

Bankruptcy Terms

341 Meeting. A meeting of creditors at which the debtor is questioned under oath by creditors, a trustee, examiner, or the United States trustee about his/her financial affairs.

Arrearage. The past due amount to be repaid in accordance with the terms of a repayment plan.

Asset. Anything of monetary value that is owned by a person. Assets include real property, personal property, and enforceable claims against others (including bank accounts, stocks, mutual funds, and so on).

Assignment. The transfer of any right, claim or interest to another person or corporation. Often used to refer to the transfer of a mortgage from one lender to another.

Automatic Stay. An injunction that automatically stops lawsuits, foreclosure, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

Chapter 7. This type of bankruptcy completely erases most of your debts except: back taxes from the past 3 years, alimony, child support and most student loans. Creditors under chapter 7 can seize all assets that are not exempt by law. The debtor is usually left with one car, necessary clothing, some jewelry, basic household goods, and the equity in their primary residence up to a certain amount. A chapter 7 bankruptcy stays on your credit record for 10 years.

Chapter 13. The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

Claim. A creditor's assertion of a right to payment from a debtor or the debtor's property.

Collection Agency. A company that will attempt to obtain payment from you. If this happens, your account may be listed as a "collection account" on your credit report. If you do not pay your bill and your card issuer has to go to a collection agency to attempt to obtain payment from you, you may be liable for the cost of the collection agency's services. Check your cardholder agreement to see if your card includes this potential fee.

Creditor. A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

Debtor. A person who owes money, goods or services to another, the latter being referred to as the creditor.

Discharge. A release of a debtor from personal liability for certain dischargeable debts. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts (defined below) and prevents the creditors owed those debts from taking any action against the debtor or the debtor's property to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

Equity. The value of a debtor's interest in property that remains after liens and other creditors' interests are considered.

Executory Contract. Executory contracts include contracts for services, contracts for deed, contracts for sale, etc. If a contract or lease is executory, a debtor may assume it or reject it.

Exemption. Property that the Bankruptcy Code or applicable state law permits a debtor to keep from creditors.

Foreclosure. The legal process by which a borrower in default under a mortgage is deprived of his or her interest in the mortgaged property. This usually involves a forced sale of the property at public auction with the proceeds of the sale being applied to the mortgage debt.

Fresh Start. The characterization of a debtor's status after bankruptcy, i.e., free of most debts.

Homestead. A homestead is your land (with or without a dwelling) and the adjoining land where the head of a family dwells. It is your fixed residence with the land and buildings surrounding the main house. In other words, if you own a house and/or land, and it is your primary place of residence, this land/house can be claimed as your homestead. A rural homestead may consist of 100 acres for a single person and 200 acres for a family. A temporary renting of a homestead to someone else is permissible as long as you intend to move back into the house.

Lien. A legal claim by one party against the property of another as security for a debt. Must be paid off when property is sold. A mortgage or a first trust deed is a lien.

Liquidation. A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

Meeting of Creditors (MOC). A meeting of creditors at which the debtor is questioned under oath by creditors, a trustee, examiner, or the United States trustee about his/her financial affairs.

Preferential Debt Payment. A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.

Priority Debt. A priority debt is a tax or administrative debt. The Internal Revenue Service and other taxing authorities are the best examples of priority debt. However, there are circumstances where the IRS could also be a secured or even an unsecured debt.

Proof of Claim. A written statement, filed by a creditor, describing the reason a debtor owes the creditor money.

Real Property Asset. Real property consists of land and whatever is erected or growing upon or affixed to the land. What does this mean to you? It means your home, property you rent to others, or acreage.

Repossession. This action may occur if you do not make payments on your secured loan. Your lender can take the property that you pledged as collateral and sell it.

Secured Debt. A secured debt is a debt which has collateral of security. This means that if you don't pay the debt, the creditor could come repossess the item they are holding as security for the debt. Houses, land, cars, large appliances and furniture are all examples of secured debts. Purchases of appliances, furniture, televisions, VCR's, DVD players, stereos, computers, jewelry, etc. purchased on department store credit cards could be secured debts.

Setoff. The reduction of the amount owed by one party to a second party by crediting the first party with amounts owed it by the second party. The existence and scope of offset rights may be determined by contract language as well as statutory, regulatory and judicial law.

Trustee. A private individual or corporation appointed in all chapter 7 and chapter 13 cases to represent the interests of the bankruptcy estate and the debtor's creditors.

Unexpired Lease. Leases include apartment leases, house leases, car leases, etc.

Unsecured Debt. Unsecured creditors do not have any collateral to secure payment of your debt. Examples of unsecured debt include most credit cards, medical bills and signature loans, as well as deficiencies that remain after a secured creditor repossesses and sells its collateral and the proceeds from the sale do not pay off the debt. Purchases of appliances, furniture, televisions, VCR's, DVD players, stereos, computers, jewelry, etc purchased on universal cards such as Visa, Master Card, American Express and Discover are unsecured. As noted above, these same items when purchased on department store credit cards can be secured.