Fresh Start Bankruptcy

A Simplified Guide for Individuals and Entrepreneurs

Deborah Levine Herman, Esq.
Robin L. Bodiford, Esq.

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To all those who need a fresh start. Don't look back.

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I would particularly like to thank Robin Bodiford for her significant work in supporting this book with up-to-date substance. Although esquire follows my name, my passion is to explain the practice of law to you—those who need it—in a way that you can understand. If I have been able to remove some of the mystique and enable you to feel less intimidated by the process, I have been successful. Robin is in the trenches on a daily basis as are many fine bankruptcy experts. My goal is to provide you with language and information to wade through the experience with empowerment. Robin supported the project by making sure the law is up-to-date and correct. Although nothing is perfect, I am grateful to Robin for doing all she could to see that errors were not made. Robin was also tireless in helping me to maneuver through the morass of what promises to become universal bankruptcy reform in this country in the near future. If our explanation seems complicated, you should have seen it before Robin dove in head first.

Suzanne Caplan, a wonderful consultant from Pittsburgh, Pennsylvania, added exceptional insights regarding businesses and the implications of bankruptcy. Suzanne also has a thriving practice and guides businesses through economic crises with the finesse of a diplomat and the skill of an artist.

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D. L. H.

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Fresh Start Bankruptcy

1 Deciding to File

The decision to file bankruptcy is difficult. It has ramifications that are far reaching and life changing. However, remaining in the throes of financial chaos is far worse than finding a tangible and meaningful solution that can bring you back to the stability of financial health.

Bankruptcy filings are at an all-time high of 1.5 million per year. After the tragedy of September 11, 2001, and during these times of financial upheaval in our country, many people found themselves in untenable financial circumstances. If you find yourself in this group, the most important thing to consider is no matter how you have gotten here—lack of money management, over spending, job loss, medical bills, or unexpected changes in your life—your focus needs to be on solutions.

The biggest problem you face as a person considering bankruptcy is your loss of self-esteem. If you are caught up in the idea that bankruptcy should be faced with shame and stigma, you will find the bankruptcy process awful. You are also experiencing fear and anxiety. Remember, you are far from the only one in the world who is in this situation. Bankruptcies are almost epidemic because of the changing climate of our economy and the ridiculously easy access to credit we all have.

As you will see in Chapter 2 in greater detail, we are a country out of control. Most of us have no idea how to use credit. Credit is funny money, but after a while, it becomes necessary to fund the lifestyles to which we have become accustomed.

Although statistics vary, it is estimated that the average family has about $8,500 in credit card debt. This is outrageous. Most bankruptcies are filed because the debtor, you, is no longer able to handle the minimum payments of the many credit accounts you have at any given time.

If you want to make it through the process of bankruptcy without experiencing total trauma and misery, you are going to have to develop a thick skin, objectivity, and the ability to accept your circumstances without the recriminating "what ifs." If you can do these things, you can avoid *decision paralysis.* Once you make the decision to file bankruptcy, the process is essentially black and white. You are the additional ingredient that will determine the quality of the outcome and how well you are able to rebuild your life.

FACE YOUR SITUATION HEAD-ON

If you are ready to face your situation head-on, you will find that the process of bankruptcy, although it involves material loss, will be the most freeing experience you will probably ever have. If you have been choking in a sea of debt, you are already in the depths of financial despair. Anyone who has experienced a nosedive in income is familiar with humiliation, creditor harassment, uncertainty, and fear. Most of us live in denial of how out of control our financial situation really is. As we see the downward slide, we pretend it isn't happening by filling our desk drawers with unopened bills we know we cannot pay. We find many ways to avoid the truth.

Now that you are looking at the reality of your circumstances, the worst is really over. It may not seem that way at first, but when you unravel your debts and figure out a way toward a fresh start, you will be able to exhale and untie the knots that are permanent residents of your lower intestines. We are not advocating that bankruptcy is your *solution.* By looking directly at your particular money monsters, you will find that there are things you can do before bankruptcy becomes the inevitable next step.

There are many paths you can take before you need to consider bankruptcy as a remedy. When you have exhausted all of your possibilities and have made the decision to file, you can learn about the process as we outline it for you in this book. Before you move ahead into the details, take time to be proud that you are staring your monster down. You are turning on the closet light to see what is really lurking inside. Your debt is of your creation, but the monster grows stronger in your imagination and might not be as bad as it seems.

Commend yourself for having the courage to pick up this book. You have decided to do something to help yourself. You may feel that you do not have a choice, but everything is a choice. Many people sit back and wait for things to happen to them without initiating a positive first step.

Bankruptcy exists as an opportunity for you to turn your life around so you can get a fresh start. If you qualify for Chapter 7 where your debts are wiped out or Chapter 13 where some of the debts are wiped out and you make a reasonable plan for repayment, you will find that you can clean up your financial mess with dignity and closure.

So cheer up. It isn't going to be horrible. There are other people who share your problems who then go on to make changes that will prevent financial distress in the future.

ARE YOU A CANDIDATE FOR BANKRUPTCY?

Before you can go any further, you need to consider if you are a candidate for bankruptcy filing. There are many factors to consider. Here is a list of possible signs that a bankruptcy might be right for you.

You know it is time to file for bankruptcy when:

- You pay for fast food with a credit card.
- Thieves won't even take your credit cards.
- The salesperson gives your card back to you cut into pieces.
- Your child thinks your real name is "declined."
- You don't go out before you check which credit card is "working."
- You tell creditors you are not home so many times you might as well put out a missing person's report on yourself.
- You start getting unsolicited advertisements from credit card companies that say, "don't even think about it."
- Your friends and relatives simultaneously change their phone numbers.
- You have to scrape together change from your couch seats to buy this book.

Many bankruptcies are a simple matter of filing the right forms and showing up. At the end of this book, we have included examples of forms to fill out if you are interested in filing your own case. We even walk you through the process of filling out forms in Chapter 7 by showing you what a completed form looks like and what will be expected of you. However, we do not recommend that you file bankruptcy without at least consulting an attorney. You have spent money on far more useless things in your past. This is money well spent, particularly if your case involves a house, significant assets, or issues with the IRS. Even if your case is simple, the advice you receive from a professional will help you move through the system with some doable plan for your future.

Don't drive yourself crazier than you probably already are feeling. There are nuances to the bankruptcy process and laws that may be better left to someone who understands them. You don't really want to have to know everything about bankruptcy unless it is really exciting and stimulating for you. This book gives you enough of a working knowledge of bankruptcy to ask the right questions or to be able to decide to file on your own.

Whether or not you file on your own, you have many decisions to make. There are things you can do to plan ahead for your filing. There are decisions to make regarding what filing you want to make. This book will give you the information you need to do these things. It will give you the confidence to proceed along whatever course you choose to put order back into your financial life.

Remember that no matter what the details of the bankruptcy filing, the most difficult aspect of the process is what is happening between your ears—in your head. If you can keep perspective and avoid the traps of guilt, humiliation, blame, and second-guessing, you can get through without as much damage to the life you have beyond finances. Think of it this way: Lack of money caused by a mountain of debt affects your most primal needs of security, shelter, and sustenance. Bankruptcy has definite unpleasant repercussions, but there is nothing as terrible as what you will do to yourself if you panic.

TAKING THE FIRST STEP TOWARD FINANCIAL FREEDOM

Think of this as a new adventure. If you are hitting financial rock bottom, it certainly can't get any worse. It has to get better. It will get better. The bankruptcy laws are designed to help debtors (that means you) get back on their feet so they can restore themselves to a stable quality of life. Having to file for bankruptcy protection may feel humiliating at first, but facing and taking charge of your life is liberating.

By the way, any person facing bankruptcy gets embarrassed and feels humiliated. Some people have a personal ethic that "no one in my family files bankruptcy." What are you going to do when your creditors are hounding you and filing for judgments because you can no longer pay your bills? Put aside your pride. Get over the family tradition. In an earlier time, there wasn't as much opportunity to strangle yourself in debt. Our generation has it down to a science. Perhaps the next generation will learn from our mistakes, but rest assured, they will surely develop many problems of their own.

In this chapter, you are going to learn about the basic process of bankruptcy. The best option for you is to try to avoid bankruptcy if at all possible. Sometimes it seems as if there is no alternative when, in fact, for some people there is. When you see everything crashing in on you, you may want a quick and easy solution. Bankruptcy is one of the quicker of the legal procedures you may encounter in your life, but its effect will be felt for many years to come. The decision making and information gathering is what is most important in the preparation of your case. The actual filing and bankruptcy procedure is the most clear-cut aspect of the process.

As we said earlier, when you are in financial decline, you may believe that your circumstances are far worse than they really are. Sometimes, you may actually be in a position where a little negotiating with creditors can help you out of the mess you find yourself in. Creditors want to be paid. If you can't pay a bill, call them about it. They may give you a hard time or they may give you the option of making payments on your debt. One couple told me that they decided to stop proceeding toward bankruptcy when they found they could negotiate with their creditors, paying out small amounts on a regular basis.

On one particularly financially overwhelming day, this couple decided to stop paying their mortgage because they couldn't figure out how they could keep up with everything. They figured their credit would be shot anyway, so at least they would have some triage.

In the middle of the month, the phone rang and the person on the other end asked, "Is Mr. So and So at home?" He was standing next to his wife, but she said, "No, he isn't." The caller went on, "Is this Mrs. So and So?" She felt caught so she said, "Yes, . . ." Her usual way of handling calls like this was to say, "I am busy, or I have a kid hanging off the roof, and have to go now!" But for some reason, she hesitated, giving her caller a chance to speak.

The voice on the other line was a representative of the mortgage company. She gulped when the woman asked when they should expect the payment. She replied honestly, "I am not sure when we can pay, we are having some financial difficulty this month." She expected to be yelled at or scolded, but the woman asked, "Why are you unable to pay the bill?"

Mrs. So and So was caught off guard by this seeming statement of concern, and simply stated the truth, painful though it was, "We don't have the money this month."

What surprised her was that the person from the mortgage company then suggested a series of mechanisms for her to stay out of arrears. She was willing to offer a payment plan and even gave a month's grace period.

For this couple, the willingness of their mortgage company to offer options kept them from hiding from their creditors, waiting for their circumstances to make choices for them. They were fortunate because the extra help was enough to push them away from the necessity for declaring bankruptcy.

The mortgage company representative, though well trained in customer service, was not doing this couple a personal favor. This was a sound business decision on the mortgage company's part. The mortgage company benefits from maintaining the mortgage. The mortgage is typically front-end loaded, that is, interest payments are paid first, so that is the profit part of the mortgage. If, instead, they foreclosed, they would sell the house to realize the amount of the loan, losing all possible interest payments. It is to the advantage of the creditor to be paid by you so if you are in a position to rearrange your finances to pay your debts, your creditor may try to make it possible for you to do so. You will get cooperation from creditors if you clearly state your intention to pay and directly face your responsibilities. This assumes, of course, that you have the money to do so. No one wants to be out of money. If you are without any resources to pay even partial payments, you will have to look into other options.

MANAGING YOUR CRISIS

There are many tactics you can use to manage your financial crises without having to go through bankruptcy. Before we look at the specifics of bankruptcy or the preliminary ways you can work with your debt, we will review the extent of the emotional upheaval you are likely to be experiencing at this time. It is important to consider this because it is going to be the worst part of the experience and your ability to navigate these waters will improve your ability to endure and move ahead.

Financial disruption is one of the most common reasons for the break down of families. It wrecks havoc on individuals. This is not a problem to be taken lightly. If you do not have awareness of what you are facing, it is going to be much worse than it has to be.

This book gives you a basic understanding of the process and implications of the remedy of bankruptcy for overwhelming debt. However, you need to look beyond the information we are giving you and the legal aspects into how this entire experience is going to affect everyone in your household.

Although individuals find it painful to go through this process, financial difficulty is most difficult for couples, especially those with children. All people come into relationships with issues around money. Some people are liberal spenders while others are more frugal. If couples have differing views of money management and there are money problems, there is a tremendous opportunity for blame and the destruction of the relationship.

Keep a Clear Head

It is very important to keep a clear head and to consider the process of achieving financial health, whether it be through the filing of bankruptcy, or through some of the other opportunities available, as a shared journey. There are many important lessons to be learned through such a challenging experience and for some, although it is hard to believe, the crisis of hardship and eventual bankruptcy have been a blessing in disguise.

A downturn in finances can make you feel panicked. If you are someone who has managed to live in a reasonable and comfortable manner until an unexpected change of circumstances, you can't help but feel shock and desperation. This makes you far more vulnerable to self-defeating choices if you are feeling backed against a wall. Otherwise, honest people will find themselves lying and manipulating just to avoid the shame they feel and the disappointment of those who depend on them. Men have always held themselves to a personal standard of "provider" even if their life partner is more financially successful. A partner's success is not necessarily an issue; the larger issue is the sense of failure a man feels when he knows he can't provide for the basic needs of his family.

Many women, even if they have thriving careers, expect their spouses or mates to be the providers and will not respect a man if he fails in that role. Even if it is not a big issue to her, a slight sense of disappointment may become a monstrous accusation to a man who already is condemning himself as worthless to his family.

Mark, a man in his forties, was so afraid that his wife would be disappointed in him that he kept from her the important fact that they were getting deeper and deeper into debt. Nina, his wife, was a stay-at-home mom who had deferred financial matters to her husband. Mark was self-employed and was having trouble with his receivables. Business was down by at least half and had been for at least six months. He was taking cash advances and borrowing from Peter to pay Paul, but he didn't tell his wife a thing. He wanted her and their two children to live in the fantasy that everything was fine and there were no financial problems he could not manage. He thought he could hide the problems until business picked up again.

When Nina happened to intercept the mail one day, she found a notice of impending foreclosure on their house. She broke all speed records on the way to his office, threw it under his nose, and yelled "When were you planning to tell me about this?" Now that his secret was out in the open, he poured out all of their problems.

Nina was furious. She wasn't furious about the circumstances, as Mark had expected her to be, she was furious that he had not told her what was happening in their lives, and she was angry at herself for not asking.

This was a couple in a crisis. When Nina looked back on things, she was frustrated because she was unaware of the reality of their financial insecurity. She wished she could take back all of the frivolous spending that she had enjoyed without concern. She had blindly relied on her husband who was all too willing to take the role of family hero. They both realized that they should have been honest, open, involved, and working as a team. Not knowing, Nina had used credit or wrote checks under the assumption that there was money to pay