

# RESPONSIBLE DEBT CONTROL



**ROSENBAUM**  
**LAW OFFICES**  
*Personal & Business Debt Control*

# RESPONSIBLE DEBT CONTROL

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# INTRODUCTION

## Could this be you?

Are you receiving harassing collection phone calls or visits to your home or work? Are you being threatened with lawsuits, repossession, foreclosure or eviction? Are calls being made to your employer, neighbors or relatives about your unpaid bills? These may be some of the intimidating and harassing (if not illegal) tactics used by some creditors to force you to send them payments you cannot afford. It is hard enough to "make do", when your cupboard is at its barest. It is a betrayal of trust when your friendly loan officer becomes an insensitive tyrant, demanding payment, without regard to your personal circumstances. Frequently, your challenging economic state is not your own fault. Job lay off, illness, divorce; even hidden contractual charges together with unconscionable interest rates are all unanticipated expenses; which will wreak havoc to anyone's budget. It is too much to be tormented by abusive creditors while your finances decline. Many individuals lose their perspective and are unable to live a happy, balanced and productive life. Depression may result when creditors' constant pressure makes the situation appear hopeless.

## When enough is enough!!

People have five options when faced with this critical predicament. The first is to starve and make the payment. This selection is not reasonable and cannot last very long. The second is to hide and do nothing, continuing to take abuse from creditors, hoping somehow the situation will improve. Eventually, they may find themselves before the Court, surrendering some of their prized possessions to the Sheriff. The third choice is credit counseling/consolidation services. Their help is usually limited to reducing interest charges on unsecured debt or negotiating with credit card companies to accept a lower monthly payment by increasing the number of monthly payments. They have even recommended you empty your retirement accounts to pay bills. This is certainly heartbreaking, if not outrageous advice, once you learn these tax-exempt funds are protected from collectors. Even more vicious, is the suggestion you pay off your unsecured credit card debt by taking a second lien mortgage on your homestead. The worst that can happen, without a second lien, is the loss of some items. Taking a second lien means risking the possible loss of your entire home. Do not be comforted by statements they are "non-profit". The company's president needs only to raise his salary to erase profits. It is also interesting to note many of these services have banking personnel on their board of directors and/or are funded by the banking/credit card companies. Have you ever heard the expression, "It is like asking the fox to guard your chickens"?

The remaining two options may be more intelligent choices. This booklet explains legal avenues available to someone faced with money problems. It is not intended to replace legal counseling. You are assured of making the best

choice, using the advice of an attorney experienced in the field of bankruptcy.

## **Bankruptcy is not a dirty word!!**

That's right; it is not criminal. It is a constitutionally guaranteed right. When blueprinting the direction of our country, our forefathers had the wisdom to grant relief to people unable to meet their financial obligations. They knew, no matter how rich you may have been; no one is totally immune from financial ruin. Congress is directed by our Constitution to provide for bankruptcy, as a safety net from debt, which resulted in the end of debtors' prisons. Debtors' prison system sentenced people to jail if they failed to make their payments and kept them in jail or as indentured servants until the entire debt was paid. It is not difficult to see the absurdity of debtors' prison. First, you cannot repay creditors when stripped of your job by imprisonment. Second, inability to pay a loan is not a crime in the traditional sense for the public at large is not injured. Third, the creditors are actually gamblers, for they know loan repayment is not a certainty. The creditor cannot expect reimbursement, where the borrower dies without a large estate. Creditors protect themselves by increasing interest rates for all of their loans, to cover anticipated losses on some of their loans, leaving the lender with his expected profit. The United States Congress, realizing lenders have the ability to safeguard themselves while imprisoned debtor is powerless, enacted bankruptcy to avoid such injustice. Our federal law provides two major forms of relief for individuals: Chapter 13, also known as "debt reorganization" and Chapter 7, "liquidation" or "debt elimination". Each is briefly discussed in this booklet.

## CHAPTER 13

### **What is the purpose of a Chapter 13?**

Chapter 13 of the bankruptcy code is a respectable approach to debt control. It allows you to repay your obligations at a reasonable lower monthly payment. You are not running away from your commitments; rather you are keeping financial promises at a rate you can afford. There are usually four reasons to file a Chapter 13 plan: 1) You find you are unable to pay all your loans on time and in full each month and still maintain a decent budget for yourself and family. 2) Keeping property, subject to repossession or foreclosure, where you are behind in payments. 3) You wish to improve your future credit rating. 4) The desire to honor your financial commitments.

### **How does a Chapter 13 work?**

You, with the guidance of your attorney, outline a detailed financial picture showing your income versus your living expenses (food, housing, utilities, clothing etc.) This should reveal the amount available to pay creditors.

A plan of reorganization can be filed with the Court, if the payment is sufficient to provide adequate protection to your creditors. You, along with your attorney, will be required to attend a meeting with a Trustee to review your proposed plan. Schedules and statements will be checked for accuracy. The Trustee must be satisfied you qualify for relief and make certain your plan compiles with all applicable law. Your plan, together with the Trustee's recommendation, will be submitted to the Court for final approval.

### **Collection is stopped**

The Bankruptcy Court immediately issues, upon the filing of your case, a most important Order. This Order is called the "automatic stay". It prohibits repossession, seizure or foreclosure of your property. It stops eviction, prohibits state court collection suits from proceeding, forbids wage garnishment (even by the IRS!). It stops creditors' collection of your bills, at home, at work and from your family and neighbors. This important fundamental protective order, grants you immediate relief from harassment, by deflating financial pressure.

### **Payments are reduced**

Your debt is organized according to its classification. Payment on some debt will be lowered and payment on other types of debt postponed. Chapter 13 accomplishes loan repayment by staggering payments to differing categories of creditors, thereby lowering your monthly payments. For example, the payment to the creditor holding the note on your car cannot be postponed, because the automobile depreciates as time passes. However, the monthly payment may be lowered, below you contracted monthly payment, to the rate of the car's depreciation. Chapter 13 additionally permits you to keep your home, where you are able to afford future regular monthly payment to the mortgage company plus a small additional amount to the Trustee, to cure any skipped payments.

You simply make one payment, usually payroll deducted to the Court appointed Trustee. The Trustee directs and distributes this money to creditors according to your court filed plan. If needed, repayment may be extended up to five years. If all your unsecured non-priority debt (such as credit card debt) is not paid within this period, the remaining balance will be forgiven. This usually results in a significant reduction in both the amount of debt and your monthly payment. Chapter 13 provides a repayment formula designed to respect your loan commitments.

### **Unsecured creditors' fees and interest charges are stopped**

If you, like most people, owe credit card, finance or signature loans, the vast majority of your monthly payment is used to pay interest and added charges; leaving little to lower the actual debt balance. This greatly increases the number and time period of payments. The British refer to this type of extended financing as "paying on the never, never". The bulk of future added

charges; overage fees and interest will be eliminated under Chapter 13. Each dollar received by the unsecured creditor will be applied to lowering your principal balance. This feature enables you to avoid revolving finance charges, quickly reducing your balance and resulting in huge savings.

## **Invalid claims erased and unnecessary contracts rejected**

Your plan can eliminate any claims, which are not legitimate. Most people have signed service contracts they later regret. Chapter 13 can cancel any unused portion of contracts, return unwanted merchandise for credit and discontinue needless service contracts. The law requires the creditor to accept these terms. You do not need their permission, no matter what is stated in their contract. Any or all of these choices will lower your total debt and monthly payments. The Chapter 13 allows you to keep those items you want, like your home and cars; protect things you need such as retirement plans; while terminating your obligation to pay for those things you no longer need. This enables you to recover control of how your hard-earned money is spent.

## **Co-signer protected.**

Chapter 13 protects co-signers, on consumer debt; to the extent your plan provides repayment of this debt. Your co-signers are not required to repay the amount you provide to pay your creditors under the plan. Where the Chapter 13 pays this debt in full, lenders are prohibited from contacting your co-signer. The co-signer will only be responsible for any remaining balance (if any) not paid by your plan. This should be fully outlined by your attorney.

## **Cost of the plan**

The Court reviews all attorney fees and trustee charges to see if they are reasonable. Except for the court filing fees and a small attorney deposit, the approved cost of the plan is incorporated as part of your plan. This allows you to receive immediate legal representation and court protection, without great financial burden.

## **Who may file Chapter 13?**

Only individuals and sole proprietorships may file Chapter 13. This excludes corporations. You must file your case in the federal district where you have resided for the majority of the previous 180 days. The Court also requires proof you can afford the Chapter 13 payment, after allowing for your household budget. If your income does not provide enough money to completely repay all debt within five years, a "composition" or "base" plan may be developed. The base plan proposes the remaining balance of your dischargeable bills be forgiven at the end of your plan, which is not less than three years in duration. Your monthly payment, however, must be adequate to protect the secured creditors' collateral and pay most types of non-dischargeable debt. The creditor should eventually receive more money from a Chapter 13 plan than if the unprotected (non-exempt) possessions were liquidated under the provisions

ENTER THE AVERAGE AMOUNT  
YOU SPEND MONTHLY

# EXAMINE YOUR FINANCIAL STRENGTH

ENTER THE AVERAGE AMOUNT  
YOU SPEND MONTHLY

<b>BUDGET EXPENSES</b>		
Rent/Home Mortgage		
Home Improvement Loan		
Home Maintenance		
Renters/Homeowners Insurance		
Property Taxes		
Homeowners Association Dues		
Electricity		
Gas, Propane		
Water		
Cable Television		
Telephone and Long Distance		
Trash Collection		
Groceries		
Paper Goods		
Cosmetics		
Over-The-Counter Drugs		
Clothing Replacement		
Laundry/Dry Cleaning		
Newspapers/Magazines		
Doctor/Dentist		
Prescription Drugs		
Car Gasoline		
Car Repair/Maintenance		
Car License/Registration		
Insurance	Car	
	Life	
	Health	
	Disability	
	Burial	
Child Support/Alimony		
Dependent Care		
Day Care		
Education		
Charity		
Miscellaneous		
<b>TOTAL</b>	<b>\$</b>	

<b>DEBT EXPENSES</b>		
Car /Truck / Boat Loan		
Car /Truck / Boat Loan		
Car /Truck / Boat Loan		
Student Loan		
Student Loan		
Signature Loan		
Signature Loan		
Signature Loan		
Pawn Shop		
Pawn Shop		
Visa Charge Card		
Visa Charge Card		
Visa Charge Card		
Master Card		
Master Card		
Master Card		
American Express		
Arbitration		
Discover		
Department Store		
Department Store		
Clothes Store		
Clothes Store		
Furniture Store		
Furniture Store		
Appliance Store		
Stereo / TV Store		
Jewelry Store		
Health Club		
Taxes		
N.S.F. checks		
N.S.F. checks		
Judgments		
Personal Loans		
Personal Loans		
<b>TOTAL</b>	<b>\$</b>	

COMPARE YOUR NET MONTHLY INCOME TO THE TOTAL OF YOUR BUDGET & DEBT EXPENSES. IF THE ANSWER IS A NEGATIVE NUMBER... YOU MAY NEED OUR HELP.

of the Chapter 7 bankruptcy. Time prohibitions may apply if you previously filed for bankruptcy relief. There is also a ceiling on the total amount of your secured and unsecured debt. These amounts fluctuate according to inflation. Please verify current limits with your attorney.

## **Chapter 13 is voluntary**

No one can make you file. No one can force you to continue in Chapter 13. The plan is provided to assist you to pay your debt, as long as you need help. You may pay more than the scheduled amount to the trustee; however this will not shorten the time in your plan, unless your plan is a 100% pay back plan. If you find it impossible to maintain your Chapter 13 plan payments, you may voluntarily dismiss your case or convert your case to a Chapter 7 bankruptcy. The decision is yours; however it is wise to have the assistance of a skilled attorney. One that is board certified in consumer bankruptcy is competent to help you with your decision.

## **Credit rating after Chapter 13**

Many people believe evidence of bankruptcy on your credit report puts an end to all future loans. This simply is not the case. First, creditors realize they would greatly limit the number of potential customers, if they excluded all people having taken advantage of the debt relief benefits of bankruptcy. Second, you certainly appear to be a better loan risk, once you satisfied all prior debt; rather than show current heavy debt commitment with continual "late" pay notes on your credit history. Rebuilding your credit after bankruptcy is easy. For your first loan, simply build a small savings account, which you then pledge to your bank and pay the bank on time and in full. This entry on your financial report is a great beginning on your new credit history.

## **What's the catch?**

You must agree to the six conditions of Chapter 13. 1) Payment must be made to the trustee on time and in full. Unless you are self-employed or you are receiving social security as the major portion of your income; all payments are ordered by the Court to be deducted from your wages. The trustee will request dismissal of your case if you fail to timely pay. However, if some extraordinary event prohibits you from paying (example: hospitalization) for a limited time, you can on occasion request permission to skip a payment and place it at the end of the plan. 2) You cannot discriminate as to which claims will be included in your Chapter 13 plan. All debt must be included. 3) You must continuously maintain full coverage insurance on your cars and home. 4) You cannot sell any of your major property, without first obtaining court permission. 5) You must obtain prior Court authority before even applying for any new loan or credit. 6) You must pay all future federal taxes on time and in full. If you believe you can follow these rules, please contact our law offices for a free and confidential conference to discuss your particular situation.

# CHAPTER 7 BANKRUPTCY

## The "fresh start" approach to debt control

Chapter 7 basically pardons many debts without repayment. This gives the debtor a chance at a financial "fresh start". The creditors obtain satisfaction of their loans from the sale of your excess property (if any), which cannot be protected or exempted. They are not entitled to payment from your future earned income. However, if a creditor "holds title" to property other arrangements (as discussed later) must be made with this creditor, to keep these goods. Additionally some types of debt will not be cleared or discharged. You will be responsible for repayment. Election of a Chapter 7 bankruptcy must be carefully considered; for you are only entitled to a Chapter 7 discharge of debt once every six years. Financially catastrophic events may occur within this six-year period, leaving you with the election of only a Chapter 13 bankruptcy.

## Protection from creditor harassment

The court, as with the Chapter 13 plan, immediately orders your creditors to cease debt collection upon filing Chapter 7 bankruptcy. Unless the Court grants the creditor an exception to this rule, a creditor may never again attempt to collect on a pardoned or discharged debt. Unlike the Chapter 13, the Chapter 7 affords no protection to co-signers or others who may be responsible for this debt.

## Discharge of debt

Although much debt is pardoned or discharged by Chapter 7 bankruptcy, there are certain types of financial obligations excluded from discharged. Normally, a public interest is attached to these bills, which in the opinion of Congress, requires repayment. Examples of debt you still have to pay are: child support, alimony, criminal fines, DUI, recent income taxes, debt obtained through fraud or misrepresentation (such as loans incurred on the eve of filing bankruptcy), government guaranteed student loans and debts omitted from your bankruptcy schedules. You should use the advice of an attorney, with knowledge of bankruptcy, to determine which loans are forgiven or must be repaid.

## What property can you keep?

You are permitted to keep the property you own outright, subject to certain dollar/value limitations and qualifications, as provided in either the federal or Texas exemption statutes. These "exempt" belongings should allow you to make a successful fresh start. The Texas statutes generally include homestead, automobile, appliances, clothing and most other household items. Property that cannot be protected may be sold to pay your creditors. In many cases, all property owned by the debtor can be exempted. However, this is no

guarantee all your property is exempt. It is in this area, most mistakes are made. It is important you fully discuss your particular situation with an experienced bankruptcy attorney; one who is familiar with all statutory shelters afforded you, allowing you to keep the maximum amount of your property. If you do not know before filing, what property is subject to confiscation, you cannot accurately decide if a Chapter 7 is beneficial. The Chapter 7 bankruptcy, unlike the Chapter 13, is not dismissed, automatically. The trustee may object to dismissal of the case, resulting in the unacceptable loss of cherished property.

### **What if the lender has title to this property?**

Where the creditor has a lien or holds the title to these possessions (Examples: loans on home, car, furniture and appliances), you need to make one of only three choices.

1) You may elect to surrender these goods to the creditor and owe nothing further on this debt. If you surrendered property to a creditor outside bankruptcy; the creditor could auction these goods and demand you pay the difference between the amount received at auction and the total amount still owed under your contract. Returning the goods (in reasonable condition), under Chapter 7, satisfies the entire debt; prohibiting the creditor from further collection.

2) You may choose to reaffirm this debt. This requires both, the Creditor's agreement to this reaffirmation, in writing and the approval of the Court. This generally renews the original contract, with all its payment terms and conditions. Normally, you must be in full compliance with the contract at the time of reaffirmation. This means all payments must be up to date and insurance protecting the creditor's property in place. After all payments have been made, you will obtain title to this property. If you fail to pay as agreed after the reaffirmation agreement is fully in force, there is little protection afforded by the bankruptcy court. The creditor, if not paid, has the right to repossess this property, sell it at auction and initiate collection on any deficiency.

3) The final option is redemption, which allows you to pay the "market value" for these goods, rather than the higher contracted amount. However, this payment must be made in a relatively short time after filing Chapter 7 and paid in one lump sum. Market value can be agreed to by the Creditor or set by the Court at a hearing. Redemption immediately releases the lien on the property.

Your attorney should help you with selecting the option which best fulfills your needs.

## **HOME FORECLOSURES**

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Foreclosure is the act of auctioning your home at sale to the public, on

the courthouse steps. In Bexar County, this occurs on the first Tuesday of each month. (Please note different rules apply where either you have only a "contract to deed" or your house is a manufactured home.) The money from this sale at public auction is applied to reduce the balance of the mortgage note. The borrower is responsible for any shortage; including foreclosure and attorney fees; if not enough money is realized from the sale to fully satisfy the loan. You will be liable for this shortage, even if the mortgage company buys back your home at a greatly reduced price. The filing of a Chapter 13 or 7 will automatically stop this sale. If you cannot qualify for either the Chapter 7's "redemption" or "reaffirmation" (see above); the result will be the loss of your home and its equity; but any deficiency will be canceled. You will owe nothing further on the debt and the mortgage company is prohibited from even attempting to collect. A Chapter 13 permits you the choice of keeping or surrendering your home. If you elect to retain your home, the Chapter 13 plan permits you to pay small catch up payments through the trustee, while you maintain your future regular monthly payments to your mortgage lender. Once a proper foreclosure sale is completed; the house is lost. There is no recovery of your home after this sale. If faced with this pending situation, consult a bankruptcy attorney immediately. It takes time to obtain accurate information that can be properly prepared for documentation. Remember, the papers filed by the attorney must be signed by you "under oath".

## PREPARATION

Attorneys can only give advice equal in value to the information you give them. It is important you bring, to the first meeting with the attorney the following documents: 1) ALL your bills; not just the bills that concern you, 2) Payroll receipts or some proof of other income, 3) the declaration page of your insurance policies showing the amounts of coverage, for both home and car (not just the liability card), 4) all collection correspondence and/or foreclosure notices received, 5) IRA, 401K and retirement documents showing account balances, 6) federal income tax returns for the previous two years, 7) divorce decrees, showing division of assets and debt,; but only if finalized within the past 6 years and 8) financing contracts for automobiles. It will also be helpful; but not vital, if you prepare a household budget.

The trustee requires photographic identification, such as a drivers' license or military ID, as well as a social security card at hearing.

## EXPECTATION

The attorney at this meeting should first learn why you are considering bankruptcy. Then the attorney will briefly and in general terms explain the

benefit and pitfalls of the Chapter 7 bankruptcy as well as the Chapter 13 bankruptcy. The attorney should review the documents you brought to this meeting. After which, the attorney makes inquiry of your assets, income, personal dealings and expenses. This allows the attorney to tailor his recommendations specifically to address your needs. The choice is yours and yours alone to select or reject these plans. Since there are many issues for you to consider, no one expects you to make an immediate “on the spot” choice. Bringing a list of questions may help you decide.

## WHY ROSENBAUM LAW OFFICES

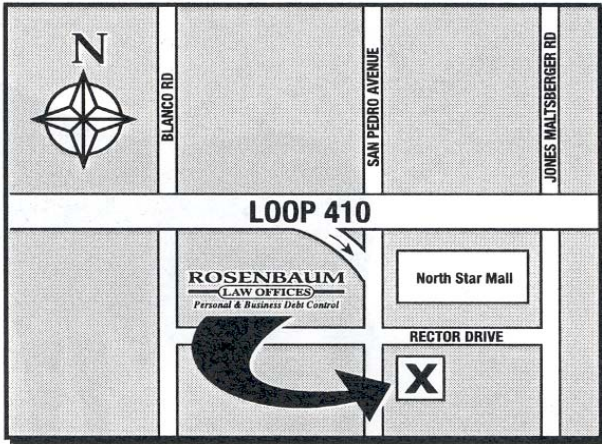
Please allow us to toot our own horn. Paul W. Rosenbaum, Heidi McLeod are all Board Certified attorneys in consumer bankruptcy law by both the Texas Board of Legal Specialization and the American Board of Specialization. A Board Certified attorney is one who has demonstrated through examination, recommendation of peers and length of practice, a prominent competence in a particular field of law. While there are many lawyers, there are few who, like Rosenbaum Law Offices, limit their practice exclusively to consumer bankruptcy, since 1987. We are here to find solutions for you.

## CONCLUSION

A person's financial security is essential to living a balanced and normal life. When you find it impossible to live and make payments; the results are devastating. The bankruptcy program provides a safety net with dignity. It is a legal and honorable approach to reclaim your financial strength. Bankruptcy may be your solution to recovering your balance. It stops creditor abuse and returns your finances to their proper place.

The subject of bankruptcy cannot be fully discussed in a booklet. Volumes of books line many office walls describing the intricacies of just this subject. Everyone's financial situation is different and therefore, it is important you discuss your particular case with an attorney experienced in the field of bankruptcy. The attorneys and staff at Rosenbaum Law Offices are specially trained in bankruptcy to answer your questions in this area. You will meet with one of our attorneys, where it should be readily evident; you are receiving expert advice for your financial situation. Please call (210) 344-7716 to arrange an appointment. There is of course no obligation or charge for the first consultation of a consumer case.

**Remember bankruptcy is your right, guaranteed by our US Constitution.**



# ROSENBAUM

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**Protect Your  
ASSETS!**

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