming in to do so. I know that you work hard and are facing tough times. I know that you are a good person and that you simply need some help getting your financial situation under control. Well, I can help you get some breathing room so that you can take control of your finances and get back to the business of your life.

## CHAPTER ONE

# How Did I Get Here?



**T**here are many different paths that lead to bankruptcy. For some people, it's the loss of a job, the death of a spouse, the illness of a spouse or child, or divorce. For others, it's poor money management or that all-American phenomenon known as instant gratification. Whatever the case may be, one thing is certain. Most people incur debt with the intention of repaying it.

When people find themselves struggling to pay their bills and make ends meet, they often begin using their credit cards to pay for groceries and utilities or to pay other credit cards. They may take out a second mortgage or a home equity line to pay off their credit cards and other unsecured debt.

Sound familiar? Unfortunately, for most people, these are only short-term solutions. In my experience, people use their home equity line or second mortgage to pay off credit cards, only to start charging on those same credit cards within a few months' time. So, all they've done is create additional debt for themselves,

debt that they simply cannot afford.

The credit card companies and mortgage companies are hugely responsible for the financial crisis that many consumers find themselves in. Many credit card companies charge usurious interest rates, late fees, and over-the-limit fees. They use deceptive practices to lure people into incurring debt they cannot afford, and then they punish their customers by raising interest rates if a customer makes a few late payments. Some credit card companies will even raise the interest rate if the customer makes a late payment on a credit card from another bank. The goal of the credit card companies is to keep hardworking consumers like you mired in debt FOREVER!

Many people are in financial trouble because of the predatory loans they obtained over the past five to ten years or so. Among these dangerous loans are interest-only, negative amortization loans with adjustable interest rates, no documentation and low documentation loans, stated income loans, and loans with harsh prepayment penalties. Many people with interest-only and adjustable-rate mortgages expected to refinance before the first payment of principal became due or before the first interest rate adjustment was to occur, but found they could not refinance due to the crackdown by lenders after the fallout of the subprime mortgage market. As a result, these consumers have been left with mortgages whose payments increased significantly when they began making principal payments, and for those with adjustable-rate mortgages, payments that reset every six months.

What the lobbyists and Phil Gramm failed to recognize at

the time the BAPCPA was enacted is that bankruptcy is like a marriage for most people. It's not something that's entered into lightly. In my experience, most people file bankruptcy as an absolute last resort and only after countless sleepless nights and lots of worry and deliberation. Contrary to what the lobbyists and Mr. Gramm seem to believe, most people want to pay their bills, but due to unforeseen circumstances, such as the loss of a job, death of a spouse, or unexpected medical expenses, become unable to do so.

Consider this. Bankruptcy is one of the top stresses—along with divorce, major illness, death of a loved one, and loss of a job—that a person can experience. So, how many people do you know who would choose bankruptcy if they had other viable options? I'd venture to guess not many!

There is no set formula for determining whether you should file bankruptcy. However, there are some indicators that you are in trouble and should be looking for options sooner rather than later.

- Do you live paycheck to paycheck?
- Do you routinely pay your bills late?
- Are you constantly juggling bills to keep creditors off your back?
- Do you routinely overdraw your checking account?
- Do you have more than three credit cards?
- Are all of your credit cards maxed out?
- Are you paying late fees and/or over-the-limit fees on all or most of your credit cards?

- Do all of your credit cards have double-digit interest rates?
- Are you at least one month behind on your mortgage payment?
- Are you at least one month behind on your car payment?
- Do you now or have you within the past three months obtained a title loan or a payday loan?
- Are you using your credit cards to pay for necessities like groceries, prescriptions, and gasoline?
- Are you dipping into your savings or retirement accounts to pay bills?
- In the past three months, have you borrowed money from family or friends to pay your bills?
- Do you know exactly how much you owe on all your bills?
- Do you make only the minimum payment on your credit cards each month?
- Are you receiving telephone calls or letters from collection agencies?
- If you own a home, are you in pre-foreclosure?
- Have you recently had a vehicle repossessed?
- Is your auto finance company threatening to repossess your car?
- Are you upside down in your auto loan?
- Have you been denied credit, insurance, employment, or a security clearance because of poor credit?

If you answered “yes” to any of these questions, it’s time to stop procrastinating and to start being proactive. What if I told



you I can help you stop worrying and put you in a situation where you can afford to put food on your table, buy your medication, put gasoline in your car, heat your home this winter, and buy Christmas gifts this year? What if I told you I could help you get your life back? What if I told you there's a way to get those nasty bill collectors to stop calling you? Would you take a step toward that fresh start you so richly deserve? Well, I hope you answered "yes" to that question, too.

If you did, great. If you still need more convincing, read on . . .

## How Can Bankruptcy Help Me?

### *Regain Control of Your Life*

One of the biggest benefits of filing bankruptcy is psychological. Filing bankruptcy allows you to regain control of your life. When you're behind on your bills and you have creditors breathing down your neck, you have no control. Even if you try to work out a deal with your creditors, they're in the driver's seat. They want to tell you what to pay to stop the calls or the lawsuit that's about to be filed against you. They have no concern for you or your family and no regard for the fact that if you agree to cough up several hundred dollars a month to pay a credit card that you're going to lose your home. When you file bankruptcy, it's quite possible that your unsecured creditors will get little or nothing. What you pay your unsecured creditors depends on how

much money you actually have to pay into a Chapter 13 plan. You see, your secured creditors get paid first. If there's nothing left after they're paid, your unsecured creditors are out of luck. So, what exactly does this mean for you? It means you can sleep at night. It means that you have peace of mind. It means that your stress level has been cut in half. It means that you'll have money to buy groceries, gas up the car, and maybe even take the kids to Disney World next summer.

### ***Stop Annoying Calls from Creditors and Bill Collectors***

How humiliating and frustrating is it to receive collection calls at work or just as you're sitting down to dinner with your kids each evening? How disheartening is it to watch your kids check the caller ID before answering the phone because they know mommy doesn't want to talk to creditors?

Well, bankruptcy stops the harassment raining down on you from creditors. When you file bankruptcy, the automatic stay goes into effect. The automatic stay prevents creditors from making any collection efforts against you, including telephone calls, letters, lawsuits, garnishments, foreclosure, and repossession.

### ***Restructure Secured Debt***

A huge benefit of filing Chapter 13 is that it allows you to reorganize your secured debt. If you are behind on your mortgage or car payments, guess what? Bankruptcy allows you to get caught up over time, rather than trying to come up with a lump sum all at once.

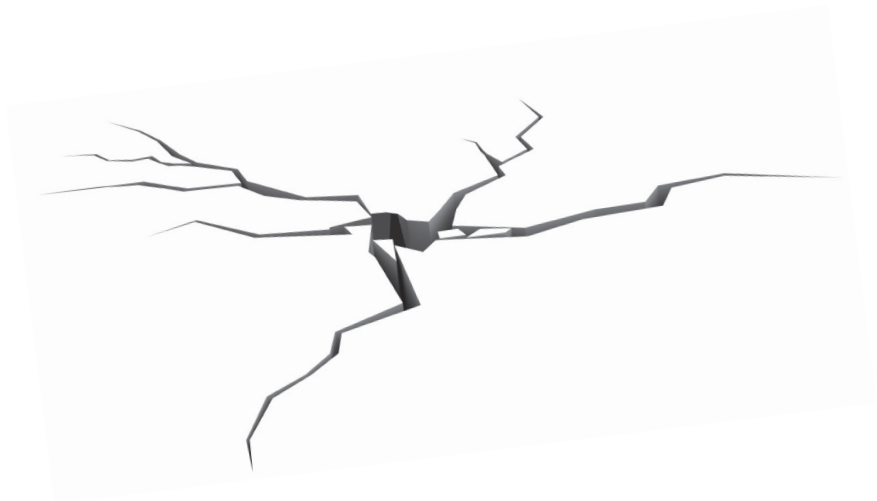
Here's how it works. If you are delinquent on your mortgage

payments, and assuming of course that you have enough monthly net disposable income, once you file a Chapter 13 case, you will make your regular monthly mortgage payments as they come due. The delinquency will be paid through your Chapter 13 plan.

If you have an auto loan, the Bankruptcy Code allows you to rewrite the terms of the loan. If the term of your original agreement was six years and you file bankruptcy in year four, quite possibly, depending on the particulars of your case, the term of that loan will be extended for several years during the life of your bankruptcy case.

The most important thing you have to understand is that there are no quick solutions, and anyone who tells you there are isn't being truthful with you. Your financial problems didn't develop overnight, and they won't be solved overnight. But there's good news:

THERE IS A SOLUTION TO YOUR FINANCIAL PROBLEMS.



## CHAPTER TWO

# Don't Ignore the Problem ... It Will Only Get Worse



**O**ne thing that I can tell you with 100 percent certainty is if you ignore your financial problems, they will only get worse. Financial problems are like an infection; if it goes untreated, it can kill you.

If you are behind on your bills, you're going to be charged late fees. Credit card companies will charge over-the-limit fees and will raise your interest rates. If you overdraw your checking account, you'll pay insufficient funds fees to your bank. Your financial problems will only get worse. If you can't afford to make your payments, you definitely can't afford to pay any additional fees or have your payment go up because of higher interest rates.

All the while, your phone will be ringing off the hook with calls from your creditors trying to get their money. They'll call you at home and at work. They'll call your cell phone. They'll call you as early as 8:00 a.m. and as late at 9:00 p.m. If you gave personal references when you got the loan or credit card, they

may even call your references. They figure they can harass you into paying. They think they can humiliate you into paying. What they don't realize is that no matter how many times they call you, it's not going to magically make some money appear in your bank account so you can pay your bills. No matter how many times they call, it's not going to get you a job, cure your illness, bring your spouse back to life, or resolve your marital problems. What I'm telling you here is that your creditors simply don't care why you can't pay. All they care about is getting their money.

So, once you are far behind on your credit card payments, you'll start receiving letters and calls from collection agencies. And guess what? Collection agencies charge a fee, and that fee gets passed on to you. This means that your debt will go up even more.

If the collection agency is unsuccessful in getting you to pay the debt, either the collection agency or the bank who issued the credit card to you will sue you. It's very difficult for a consumer to win this type of lawsuit because it's virtually impossible to prove that you did not make the purchases. If you lose the lawsuit or fail to respond, a judgment will be entered against you for the amount of the debt, plus attorney's fees and costs. Once this happens, the creditor can garnish your paycheck or bank account. Moreover, the creditor can have the sheriff in your county levy on other property that you own and sell it to pay off or pay down the judgment. All the while, interest will continue to accrue until you pay off the judgment in its entirety.

If you default on a mortgage, your lender will eventually

foreclose; if you default on an auto loan, the finance company will eventually repossess the vehicle. If you live in a state that allows lenders to seek deficiency judgments, your mortgage lender or auto finance company can seek one against you if they sell the house or vehicle at a loss. If the creditor successfully obtains a deficiency judgment, it can garnish your paycheck or bank account to collect the debt. And until the debt is paid in full, interest will accrue at the rate allowed under the laws of the state in which you live.

If the creditor files a lawsuit seeking a deficiency judgment, it will be represented by an attorney. And you will be required to pay the attorney's fees and costs incurred by your lender in filing the suit.

In an effort to avoid dealing with creditors and collection agencies, many consumers seek the assistance of debt counseling services. These companies' services include negotiating with your creditors to revise the terms of your debts—including reducing the interest rate, monthly payments, and balance—and making your payments for you. In essence, your debts will be consolidated, and you will make one payment to the debt counseling service, which in turn will pay your creditors.

The problem with these services is that they often fail to make the payments to their clients' creditors or they make those payments late. Because debt counseling services frequently sell client accounts to other companies and because of poor record keeping, consumers often don't get credit for all the payments they have made. As a result, their creditors will place the account

in a default status and once again begin attempting to collect the debt.

Many consumers who sign on with debt counseling services cannot resist the temptation to continue using their credit cards or acquiring additional credit cards. This lack of discipline only drags them deeper into debt and makes an already bad situation that much worse.

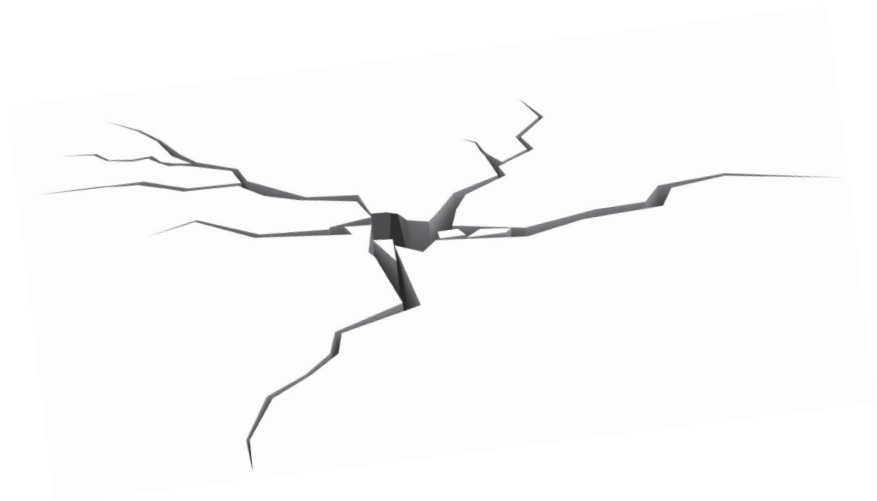
It is not uncommon for people who are struggling to pay their bills to get a payday loan. On first glance, this may seem like a quick and easy solution to your financial problems. However, because of the high interest rates and short term of these types of loans, they are not a viable or realistic option for most people with financial problems. Generally, payday loans are due within 14 to 30 days and may carry interest rates of 15 percent or more. This may not sound like very much, but if you borrow \$300 and must repay the loan in 14 days, the annual percentage rate calculates to almost 1200 percent.

Auto title loans are just as bad as payday loans. These loans usually mature in thirty days and can have interest rates as high as 500 percent or more. Most title loans have a rollover option that allows you to extend the term of the loan for another thirty days. This is where most people get in trouble. Unless you pay the loan off at the end of the first thirty-day term, any future payments that you make will be applied only to interest until you are able to pay the loan in full. If you fail to repay the loan, the lender can repossess the car and sell it to recover the amount of the loan plus any interest and fees that may be due. In some states, if the



lender sells the car for more than what is owed on the loan, it is not required to turn that money over to the borrower.

It's important that you take action as soon as you realize that you are in financial trouble. If you ignore your problems, they will only get worse and might result in foreclosure, repossession, or garnishment.



## CHAPTER THREE

# Bankruptcy May Be the Answer



**B**ankruptcy is meant to give financially overwhelmed consumers a fresh start. However, many people are embarrassed and humiliated by the prospect of filing because, like you, they truly want to pay their bills. They are not dishonest people looking for an easy way out. They are hardworking people who have run into hard times and who are looking for some relief.

When I think of my clients, I honestly can't think of a single one who didn't feel an obligation to repay his or her debts. For most people, it's a question of morals; they borrowed the money, so they should repay the money. Because of this mindset, it's quite difficult for most people to come to terms with the idea of filing bankruptcy.

But bankruptcy is legal, and until it becomes illegal, there is absolutely no reason not to file if you are on the brink of financial disaster. You deserve the fresh start that bankruptcy offers. You deserve the peace of mind and relief from the endless barrage of

phone calls from your creditors. You deserve to know that you'll be able to feed and clothe your children and keep a roof over their heads while you get your financial situation worked out. And at The Tampa Bankruptcy Center, PA we're committed to helping you. We want to guide you through the process and make it as stress free as possible. We want to educate you about the process so that there are no surprises.

### What Is a Chapter 7 Bankruptcy?

Pursuant to the Bankruptcy Code, a Chapter 7 filing allows debtors who qualify to discharge most of their unsecured debt. Prior to October, 2005, it was much easier for a debtor to file Chapter 7. The BAPCPA requires anyone seeking to file a Chapter 7 bankruptcy to meet a certain threshold called the means test.

The means test requires prospective debtors to have an annual income of less than the state median income for a family of the equivalent size. The US Census Bureau maintains a list of the median incomes for each state.

If a prospective debtor's annual income is more than the median income for a family of the same size in his state, there is a presumption that he can afford to pay at least a portion of what he owes to his unsecured creditors. Therefore, before he can file a Chapter 7 bankruptcy, he must demonstrate to the court that his monthly expenses for housing, transportation, utilities, etc. are within the national and local standards as determined by the Internal Revenue Service and that once he pays those expenses,

he has nothing left to pay into a Chapter 13 plan. If he cannot meet this second requirement of the means test, the debtor will have to pay at least \$100 per month into a Chapter 13 plan for six years.

### What Is a Chapter 13 Bankruptcy?

Chapter 13 bankruptcy is a debt consolidation plan that allows a debtor to restructure her debt and pay it over a three to five year period. On occasion, debtors who planned on filing Chapter 7 are forced to file a Chapter 13 because they cannot satisfy the means test required of Chapter 7 debtors.

To file a Chapter 13 bankruptcy, a debtor must have enough income, after paying all monthly expenses, to pay into the Chapter 13 plan. The funds that are paid into the plan are used by the trustee to pay the administrative costs of the case, the debtor's attorney's fees, priority claims such as taxes and child support, secured claims such as mortgage arrearages and auto loans, and unsecured claims such as credit cards and medical bills.

To determine how much a debtor can afford to pay into the Chapter 13 plan, the bankruptcy attorney reviews the debtor's income from all sources and subtracts the debtor's monthly expenses from his net monthly income to arrive at his net monthly disposable income. The bankruptcy code requires 100 percent of a debtor's net monthly disposable income to be paid into the Chapter 13 plan. If a married debtor is filing bankruptcy without her spouse, her spouse's income and expenses must also be con-

sidered in formulating the Chapter 13 plan.

Once the court approves or confirms the debtor's Chapter 13 plan, the debtor will continue making her plan payments and complying with the other terms of the plan. If the debtor's financial circumstances change, she should notify her bankruptcy attorney immediately so that he or she can advise her and file any motions that may be necessary to protect her interests.

## CHAPTER FOUR

# The Truth About How Bankruptcy Works



**I**n the months leading up to and immediately after the passage of the BAPCPA, there was a huge media push to brainwash consumers into believing they could no longer file bankruptcy or would lose everything they owned if they did. This intentional miseducation of the consumer is egregious and yet another part of the credit card lobby's attempt to have their cake and eat it too.

You might be wondering what all of this has to do with you. Well, I'm here to help you unlearn all the misleading information you've read or heard about bankruptcy. I want to show you that there is a way out of your financial problems. I want to show you what your options are and the consequences of those options. Most of all, though, I want to make sure you take action to change your financial situation as soon as possible rather than waiting, with your head buried in the sand, until it's too late.

## Top 15 Bankruptcy Myths

### **Myth #1**

#### ***Filing bankruptcy will hurt my credit for ten years.***

Although bankruptcy will stay on your credit report for seven to ten years, assuming you begin rebuilding your credit immediately and keep your credit clean, you can usually obtain a mortgage within eighteen to twenty-four months after discharge.

You can begin building your credit after bankruptcy by getting a secured credit card and using it, making sure to pay the balance off each month. Beware of credit cards, both secured and unsecured, with annual fees and high interest rates. Avoid secured cards that do not convert to an unsecured card after eighteen months of on-time payments. You can also get an installment loan or personal loan and make your payments on time in an effort to rebuild your credit.

If you have a student loan that was not paid in full during your bankruptcy, continue making your payments after your bankruptcy case is discharged. This is a great way to reestablish credit.

### **Myth #2**

#### ***Everyone will know that I filed bankruptcy.***

Although bankruptcy filings are a matter of public record, no one you know will know about it unless you tell them. Your attorney, his staff, and court personnel will, of course, know about it.



### **Myth #3**

#### ***I cannot file bankruptcy because of the BAPCPA.***

Although the BAPCPA has changed the methods by which people qualify to file bankruptcy, and its intended goal was to make it much more difficult for people to file, in most cases, people are able to get the same or better relief under the new laws as they were before the BAPCPA was enacted.

### **Myth #4**

#### ***I am a bad person for filing bankruptcy.***

There is a stigma associated with filing bankruptcy, a stigma that the lobbyists latched onto in pressing for passage of the BAPCPA. But the truth is that bad things happen to good people. There's a reason that over one million people file bankruptcy each year, and it's not because they are bad people. On the contrary, they are good people looking for a solution to their financial problems. Bankruptcy provides hard-working people like you with the fresh start they deserve, but would otherwise be unable to obtain.

### **Myth #5**

#### ***I can pick and choose what to include in my bankruptcy.***

You must include all of your assets and liabilities in your bankruptcy petition. You cannot exclude a creditor from your bankruptcy because you plan to continue paying it.

It's great that you want to pay, but it is mandatory that you list each and every one of your debts. Once your case is discharged, you can continue paying the debt, but you are under no obligation to do so.

### **Myth #6**

#### ***It's hard to file bankruptcy.***

Although there is a lot of paperwork involved in filing bankruptcy, having a skilled and experienced attorney will make the process much less stressful and complicated. A couple of years ago, it became mandatory that all filings be done electronically, so that makes it a lot easier.

### **Myth #7**

#### ***I will never be able to own property again.***

Immediately after you receive your discharge, you will receive credit card offers and may even receive credit offers from auto finance companies. Within about two years of discharge, assuming you rebuild and maintain a good credit rating, you will be able to obtain a mortgage. In some instances, you may even be able to get certain loans while you are in bankruptcy.

### **Myth #8**

#### ***I will lose everything I own.***

Bankruptcy makes it possible for you to keep the majority

of your property, and it offers you protection from the collection efforts of your creditors, protections you simply don't have outside of bankruptcy. The laws pertaining to property exemptions for debtors vary from state to state. Therefore, you should consult an attorney in your area to properly advise you of the laws in your jurisdiction. Bankruptcy doesn't always wipe out liens. This means that you will have to continue to pay for certain property if you want to keep it.

### **Myth #9**

#### ***My spouse and I must file bankruptcy together.***

Married couples can file separately or jointly. It's your decision. However, you should consult with an experienced attorney to determine whether it makes more sense to file jointly or separately.

### **Myth #10**

#### ***I can't get rid of back taxes by filing bankruptcy.***

You can get rid of income taxes that are more than three years old by filing bankruptcy. There are several qualifications that you must meet for the taxes to be wiped out, but having a portion wiped out is better than having none wiped out at all. Sales taxes must be repaid and cannot be wiped out by filing bankruptcy.

### **Myth #11**

#### ***I can only file bankruptcy once.***

You can file bankruptcy as many times as you want. However, you are limited on how often you can receive a discharge. You can receive a Chapter 7 discharge once every eight years, or a Chapter 13 discharge every two years. If you receive a Chapter 7 discharge, you have to wait six years before you can receive a Chapter 13 discharge. If you receive a Chapter 13 discharge, you cannot receive a Chapter 7 discharge for four years.

If you do not receive a discharge, you can refile as many times as you want. Be advised, however, that the court will punish serial filers by preventing them from filing again for six months or more.

### **Myth #12**

#### ***I can never get credit again.***

You can start rebuilding your credit immediately. Bankruptcy wipes out debt, which in turn helps improve your credit score. Making timely payments on the property that you choose to keep also helps raise your credit score. You will be able to get certain forms of credit as soon as your case is discharged—and sometimes sooner.

### **Myth #13**

#### ***Only losers file bankruptcy.***

Bankruptcy is a means for good people who are going through bad times to get relief. Many times, people have to file because they have lost their job, gone through divorce, or experienced a serious illness. Bad times don't make you a bad person. Bankruptcy can provide the relief that good hardworking people like you need to get the fresh start they deserve.

### **Myth #14**

#### ***Creditors can still harass me after I file bankruptcy.***

When you file bankruptcy, the automatic stay protects you from the collection efforts of your creditors. Creditors are not allowed to contact you for any reason, which includes phone calls, letters, and even billing statements. If a creditor persists in contacting you after you file bankruptcy, you should let your bankruptcy attorney know so that he can use the remedies available under the Bankruptcy Code to address it.

### **Myth #15**

#### ***Filing bankruptcy causes more family trouble and divorce.***

Bankruptcy eliminates debt, thus eliminating stress. Filing bankruptcy is the solution to a major problem that, unresolved, often leads to divorce. Although making the decision to file bankruptcy is difficult, the relief provided will lift a huge weight off

of you. The absence of financial stress will give your relationship a fighting chance.

Don't just assume you can't file bankruptcy. Talk to an experienced bankruptcy attorney to determine whether you are a candidate for bankruptcy.

## CHAPTER FIVE

# How to Hire the Right Attorney for You



### Why Do You Need an Attorney?

**P**eople who are struggling financially often make the decision to represent themselves when they file bankruptcy. Have you ever heard the saying “Don’t be penny wise and pound foolish”? Well, it means that you lose more money over the long run by being overly focused on savings a few dollars now. If you choose to represent yourself in a bankruptcy because you don’t believe you can afford an attorney, you are being penny wise and pound foolish.

Honestly, why would you sacrifice your chance at a fresh start to save a few hundred dollars? Yes, hiring an attorney costs money. Yes, you are already struggling financially. But consider this. Would you hire your dog groomer to perform an emergency appendectomy on your eight-year-old son? Never. Would hire an accountant to style your hair? I don’t think so. Would you hire the trash collector to build your dream home? Of course not. So why

would you choose to represent yourself in your bankruptcy?

You must think of hiring an attorney as an investment in your future. If hiring an attorney will ensure that you get the best outcome possible, wouldn't it be worth it? Doesn't it make more sense to use what money you have to pay an attorney who wants to help you than to pay that same money to a credit card company that doesn't give a hoot about you and your family? What if I told you that if you file a Chapter 13 bankruptcy, most, if not all, of the attorney's fees will be paid through the Chapter 13 plan? You have to do a cost benefit analysis and realize that, although you may save some money by representing yourself, in the long run, it could cost you a whole lot more than you can imagine.

Another reason that people choose to represent themselves in a bankruptcy case is that information about bankruptcy, including the forms, is so readily available on the Internet. Well, bankruptcy involves much more than filing a few forms. The forms themselves require lots of information, including some that the average debtor cannot begin to understand. Moreover, the process itself is very technical and very complicated. Following are a few of the most common mistakes that pro se debtors (debtors who represent themselves) make.

### ***Failure to Select or Properly Apply Exemptions***

The Bankruptcy Code allows debtors to claim exemptions to protect their property. Depending upon which state you are in, you may either claim the federal exemptions, the state exemptions, or some combination of the two. If you fail to select exemptions or to properly apply them, you risk having your property seized and



liquidated by the trustee; if this happens, the net proceeds will be distributed to your creditors.

An experienced bankruptcy attorney will be well versed in the exemptions available in your state. He will make sure that you claim all exemptions available to you. This will maximize the protection of your property and ensure that your creditors and the trustee cannot get to it.

### ***Failure to List All Assets***

Failure to list all assets may be viewed as an attempt to hide those assets and could result in sanctions against the debtor, including loss of the right to claim the allowed exemption on the property or, in extreme circumstances, dismissal of the case. Therefore, in preparing for your bankruptcy, you must make an accurate list of all your property, including investment accounts, stocks and bonds, retirement accounts, tax refunds, lawsuits, and property you own that may be in the possession of someone else.

### ***Reaffirming Unreasonable Debts***

Creditors can be unscrupulous. Many take advantage of pro se debtors by trying to convince them that they must reaffirm a debt to keep certain property. This is not true. Reaffirmation is optional, and as long as the debtor's payments are current and he continues to make voluntary payments, he can retain possession of the property that is the collateral for the loan. By reaffirming a debt, the debtor is agreeing not only to pay the debt, but also to exclude that debt from discharge at the completion of his case. If

you reaffirm a debt and later default on that debt, the creditor can pursue all remedies against you to collect the debt. Your attorney will help you decide whether reaffirming a debt is in your best interests.

### ***Failing to File a Chapter 13 Plan or Filing a Plan That Doesn't Comply with the Bankruptcy Code***

Many pro se filers have their cases dismissed because they have absolutely no idea how to put together a Chapter 13 plan, much less what the trustee's objections mean and how to cure them. The BAPCPA made drafting a Chapter 13 plan much more technical. An experienced attorney will draft a feasible Chapter 13 plan and will work diligently to cure any objections to ensure that your plan gets confirmed.

## How to Select an Attorney

Hiring the right bankruptcy attorney is paramount to the success of your case. You don't want an attorney who dabbles and dabbles in bankruptcy, handling a couple of cases a year. You want an experienced bankruptcy attorney who is well versed in the technicalities and intricacies of bankruptcy law. So how do you find the right attorney?

- ***The Yellow Pages?***—**Not necessarily.** The telephone book is filled with ads for hundreds of attorneys. Anyone can pay for ad space, but that is no indicator of experience or expertise.

- ***Internet Directories?***—**Not necessarily.** Internet directories are no indicator of an attorney’s experience or expertise, either. Like Yellow Pages ads, anyone can pay a fee to appear in an Internet directory.
- ***Television and Radio Ads***—**Not necessarily.** Like the Yellow Pages and Internet directories, television and radio ads give you no true indication of how experienced an attorney is. And remember, anyone can pay for a television or radio advertisement.
- ***Referral from Family or Friends?***—**Maybe.** If you get a referral from a family member or a friend, you want to make sure that the attorney actually handled a bankruptcy for that person. Simply because your Aunt Matilda had a great experience when Attorney Smith handled her divorce does not mean that he is a good bankruptcy attorney.
- ***Referral from Another Attorney?***—**Yes.** Chances are, if you contact an attorney who has represented you in another matter, he will be able to give you a referral to a good bankruptcy attorney.
- ***State and Local Bar Associations?***—**Yes.** Depending on where you live, the State Bar may be able to give you a referral to a bankruptcy attorney. Be advised, though, that in some States, this is not the case. Local bar associations, on the other hand, often refer cases to their members on a rotating basis.

When meeting with an attorney, you want to make sure to evaluate several key factors.

First, did the attorney provide you with any information in preparation for the consultation? Because of the amount of preparation that goes into a bankruptcy case, you want an attorney who will provide you with some guidance, in advance of your first meeting, as to the documents you will need to gather. If an attor-

ney provides you with a prefiling questionnaire and other pertinent information to help you prepare for your case, it's a good indicator that he or she is an experienced bankruptcy attorney and that he is organized. On the other hand, if you get no written information from the attorney in advance of your first meeting or even at your first meeting, it can be a sign that the attorney's primary practice area is not bankruptcy and that or she may not have very much experience.

During the consultation, be sure to ask the attorney these questions:

- ***How many bankruptcy cases do you file each year?***—If any attorney files only a handful of cases each year, that's a sure sign that he only dabbles and dabbles in bankruptcy. You want an attorney who files hundreds of cases per year.
- ***How many cases have you successfully taken to discharge?***—If an attorney is not getting the majority of her clients the discharge they seek, it can be a sign that the attorney is not zealously representing her clients against their creditors. Keep in mind, though, that some cases get dismissed solely because of the debtor's failure or refusal to do his part to receive a discharge, whether it's a failure to pay filing fees, to make plan payments, or to complete the personal financial management course.
- ***What percentage of your Chapter 13 cases get confirmed?***—A key indicator of an attorney's experience is the number of Chapter 13 cases he's had confirmed. If the majority of his Chapter 13 cases do not get confirmed, that's a red flag that he may not have the expertise you are seeking.

These questions are important because you want an attorney whom creditors respect. Law firms who represent creditors are present at the bankruptcy court daily, and they know which bankruptcy attorneys are heavy hitters. They know which bankruptcy attorneys actually fight and advocate for their clients.

Here are a few more questions you should ask:

- ***What bankruptcy associations do you belong to?***—Membership in local and national bankruptcy associations is an indicator that an attorney actively networks with other bankruptcy professionals. These associations offer their members exceptional training and continuing legal education, which are key to staying abreast of the latest developments in the field of bankruptcy law.
- ***Will you personally handle my case or will the bulk of the work be delegated to a paralegal or legal secretary?***—In some law offices, a legal secretary or a paralegal will draft the bankruptcy petition, and the attorney will review it before it's filed. In other offices, the attorney may draft the petition and turn it over to a secretary for filing. Regardless of how the office chooses to handle this part of the process, the attorney should supervise the preparation of the petition. Make sure the attorney will be the one supervising your case.
- ***How often will you communicate with me about the status of my case?***—There is no set formula for how often your attorney will call you to update you on the status of the case. However, you should expect the attorney to answer this question directly and explain to you what his policies and practices are for staying in contact with his clients. As your petition is being prepared,

your attorney may contact you for additional information. Once your petition is filed, your attorney should contact you either by phone or mail to remind you of court dates and other important dates. Moreover, you should expect to hear from your attorney if the trustee or any of your creditors file any motions in your case or if there is any other major development in your case.

Keep in mind that as you are interviewing a prospective attorney, he or she is also interviewing you. You'll be asked a lot of questions about your finances and your assets and debts. As you are answering these questions, the attorney will be evaluating you for how direct and responsive you are. Additionally, if you were provided with a questionnaire to complete and bring to the consultation, the attorney will expect you to have completed it in its entirety. If you have not done so, this is an indicator to the attorney that you may not be serious about your case.

## CHAPTER SIX

# What to Expect after You Hire an Attorney



### What Happens after I Hire an Attorney?

**I**f you hire my law firm to represent you in a bankruptcy, we will aggressively represent you. We will evaluate every aspect of your case to ensure that you get the best outcome under the circumstances. Here's what you can expect:

***Retainer Agreement***—The first thing you will do is sign a retainer agreement. The retainer agreement specifically sets forth the terms of our representation of you. Think of the retainer agreement as our promise of loyalty to you and our commitment to represent you in a professional, courteous, and zealous fashion.

***Interview/Case Evaluation***—We will conduct an extensive interview with you to get a firm grasp of your situation. No two bankruptcies are the same. Therefore, it is essential that we evaluate each case individually to ensure that we address and prepare for any unique issues or circumstances that may arise.

***Review of Documentation***—We will provide you with a

detailed list of the documentation that we will need to prepare your petition. Once you provide us with that documentation, we will go over it with a fine-tooth comb. When necessary, we will obtain copies of legal documents, such as judgments, divorce decrees, and other liens.

***Pre-bankruptcy Counseling***—We will assist you in obtaining the pre-bankruptcy counseling required by the BAPCPA.

***Analysis of Legal Issues***—We will analyze the legal issues of your case, including exemptions, validity of liens, and any factors that may affect your ability to obtain a discharge.

***Review of Auto and Homeowners Insurance Policies***—We will review your auto and homeowners insurance policies to determine whether you have sufficient coverage to adequately protect your creditors' interests.

***Draft the Petition***—We will draft your bankruptcy petition, schedules, and other documents required to be filed by law, including the Chapter 13 plan.

***Review the Petition***—We will meet with you and go over your petition page by page to make sure that all of your assets and liabilities are properly listed and to ensure that all other information contained in the petition is accurate.

***File Petition***—We will file your petition with the court and ensure that each of your creditors receives notice of the filing.

***Serve Chapter 13 Plan***—If you're filing a Chapter 13 case,



we will make sure that each of your creditors is properly served with a copy of the Chapter 13 plan.

***Pending Litigation***—If any of your creditors has commenced a lawsuit against you, has begun foreclosure proceedings, or threatened repossession, we will provide them with a Notice of Bankruptcy Filing immediately after your petition is filed. Additionally, we will file the appropriate Notice of Bankruptcy in any state courts in which litigation against you is pending.

***Meeting of Creditors***—We will prepare you for and attend the meeting of creditors with you.

***Pre-discharge Counseling***—We will assist you in completing the personal financial management course necessary to obtain a discharge.

***Trustee and Creditor Objections***—If the bankruptcy trustee or any of your creditors files an objection to your Chapter 13 plan, we will work aggressively to cure the objection before your confirmation hearing.

***The Confirmation Hearing***—We will prepare you for and attend the confirmation hearing with you. We will make sure that any documentation required by the trustee to confirm your plan passes muster.

***Defense of Actions by Creditors***—If any of your creditors files a motion, complaint to determine dischargeability, or other action against you, we will thoroughly review the pleading, discuss it

with you, and formulate a plan of action to defend against it.

***Reaffirmation of Debts***—We will discuss with you each of your debts to ascertain whether it would be in your best interest to reaffirm. If you decide to reaffirm any of your debts, we will fully explain the process and even file a recision of the affirmation if you timely change your mind.

***Lien Avoidance***—We will analyze any liens against your personal property and, where warranted, for a small additional fee, file a Motion to Avoid a Lien.

***Final Case Review***—We will review your case to make sure you have satisfied all requirements necessary for discharge.

***Miscellaneous***—We will evaluate any miscellaneous matters as they arise and will file the appropriate motions to address them.

Keep in mind that each case is different. Therefore, every one of the above steps may not be necessary in your case.

## What Happens after My Bankruptcy Petition Is Filed?

Immediately upon filing your petition, the automatic stay goes into effect. The automatic stay protects you and your property from the collection efforts of your creditors. To move forward with collection efforts, a creditor must file a Motion for Relief from Stay. If the creditor's motion is granted, it can move forward with all remedies available under the law, including lawsuits, garnishments, foreclosure, and repossession.

The clerk of the bankruptcy court will serve each of your creditors, as well as you and your attorney, with a Notice of Bankruptcy Filing. This notice contains your case number and the dates, times, and locations of the Meeting of Creditors and the Confirmation Hearing. It also has the name, address, and phone number of the bankruptcy trustee assigned to your case and the name of the judge to whom your case has been assigned.

The Meeting of Creditors will take place about thirty days after you file your petition. At the Meeting of Creditors, the trustee and your creditors will ask you questions about your finances, assets, and the contents of your bankruptcy petition. The trustee and your creditors can file objections to your case. If this happens, we will work to cure the objections so that you can receive the discharge you deserve.

If you file a Chapter 13, you will be required to attend a Confirmation Hearing about thirty days after the Meeting of Creditors. As long as you have complied with the Bankruptcy Code, made your plan payments and post-petition mortgage payments, and cured any objections to confirmation, your case

will be confirmed.

Within forty-five days of the Meeting of Creditors, you must complete the personal financial management course. This course is necessary to receive a discharge.

Once you've satisfied all requirements of your case, you will receive a discharge. If you filed a Chapter 7 case, you will receive your discharge about ninety days after you file your petition. If you filed a Chapter 13 case, depending upon the terms of your Chapter 13 plan, you will receive a discharge three to five years after you file your petition.

## CHAPTER SEVEN

# The Tampa Bankruptcy Center Difference



What Sets The Tampa Bankruptcy Center Apart from the Rest?

**A**t The Tampa Bankruptcy Center, PA, we understand that that the average person is one job loss or one emergency away from the need for a bankruptcy attorney. For this reason we work with most debtors. As a result, our firm is a high volume filer of consumer bankruptcy cases in the Middle District of Florida - Tampa Division and we represent clients in Tampa Bay and all surrounding cities.

Our number one goal is to make sure our clients benefit from our services and receive the fresh start they deserve. To ensure that each of our clients receives superior representation, most of our practice is consumer bankruptcy law; we do not handle business bankruptcies. We have experience at what we do, and it shows in our success rate and the number of satisfied clients we serve each year.

Many bankruptcy attorneys are super selective about which

cases they will accept. But at The Tampa Bankruptcy Center, PA, we recognize that bad things happen to good people, and we are committed to helping as many clients as we can. So, we can help you if:

- You are a first-time filer
- You have filed bankruptcy before
- Your case was dismissed
- You are dissatisfied with your current attorney
- You are representing yourself and now realize you need an attorney
- You are self-employed

In an effort to serve prospective clients, we offer free initial consultations. We value your privacy, and your personal information will be kept confidential.

Our staff has over several years of tax and bankruptcy experience combined. This means that we have the knowledge to handle even the most complex cases. We are not intimidated by the issues or your creditors. We have the resources and confidence to fight for your fresh start in a way that many other attorneys simply can't do. Here's what our clients are saying:

*"Darrin Mish has been absolutely great in handling our case. His personal touch & his genuine concern for our well being have been very reassuring. I would, & have highly recommended Darrin & his staff to anyone who has any type of IRS problem or situation.*

—SJM

*"Thank you for representing me and helping me protect my rights. I was very happy with the results of my case and especially happy with my decision to choose your firm, here's why:*

*First, you explained to me in terms that I could understand exactly my situation as it related to the Law and my rights.*

*Second, you listened and acted promptly to an immediate need by scheduling an emergency appearance with the Judge.*

*And last but not least you did what you said you would do and more.*

*Thank you for exceeding my expectations."*

—JR

*"I have not been treated so well since I was a professional football player with the Tampa Bay Buccaneer's. I felt like a first round draft pick, the firm answered all questions, and left nothing to chance. I am totally confident in my selection for a tax attorney. I would recommend Darrin Mish and his firm to anyone. He knows his business, and when he's done, you also will be a lot smarter for having used his office."*

—SA

*"I would like to say thanks to you Attorney Mish for having patience with me in the last year or so. I have to admit that I was skeptical about the hole thing. After dealing with the IRS for years, making payments and getting nowhere. It is hard to believe that I am free from all the threats and actual liens on my pay and property. I have a fresh start and will take advantage of it by making sure my taxes are filed on time in the future. Even before my case was completed, anyone that I heard having*

*a conversation concerning tax problems, I referred you. I do not need anything in return, because you have done more for me than I thought you could. I tell everyone because I believe in you greatly. Now I know personally that those testimonials that I read about you were not made up. When someone comes in your office and presents their case to you, upon their departure they will be sold on your abilities."*

—Ezekiel D. Brown

### A Final Word about Your Case

When you meet with us at The Tampa Bankruptcy Center, PA, your case will be evaluated, and you will be given an opinion as to the best course of action and the possible outcomes based on our years of experience. But we cannot guarantee the outcome of your case. Although we proudly boast that we obtain the expected result in the majority of cases, once the case is turned over to the judge, it's out of our control. Judges are people just like you and me and sometimes they don't do what we expect them to. However, we will fight for you as though we were fighting for ourselves, and we will work untiringly to get you the best possible outcome under the circumstances.

Whether you are just now experiencing financial difficulties or are on the brink of financial disaster, you need to take action. By requesting this book, you have taken a first step toward resolving your problems and getting your life back on track. If you have any questions, would like to schedule a consultation, or need a referral to an attorney in your area, visit our website at [www.tampabankruptcy.pro](http://www.tampabankruptcy.pro), and we will help you in any way we can.





## The Truth About Bankruptcy



## The Truth About Bankruptcy







