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Ted Kirsch, President



**PRE-PAID
LEGAL PLAN**

Administrator

**WILLIG, WILLIAMS &
DAVIDSON**

**1-215-814-9200
1-866-738-5343**



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**BANKRUPTCY REFORM:
THE BANKRUPTCY
ABUSE PREVENTION
AND CONSUMER
PROTECTION ACT -
WHAT YOU NEED TO
KNOW**

By now you have heard about the sweeping changes to the Bankruptcy Code that have been passed into a new law known as the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA). The title of the Act is very misleading, as it suggests that consumers have protection, which to the contrary, it is the huge credit card corporations who won this battle. Simply put, the new law has made filing for relief from debt much more difficult for the average individual, and has made collecting on debt much easier for creditors.

**How does the new
bankruptcy law effect
individuals?**

Previously, individuals who could demonstrate a certain lack of assets and whose

monthly expenses matched their income could file for protection under Chapter 7 of the Bankruptcy Code without giving up the assets they did own. Under Chapter 7 an individual could discharge (eliminate) most forms of unsecured debt, such as credit card debt, hospital bills, unsecured loans and certain utility debt and obtain a “clean slate” upon discharge.

Unlike Chapter 7 which requires no monthly payments to a Trustee, Chapter 13 is considered a “wage earner” plan that requires an individual filing under that Chapter to make a monthly payment to a Chapter 13 Trustee over a period of 36-60 months. The Trustee accumulates those payments and pays to creditors who file a claim, a portion, or all of the debt, depending on the Plan. The Plan also provides for repayment of secured debts, such as a mortgage or car loan, or priority debts, such as taxes or child support, and therefore this form of bankruptcy is most



often chosen by individuals who need to pay such debt back.

Now, individuals have to jump through many more “hoops” to file for Bankruptcy, having to gather a lot of paperwork and documentation to support a Petition to the Court, among other things.

The changes to the Bankruptcy Code have effected both Chapter 7 and Chapter 13 filers. Some of the major changes and new requirements are as follows:

1. Credit Counseling: Any individual who intends to file for Bankruptcy under Chapter 7 or 13 will be required to receive and pay for credit counseling during the 180-day period preceding the filing of a Bankruptcy Petition. The individual must provide the Court with a certificate from an approved, non-profit credit counseling agency certifying that he or she received credit counseling and attempted to work out payment arrangements with his or her creditors.

2. Income Requirements: Individuals seeking Chapter 7 Relief will have to pass an income “Means Test”. The test is rather complicated, but primarily is based on the

median income of the state in which an individual resides. An individual's average monthly income (which is calculated over a 6-month period, and yes, you must provide each and every paystub, and proof of any other source of income, for the 6 months prior to your filing) must fall below the state's median income for a family of the same size. If your household income is greater than the median household income for your state, you may not be able to file for Chapter 7 Bankruptcy even if you seem to have no money at the end of the month. Instead, you may have to file under Chapter 13, wherein you will repay a portion of your debts as previously explained. If you earn more than the state median income, you may be forced to pay at least \$100.00 a month for 5 years to a Trustee, which means you will pay back at least \$6,000.00 towards your debt. Also, because you earn more than the state median income, there is a "presumption of abuse", that is, it is noted on your petition that you may be abusing the bankruptcy process, and the argument is that you may actually be able to afford all of those credit card bills with outrageous interest rates. Creditors may object to the filing of your petition, and ultimately your case may be dismissed or you may be forced to repay your debt in a Chapter 13 instead. If forced into a

Chapter 13, individuals would have to live on a very strict budget, because the only reason they are in a Chapter 13 is for earning more than the state median income, despite the fact that they honestly live paycheck to paycheck and truly cannot afford the payments. This is one of the biggest and most significant changes in the law since many individuals who would have been eligible for Chapter 7 Relief, and would not have had to make any payments towards their debts, may no longer qualify.

3. IRS Allowable Expenses: If you fail the "Means Test" as described above, you have to itemize your monthly expenses. Instead of listing your actual expenses, you have to use the IRS allowed expenses for a household of your size. For instance, though you may spend \$400 a month for a car payment, you have to list the IRS allowed expense, though it may be much less than what you actually spend. Basically, the government sets your budget for you, and if your expenses exceed what they have allowed for your household, too bad.

4. Multiple filers: Under the old law, an individual who obtained a Bankruptcy Discharge under Chapter 7 was required to wait six years from the time their first petition was filed before being permitted to file another Chapter 7 Petition. The new law increased this time period to 8 years. For Chapter 13 Petitions, refiling within a year of your Case being dismissed will be quite a challenge, as automatic stay will

terminate within 30 days of the new filing unless the Court approves an extension of the automatic stay. To obtain such approval, a debtor must prove that he is acting in good faith and that there are true changed circumstances, such as acquiring a new job earning more money. A hearing to obtain the Court's approval for such an extension must take place within thirty days after filing. As a further slap on the wrist to multiple filers, a Chapter 13 individual cannot receive a discharge if he or she received a Chapter 7 discharge in a case filed within the four years prior to the new filing.

5. Attorney Certification and Elaborate Documentation: Attorneys must now certify that they made a reasonable investigation of all of the information contained within their clients' petitions. Not only does this mean that an attorney is subject to sanctions, but it means that the attorney's workload has significantly increased, the fees that the courts have allowed them to charge individuals has substantially increased, and the documentation required to make such an investigation has greatly increased. The Court and the Trustees are requiring such documents as the past 5 years of tax returns, 6 months of paystubs, a formal appraisal of all real property owned (by the way, it is approximately \$300.00 for each appraisal you must obtain), a recent credit report,

credit card and utility statements for 3 months, verification of insurance for secured property, and the list goes on and on and on. The purpose of the change in law here was two-fold: not only will it force attorneys to look over the shoulder of their clients, but it will make the process so cumbersome for individuals when collecting all of the documentation required that it will deter some people from filing. Some of the people who will be deterred from filing are the very people who truly cannot afford their bills and need to file the most!

6. Financial Management Course: Under Chapter 7 or Chapter 13, an individual will be required to complete a Financial Management Course before they may receive a final discharge of their debts. The Court will tell you the deadline you must complete this course by; if you do not complete the course by the deadline, you will be completely denied a discharge of your debts.

Please take note that these are just a *few* of the numerous and complicated changes to the law. The changes are so specific that they should be discussed on an individual basis upon review of a potential filer's individual circumstances.

Seek Counseling Now

If you are contemplating filing for Bankruptcy and your debts are causing you great

hardship, seek the help of an attorney as soon as possible and discuss the options available to you. Bankruptcy consultations must take place in-person with an attorney, as required by the new law, as there are many forms to sign and review if contemplating the filing of a petition. Only an attorney can give you legal advice, and the new law is so comprehensive that a one-on-one consultation is necessary to determine under which chapter, if any, you are eligible to seek relief. Act now! Do not be overwhelmed by your debt!

DEBT COLLECTION, KNOW YOUR RIGHTS!

If you're lucky and good at budgeting your money, you've never had a past due credit card, magazine subscription or cable bill. But if you are like many of us, you may have been late paying your bills and were contacted by a bill collector as a result. When you owe someone money, that person, or company, is called your creditor. When the bill first becomes delinquent, you will most likely be contacted by your creditor's in-house collection department. These employees are not subject to the Fair Debt Collection Practices Act (FDCPA).

Once a few months have passed and the company determines that you are not willing to pay, your account will be placed with an outside collection agency. You should avoid having your account

placed with an outside collection agency if at all possible. Once an account is placed with an outside collection agency, your creditor must pay that agency a fee for collecting the debt. Because of this extra cost, a creditor may be less willing to settle for anything but the full amount owed. The earlier you can settle your debts the better. If you have the money, holding out may just cost you more in the end. The Fair Debt Collection Practices Act sets forth the type of activities outside collection agency can do in its attempts to obtain payment from you.



Prohibited Collection Activities

1. Calls made before 8 a.m. or after 9 p.m. your time.
2. Communications about your debt to any other person, except a spouse.
3. Communications to a debtor already represented by an attorney regarding such debt.
4. Communications at a your place of employment, UNLESS you have consented to these communications.
5. Referring your debt to another collector after you requested the first collector to cease collection activities.
6. Use of threats or abusive and profane language.

7. Publishing a list of consumers who have allegedly refused to pay debts.

8. Use of deceptive tactics, such as:

a. Making false statements to get information. For example "We're taking a survey, what bank do you use?"

b. Misrepresenting the amount of the debt. For example, the debt is \$500 and you are told it is \$1,000.

c. Misrepresenting or failing to state who the collector is. The collector must not use an alias, unless it is one that is used on a regular basis and the debtor is familiar enough with the alias that there is no confusion about with whom the debtor is speaking.

What You Should Do When A Debt Collector Contacts You

1. Immediately determine the name of the person calling, the person or entity for whom they are calling, and the address and telephone number where correspondence concerning the debt should be sent.

2. Record the date and time of the telephone call.

3. Request verification of the debt within **30 days** of receiving a written notice from the collector. Your request should ask for:

a. The name and address of the original creditor;

b. The original amount of the debt;

c. The exact amount now owed on the debt and how long that figure is valid for pay-off;

d. The interest rate and fees; and

e. The date and amount of the last payment received from you.

Be sure to date the letter and keep a copy.

4. Once you request verification of the debt, a debt collector should not:

a. Refuse to verify the debt;

b. Demand payment from you before sending verification of the debt; or

c. Threaten legal action or actually file a lawsuit until the debt is verified.

Debt "Resolution" Companies

Beware of "debt resolution" companies or companies that agree to help resolve your debts for a fee. These companies claim that they will be able to settle your delinquent accounts for 45 - 65% of the total amount due. In reality, these companies cannot **guarantee** that they will be able to settle your claims at these rates. In fact, some will admit that these rates may only be obtained once the creditor has already won a legal judgment against you and places a lien on your property. One representative was quoted saying "I'm just playing the odds."

These companies assume that the first collection agency will simply give up and sell your

debt to a second collection agency once it puts a lien on your property and does not receive any money from that lien. This second collection agency is then supposed to settle the debt for a fraction of the original amount because it has not invested as much time and expense in collecting the debt from you. If you don't mind having a possible legal judgment and a lien placed on your property, then perhaps these companies may be of service to you. The bottom line is to always read what is stated in the contract. A lot of debt resolution companies state in the contract that possible harm could occur to your credit. Verbal assurances from a company representative that everything will "be okay" will not override what is stated in the contract. You should determine whether paying a debt resolution company, that may not be able to resolve your debts in the end, is the best use of your money.

IDENTITY THEFT: HOW TO PREVENT IT FROM HAPPENING TO YOU AND WHAT TO DO IF YOU ARE A VICTIM

There has been a substantial increase in the number of identity theft cases that have been reported in recent years. There are many factors that have led to the increase of people who have fallen victim to identity theft. It

is important to guard yourself against potential theft of your credit card information and social security number, which are prime targets for identity theft.

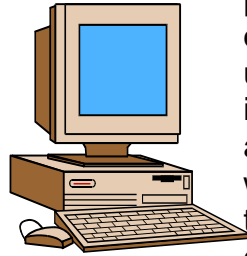
What is Identity Theft?

Identity theft is a crime in which someone obtains another's personal information in a fraudulent way, typically for economic gain. Victims of identity theft spend months, sometimes years, and countless dollars, clearing up their credit and financial matters as a result.

How does identity theft happen?

There are countless ways, unfortunately, that someone becomes a victim of identity theft. Sometimes it involves the actual theft of an individual's purse or wallet that has their credit cards, social security number, and other personal information inside. Other times, an individual purchased something over the telephone or on the internet, and a third party has somehow hacked into the call or computer, accessed the information and used it for their own benefit. Sometimes people call an individual's home or send an email, and claim to be a legitimate business, solicit personal information, and ultimately use the information given to hurt the unsuspecting victim. There have been incidences where employees

with access to clients' personal information (for example, at banks, doctors' offices, credit agencies, etc.) sell the information to anyone willing to



pay for the opportunity to use that information in a fraudulent way. And then there is good, old-

fashioned trash rummaging, where someone finds credit card applications, mail, bank statements, and other personal information and run wild on your dime. One of the more recently reported methods of stealing personal information is by the use of cellular telephones, where someone standing right behind an unsuspecting victim in the check-out line snaps a shot of his or her credit card and uses it later to make purchases. And the list of methods could go on and on, as far as a criminal mind can go.

Regardless of how the thief gets your information, they are quick to use it and get the most that they can, as fast as they can, without getting caught. They use your information to open new accounts and credit cards, to issue counterfeit checks, to authorize charges in your name, to purchase goods and get cash advances, to obtain a driver's license, and a host of other deviate acts. Sometimes they even use your bank information or debit card number to wipe out your accounts. Identity theft is very frightening and happens all too

often, so it is important to take some steps to prevent this from happening to you.

Preventative Measures

There are some steps you can take to prevent the occurrence of identity theft. The key step is to be aware of what is going on in your life financially. Ways to accomplish this are:

1. Check your credit card and bank statements every month. Carefully and promptly review all of your statements. Look for unusual, suspicious charges that you did not authorize, and call your credit card company or bank if any charges are unfamiliar or you need clarification.
2. Check your Credit Report every few months, but at the very least, once a year. Make sure that all of the accounts listed were established by you. Verify that all accounts belong to you, and that there are no open, fraudulent accounts.
3. Safeguard your personal information. Shred mail before throwing it in the trash. Never give out personal information over the internet, especially your social security number or account information, unless you have verified that the company is legitimate and it is someone you regularly conduct business with. Be careful giving out information over the phone, especially when you did not initiate the call. Never offer your social

security number, unless it is a familiar account that you know requires this information for identification purposes.

4. Put passwords on your accounts. When possible, but passwords on all of your credit card and bank accounts to make it more difficult for someone else to access it. Try to pick a password that someone else cannot easily guess.

5. Never carry your social security card. Keep it somewhere secure and not easily accessible to anyone beside you.

6. Keep your purse or wallet out of sight. When you are not actually carrying your purse or wallet, keep it hidden away as to not invite someone from walking away with it quickly.

7. Update the virus protection on your computer. This will prevent hackers from having easier access to your files and personal information. Never open up attachments or emails from someone who you do not recognize.

What to do if you are a victim of identity theft

There are some immediate steps you should take once you discover you are the victim of identity theft.

1. Call the Police and file a report. Most banks and credit card companies will require that you file a police report before they forgive the fraudulent charges to your

account. Ask for the report number or copy of the report from the police.

2. Close your accounts immediately. Contact all of your credit card companies and your bank immediately and notify them of the theft. Close your credit card accounts, and if opening a new account, place a password on it. Follow up in writing to all of your existing accounts, and keep a copy of all correspondence sent. Send a copy of the letter certified so you get a return receipt from the post office.

3. Contact all three major credit reporting agencies. Request that they place a fraud alert on your report and on all accounts. This will prevent someone from opening new accounts in your name. The contact information for the three major credit reporting agencies is:

Equifax

www.equifax.com

For Fraud Alerts, call: 800-525-6285 and write:
P.O. Box 740241, Atlanta, GA 30374-0241

To order your credit report, call: 800-685-1111 or write:
P.O. Box 740241, Atlanta, GA 30374-0241

Experian

www.experian.com

For Fraud Alerts, call: 888-EXPERIAN (397-3742) and write:
P.O. Box 9530, Allen, TX 75013

To order your credit report, call: 888-EXPERIAN (397-3742) or

write: P.O. Box 2002, Allen, TX 75013

Trans Union

www.transunion.com

For Fraud Alerts, call: 800-680-7289 and write:
Fraud Victim Assistance Division, P.O. Box 6790, Fullerton, CA 92634

To order your credit report, call: 800-888-4213 or write:
P.O. Box 1000, Chester, PA 19022.

4. Contact PennDot or the agency where your state ID is registered. Request that a fraud alert be placed on your file so that no one can get a license or ID in your name.

5. File a complaint with the Federal Trade Commission (FTC). The FTC will investigate your complaint and try to track down the thief who stole your information. You can contact them at 1-877-ID THEFT (438-4338) for information about filing a complaint.

6. Document all of the actions you have taken. Make sure to keep accurate records of all companies and agencies you have contacted. If anything should ever reoccur on one of the accounts, you will be able to trace back who you spoke to and what action was taken on your behalf. Always follow up in writing with all individuals that you spoke to.

If you have been the victim of identity theft and are in need of further assistance, do not hesitate to contact an attorney for help.

COMMON LAW MARRIAGES IN PENNSYLVANIA

Mr. Windsor and Ms. Bowles are a star-crossed couple, quite famously in love. After years of cohabiting, they have decided to wed. Sadly, few in their posh Pennsylvania community seem interested in sharing their joy. Although they had once imagined a lavish exchange of vows surrounded by family and friends, Mr. Windsor and Ms. Bowles have met with

unexpected resistance. It seems most of the invited guests have declined to attend. Mr. Windsor's mother has declared her unequivocal opposition to the proposed union. Even Mr. Windsor's siblings, fearing disinheritance, have sent their regrets.

In spite of these obstacles, Mr. Windsor is determined that he shall wed his intended bride. Ms. Bowles feels somewhat responsible for the lack of enthusiasm displayed by



Mr. Windsor's family and suggests that the couple discard plans for a grand ceremony. Mr. Windsor, eager and in love, readily agrees. "Camilla, my darling, do you consent to be my wife, now and forevermore?" Without hesitation, Ms. Bowles responds, "Yes, dear Charles, I do." Immediately, the couple contacts the society editor of the local newspaper to arrange a full page advertisement announcing that they shall henceforth be known as Charles and Camilla Windsor. Historically, Charles and Camilla's actions would have successfully formed a valid common law marriage. Under the common law of Pennsylvania, competent individuals capable of contracting a marriage were, until recently, able to create a legal marital relationship without ceremony or the issuance of a license by 1) intending to create a marital relationship and 2)

using words in the present tense to declare their intent to become husband and wife. Also, until recently, where a man and woman lived together and had a reputation in the community as husband and wife, a common law marriage was presumed under Pennsylvania law, as long as each party was capable of marrying. In these circumstances, the burden of proving that a common law marriage **did not** exist would be on the party contesting the existence of a marriage. Because of the potential for fraudulent claims, Pennsylvania law tolerated, but never encouraged, these unions. Effective January 2, 2005 common law marriages have finally been abolished in Pennsylvania by statutory amendment.

The statutory amendment to abolish common law marriages was signed by Governor Rendell on November 23, 2004 and became effective on January 2, 2005. It is now clear that the Commonwealth of Pennsylvania will not recognize common law marriages entered on or after January 2, 2005. However, some confusion remains about the validity of common law marriages entered into before that date. Despite the statute's specific declaration that common law marriages entered into on or before January 1, 2005 shall remain valid, the Commonwealth's appellate courts have rendered conflicting decisions as to the validity of common law

marriages entered before January 2, 2005.

In 2003, Commonwealth Court issued a decision declaring that no common law marriage entered into on or after September 17, 2003 was valid. In 2004, Superior Court, one of the Commonwealth's other appeals court, rendered a decision upholding the validity of common law marriage. To make a difficult issue even more confusing, Superior Court rendered a later decision which questioned the validity of common law marriage. There has been no subsequent determination by the Supreme Court of Pennsylvania, the highest court in the Commonwealth, to settle the issue of whether common law marriages entered before January 2, 2005 are invalid. Therefore, confusion about this issue persists.

Federal agencies take the position that they are bound only by the decisions of the highest court in the state. Furthermore, because the Supreme Court of Pennsylvania has never determined that common law marriages are invalid, federal agencies like the IRS and the Social Security Administration presume the validity of common law marriages entered before January 2, 2005. In light of the conflicting decisions of Pennsylvania's appellate courts on this issue, an individual could mount a

credible legal challenge to any party refusing to recognize a common law marriage entered into from September 17, 2003 through January 1, 2005. Employers, benefit funds and unions should review the facts and circumstances of each common law marriage before taking a position on whether an individual is a party to a valid common law marriage.

Pennsylvanians who, like Camilla and Charles, seek to enter a marital relationship certain to be recognized by Pennsylvania law, would be wise to have a marriage ceremony solemnized by an authorized individual after the issuance of a valid marriage license.

LIVING WILLS – HELP YOUR FAMILY DECIDE

Suppose you were in an accident that left you so badly injured that you were unconscious, unable to communicate or breathe on your own. After some time, the doctors told your family that there was nothing they could do to improve your condition and they had to decide whether or not to turn off the machines that keep you alive. Who would make that decision for you and how would they know what you would want? You can answer those questions **right now** by signing a Living Will.

A Living Will or an Advanced Health Care Directive is a document that allows you to decide what forms of treatment you want or don't want if you can't make those decisions

yourself. It also allows you to name another person called a surrogate to make those decisions for you. Once signed, the Living Will comes into effect if you are in a terminal condition or a state of permanent unconsciousness



Any competent adult over 18 can execute an Advanced Health Care Directive.

To obtain a Living Will with a detailed explanation of the terms, call the PFT Legal Services Plan at 866-738-5343 or 215-814-9200. You owe it to your loved ones.

CAUTION

These articles are not a substitute for individual legal advice from a lawyer. The information presented here is believed to be accurate, but laws vary between states and every legal situation is different.

For legal service, call Willig, Williams & Davidson at 866-738-5343 or 215-814-9200.