

# So Your Client Wants to File For Bankruptcy?

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# Objectives in Consumer Bankruptcy

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- Obtaining a **Discharge**: A “discharge” is the elimination of the legal obligation to repay a debt.
  - No actions can be taken to collect a discharged debt
- Invoking the **Automatic Stay**: Automatically stops creditors’ actions, including continuing or filing judicial actions, taken against the debtor to collect a debt.
  - It comes into effect instantly when the bankruptcy petition is filed and applies broadly. Creditors’ phone calls and letters must cease.



# First Question: What Type of Debts Are At Issue?

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- Dischargeable Debts (Generally)
  - Credit Card Debts
  - Medical Debts
  - Personal Loans
  - Debts owed for most torts (with some exceptions)
  - Auto Loan *Deficiencies* (the amount of debt left over after a car has been repossessed and sold)

# Non-Dischargeable Debts

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- The types of debt will generally not be discharged in bankruptcy:
  - Student Loans
  - Domestic Support Obligations (Child Support or Alimony)
  - Debts owed for Taxes
  - Criminal Fines or Restitution
  - Debts obtained through fraud (which may include false pretenses)
- Of course, there are exceptions

# Secured Debts

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- “Secured” means the creditor has a lien on your client’s property:
  - Mortgages
  - Condominium and HOA liens
  - Car loans
  - Rent-To-Own Furniture
- The client’s personal liability for the debt will be discharged, but the lien can still be enforced against the property.
- Consider Chapter 13 bankruptcy to address secured debts



## Second Question: How Urgent Is It For Your Client To File Bankruptcy Right Now?

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- Find out what stage of debt collection your client is at:
  - First Stage: Your client is receiving letters and phone calls from debt collectors
  - Second Stage: A lawsuit has been filed against your client to collect a debt
  - Third Stage: A Final Judgment has been entered against your client.
  - Fourth Stage: The judgment creditor is seeking to garnish your client's wages or levy on their property.
- It is important to know how immediate the threat is to your client's income or assets

# Urgency of Bankruptcy (Continued)

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- There are limits on how often a person can file bankruptcy
  - A debtor who receives a discharge in a Chapter 7 case cannot receive another Chapter 7 discharge in the following 8 years (the “ineligibility period”).
- Debts that arise after a bankruptcy petition is filed cannot be discharged during this ineligibility period
- Does your client expect to incur more debts in the near future?
- Prevailing wisdom is that it is best to wait to file bankruptcy until absolutely necessary, as more debts will be included in the discharge



## Third Question: What Is the Value of Your Client's Assets

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- At the time of filing, a “bankruptcy estate” is created.
- This estate includes all of the property that your client has an ownership interest in, whether tangible or intangible, located anywhere in the world.
- Your client is allowed to exempt a certain value of property from the bankruptcy estate, based on state and federal law.
- Property of the estate that is not exempt must be turned over to the trustee for the benefit of unsecured creditors
  - Your client needs to understand the risk that they could lose non-exempt property in the bankruptcy



# Assets: The Obvious Ones

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- Real Property
- Motor Vehicles
- Personal Property
  - Household Goods and Furnishings
  - Clothing and Jewelry
- Financial Assets
  - Bank Accounts
  - Investments

# Not So Obvious Assets

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- Income Tax Refunds
- Recovery from lawsuits in which your client is the plaintiff (including potential lawsuits that have not yet been filed)
- Property held in another state or country
- “Bare Legal Title” assets (e.g. cars driven by a family member)
- Inherited property (including family homes)
- Right to recover debts owed to your client
- Dormant savings accounts
- Cash surrender value of some insurance policies and annuities



# Exemptions: What Your Client Gets to Keep

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- Florida is an “opt out” state, meaning the debtor must use the exemptions provided by Florida state law.
  - \$1,000.00 in personal property (the debtor chooses how to apply it)
  - \$1,000.00 additionally for any motor vehicle
  - \$4,000.00 “wildcard” exemption is available **if** the debtor does not claim a homestead exemption (this can be “stacked” on top of other exemptions)
- Homestead property is almost always 100% exempt.
- Social Security benefits and most retirement accounts (401Ks) are exempt under federal law.

# Deciding Whether to File: Bankruptcy Advantages

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- Bankruptcy can protect your client's assets and income from garnishment and levy
- Bankruptcy can prevent debt collection lawsuits from being filed (or continued) against your client
- Bankruptcy will stop harassing debt collection activity (phone calls, letters, etc.)
- May help to restore your client's driving privileges (for judgment debts owed for auto accidents)



# Deciding Whether to File: Negative Consequences

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- Client could lose non-exempt assets through the process
- Client will be precluded from filing subsequent bankruptcy cases (Chapter 7 cases can only be filed once every 8 years, generally)
- Bankruptcy will remain on your client's credit report for 10 years
- Bankruptcy filings are public records. Future employers, future landlords, and future lenders will all have access to the information.
- Once a Chapter 7 bankruptcy is filed, it can only be dismissed with the Court's permission.

# Bankruptcy And The “Judgment Proof” Client

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- Social Security benefits, SSI benefits, and most public and retirement benefits are exempt from garnishment.
  - Even after the benefits are deposited into a bank account
- Head of Household wages are exempt from garnishment
  - Must provide more than 50 percent of the financial support to a dependent
- Debtors can assert their personal property exemptions to levy on their personal property (as described in the previous slide)
- If there is nothing a creditor can take from your client, do they need to file bankruptcy?



# Non-Bankruptcy Alternatives

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- For debt collector harassment: Consider sending a “cease communication” letter under the FDCPA and/or filing a complaint with the CFPB- [www.cfpb.org](http://www.cfpb.org)
- For federal student loans: Consider applying for an income-driven repayment agreement or a statutory discharge of the loans- <https://studentaid.gov/>
- For federal income tax debts: The IRS has a number of options, including offer-and-compromise and current non-collectable status
- For other debts: Try entering into an affordable repayment agreement with the creditor, sometimes just the threat of bankruptcy filing gives you negotiation leverage

# Thanks for Watching

(or reading or listening)

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## Good Luck!

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