

White Paper

## Bankruptcy Management and Recovery

Recover collections revenue with proactive bankruptcy management. The proof is in the profit margin.

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**Challenge:** Bankruptcy filings continue to translate into major decreases in revenues for many creditors and collections organizations—especially those who do not have an effective bankruptcy management and recovery program in place.

**Solution:** Leverage technology to implement an efficient bankruptcy management solution, including a streamlined proof of claims (POC) debt recovery process.

**Purpose:** Assist creditors and collectors to generate an ongoing revenue stream by identifying, managing and collecting on bankrupt accounts.

## Background

### Bankruptcy filings statistics

Bankruptcy is a legal status of a person or other entity that cannot repay the debts it owes to creditors. It is a federally governed process, and is covered under Title 11 of the U.S. Code<sup>1</sup>. While there are several different types of bankruptcy filings (bankruptcy “chapters” which refers to the chapter of the U.S. code that the requirements for that type of bankruptcy are covered), the most common in consumer collections are Chapter 7 (full discharge of a bankruptcy debtor’s debts) and Chapter 13 (a reorganization or debts, or repayment plan). You will occasionally also see a Chapter 12, which relates to family farmers or fishermen. If you collect on commercial debt, you will also see Chapter 11, which is the equivalent of a Chapter 13, but carved out for commercial use, not an individual consumer.

In the late 1990’s and early 2000’s, annual bankruptcy filings were continuously increasing at a relatively steady rate. To counter the steady growth, The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was passed and successfully resulted in a drastic decrease in bankruptcies. But the decrease did not last. Within two years, bankruptcy filings began to increase at an unprecedented rate and have continued to do so until recently. While the past few years have seen a slight decrease, bankruptcy is still an issue when collecting a debt.

Although bankruptcy growth has slowed in the past couple of years, it is still important to track and react to bankrupt accounts. With new Final Cure actions in the mortgage industry and a higher number of automatic stay suits than ever before, you need to protect your company and your company’s assets.

### Total Bankruptcy Filings over Ten Years:

Year	Number of Filings
2004	1,581,246
2005	2,063,787 (BK Act Changes 10/2005)
2006	592,414
2007	829,410
2008	1,087,082
2009	1,433,260
2010	1,547,837
2010	1,547,837
2011	1,368,379
2012	1,176,569
2013	1,024,043
2014	963,739

Source: LexisNexis® statistics.

## Bankruptcy Management and Recovery

There are several contributing factors to the continued high rate of national bankruptcy filings:

- 1. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 isn't working as expected:** This important piece of legislation was intended to make the bankruptcy laws less prone to abuse by debtors looking for an easy escape from their debt. For a short time after the law was enacted in 2005, there was a significant decrease in bankruptcy filings. But bankruptcies have jumped back to their pre-BAPCPA rates.
- 2. The economy:** Job loss is one of the main reasons for bankruptcy filings. The recent deterioration of our national economy is resulting in failing businesses and unemployment rates of 5.1 percent.<sup>2</sup>
- 3. A social paradigm shift:** Not long ago, filing for bankruptcy was considered a social faux pas and a last resort for consumers and businesses that had no other options. But today, with Chapter 13 repayment plans, consumers and businesses are proactively choosing bankruptcy as an acceptable solution. There is no longer the same social or psychological stigma associated with being bankrupt.<sup>3</sup>

## Current Perception

### Bankruptcy records are often perceived as uncollectible

From advanced data analytics to forward-thinking scoring models, creditors and collections professionals often employ every possible measure to proactively predict and avoid eventual bankruptcies. But many of these same organizations share a standard policy of removing all bankruptcies from their debtor files as soon as they receive the bankruptcy notice—simply accepting them as losses and an unavoidable cost of doing business.

Some organizations maintain the position that consistently filing proof of claims within the legal time frame requires too much time, money and manpower to justify the amount of revenue that could be recovered. Others don't see the value of spending money trying to collect from people and businesses that don't have money to give (because they are bankrupt). But statistics show that on average more than 50 percent of bankrupt accounts do have money and, therefore, can and do pay some or all of their debts.

In fact, there are several types of debt that are not dischargeable in bankruptcy, the most common are student loans (as of 10/2015, however, there is talk of including these in the future), child support, alimony, penalties and fines, taxes and fraudulently incurred debts.

## Increase in Regulations Surrounding the Credit and Collections Industry

Not only is our industry regulated by the FCRA, FDCPA, HIPPA, TCPA and others, but the invention of the Consumer Financial Protection Bureau (CFPB) has caused more attention to compliance and regulations than ever before. New rules surrounding the mortgage lending industry, auto lending industry and the collections industry have caused everyone in the credit and collections industry to be on heightened awareness. In this age of increased regulation, it is even more important to make sure you have proper bankruptcy notification and follow-up processes in place.

Additionally, in May of 2015 settlements with big banks required them to update credit reports of consumers who had their debt discharged in bankruptcy. The banks are also required to remove statements on the credit bureau relating to "past due" or "charged off", as well as showing the balance as \$0.00 on the credit bureau. The balance is set to zero, because once the discharge is entered, the amount due is zero; the debt has been discharged in the bankruptcy. Therefore, it is more important than ever to make sure you are aware of the most recent disposition of your consumer's bankruptcy.

## Opportunity

### Implement a bankruptcy management and recovery program

Developing and committing to an effective bankruptcy management program gives organizations the ability to anticipate bankruptcies before they happen and respond proactively to recover as much debt as possible before the bankruptcy is officially filed. Understanding the demographics and patterns of the bankrupt debtor will help in early detection and preemptive resolution.

Below are some general national bankruptcy demographics<sup>4</sup>:

- Average age of 38
- Slightly better educated than the general population
- 44% couples
- 30% women filing alone
- 26% men filing alone
- 66% have lost a job
- 50% have experienced a serious health problem (75% of whom have health insurance)

Organizations with an active bankruptcy management program will have access to more detailed demographic, psychographic and behavioral profiles on their own customer base or collections list.

Since the primary reasons for bankruptcy filings are medical issues, loss of a job, divorce or foreclosure, data monitoring and alerts are an easy way to predict the potential for a bankruptcy filing. Creditors should also educate collectors to look for these warning signs. For example, if on a customer service or collections call a consumer mentions one of the triggers above, the creditor should consider policies moving for settlement rather than payment arrangements. Information allows creditors and collectors to be creative in helping debtors find a way to avoid bankruptcy.

How often is often enough when checking for bankruptcy in a litigation situation? We suggest monitoring all active collection and litigation cases for bankruptcy, but if you choose not to monitor, and choose to check PACER manually instead, we suggest you check for bankruptcy: 1) at the start of the collection cycle, 2) prior to filing for suit and 3) prior to pursuing enforcement of a judgment.

Implementing an automated bankruptcy notification and update process can help to reduce manual time spent in locating bankruptcies and updating your files. An automated process will also help to avoid missed bankruptcies. Additionally, by monitoring for updates to the bankruptcy (dismissal, discharge, conversion, reinstatement, etc.) you can make sure to take the proper action on your accounts in a timely manner.

### Secured Debt

Secured debt is handled a little differently in a bankruptcy because you can generally collect on the underlying debt once the bankruptcy has been discharged. However, if the consumer has moved for an order to avoid your lien, and that motion has been granted, this is an exception to the rule.

Often times, if a consumer is up-to-date on their mortgage or auto loan when the bankruptcy is filed, the mortgage company or auto loan company will ignore the bankruptcy, continue to send statements, and not communicate with the bankruptcy debtor's attorney or the bankruptcy Trustee. This is a mistake. You should not send any communication to the bankruptcy debtor during the time the bankruptcy is open. But, because secured debt survives the discharge, you should file a Proof of Claim for your secured debt. Additionally, if your secured claim is being paid through a Chapter 13 Plan, you should not send statements during that repayment period.

In vehicle loans, there are historically three ways to handle the loan if the bankruptcy debtor wants to keep the vehicle:

- **Reaffirmation Agreement.** An agreement signed by both parties, whereas the bankruptcy debtor agrees to payments on the loan. The Reaffirmation Agreement makes the bankruptcy debtor permanently liable for the loan. If they default on the Reaffirmation agreement, the creditor can continue with collection or repossession.
- **Redemption.** This involves the bankruptcy debtor paying the creditor the current market value of the vehicle in one lump sum. Redemption is generally used when the car loan is upside down, and the vehicle is worth far less than the loan balance.
- **Retain and Pay.** Sometimes called Keep and Pay. In this case, there is no formal, written agreement like the Reaffirmation Agreement. It's just an agreement that the bankruptcy debtor will keep their vehicle, and they will continue to pay the loan. However, if the bankruptcy debtor defaults, you should obtain a Relief from Stay before you pursue collection activities.

## Electronic bankruptcy noticing (EBN)

When a bankruptcy is filed, the courts must send notices to all creditors who are listed on the creditor's matrix. The way the courts do this is to send the notification to the Bankruptcy Noticing Center (BNC) and in turn the BNC mails the notice to the listed creditors.

The BNC allows creditors to receive their notification in one of four different electronic ways: email link, email attachment, fax or Electronic Data Interface (EDI). This allows for notices to be sent electronically rather than through the mail, saving time, paper and postage. Although EBN will not eliminate 100 percent of paper notices through the mail, it typically eliminates most of them.

To sign up with EBN, simply contact the Bankruptcy Noticing Center at 877.837.3424. Or, you can have a "middle man" company, like LexisNexis® Banko®, be your Authorized Agent to receive the EBN feed via EDI on your behalf. As your authorized agent, a bankruptcy notification company will save you the time and cost of installing and maintaining your own EDI software.

## Proof of claims debt recovery

Even with a solid detection and prevention plan, inevitably bankruptcies will happen. If bankruptcy cannot be avoided, it is important to properly identify and quickly handle the account. Submitting a properly completed proof of claim form and including the necessary documentation within the required time frame (usually 90 days from the 341 meeting for non-government debt) is a requirement to have any chance of recovering debt on a bankrupt account. If the deadline date is missed, it is very difficult to convince the court to accept the proof of claim.

In fact, receiving the bankruptcy notice and filing the proof of claim promptly are the most important factors in collection potential. In every case there is a limited pool of bankruptcy dollars available for distribution and getting your proof of claim filed on time will ensure that your claim will be considered for payment.

Today there are data tools and technology-based solutions that allow companies to easily and efficiently submit proof of claims and collect some, if not all, of the balance on more than 50 percent of the accounts that go bankrupt.

The more effective bankruptcy management programs are automated and streamlined to minimize paperwork, tracking functions and manual involvement. With the right solution in place, a creditor or collector can easily generate an ongoing collections stream that would have otherwise been taken as a loss. Making it a policy to submit proof of claims on bankrupt accounts is a simple way to directly boost bottom-line profits with minimal cost and effort.

## Submitting Proof of Claims Pays Off

### Chapter dollar summation

Statistics indicate that a Chapter 13 bankruptcy management plan is the creditor's or collector's best chance for recovering dollars from a bankruptcy debtor. For example, in fiscal year 2001, Chapter 13 disbursed a total of \$3.6

billion compared to \$1.5 billion disbursed under Chapter 7. Unsecured creditors received \$805 million in Chapter 13 disbursements and \$357 million in Chapter 7 disbursements. Secured creditors received \$2.1 billion in Chapter 13 disbursements and \$451 million in Chapter 7 disbursements.<sup>5</sup>

As you can see from the table below, all bankruptcy chapters have begun a steady increase after the immediate post-Bankruptcy Reform Act dip in 2006, but Chapter 13 bankruptcies are growing at the fastest rate. Clearly from the creditor's or collector's perspective, a Chapter 13 debt recovery plan is a smart way to produce a continuous revenue stream of collected bankruptcy dollars. All that is needed is an efficient process to monitor accounts and file claims in a timely manner.

Not only it is important to file POC's on your Chapter 13's, but it is equally important to monitor your Chapter 7 accounts for conversion to a Chapter 13 or conversion to a Chapter 7-Asset case status. In the case of a conversion to a Chapter 13, all creditors should file a POC. In cases where assets are discovered on a Chapter 7 case, but they are not enough to convert to a Chapter 13, many creditors are still eligible to file a POC.

## Proof of claims submission details

The proof of claim form (B10) is fairly straightforward. Form B10 is available from the bankruptcy court at <http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim>. Be sure to attach proper Proof of Debt to the POC form. Proof of Debt will vary based on the type of debt owed. Proof of Debt includes (but is not limited to):

- Statement of the account
- Copies of open invoices and outstanding debits
- Copies of contracts, purchase orders, promissory notes and more
- Itemization of interest or other additional charges claimed

Most courts now prefer that proof of claims filing be done electronically via the CM/ECF web interface. Creditors and creditor representatives must register with each court in which they will be filing POCs. Some courts will still accept a paper filed POC and, based on volume, it may be easier to file via paper.

## Bankruptcy Filing Trends

### Non-business filings by chapter (2003 - 2014)<sup>6</sup>

Year	Total Filings	Chapter 7	Chapter 13
2003	1,624,677	1,155,081	467,908
2004	1,562,621	1,117,304	444,352
2005	2,038,842	1,628,749	409,210
2006	601,535	350,190	250,816
2007	821,275	500,223	320,430
2008	1,079,214	717,775	361,439
2009	1,422,094	1,016,761	405,333
2010	1,538,311	1,102,541	435,770
2011	1,360,323	958,230	402,093
2012	1,169,946	810,359	359,587
2013	1,024,043	701,949	322,094
2014	904,807	600,037	304,770

Source: LexisNexis® statistics.

## Proof of Claim FAQ's

**Q:** Can you file a proof of claim if the debt is under Sovereign law?

**A:** Yes, under Bankruptcy law, a claim is deemed allowed unless objected to. Once an objection is made, the Court decides whether to sustain or overrule the objection.

**Q:** Can you file a Proof of Claim on time barred debt?

**A:** Some courts have ruled that a third party debt collector who files a Proof of Claim on time barred debt is making a false and misleading representation in violation of the Fair Debt Collection Practices Act. They have stated that it "creates the misleading impression to the debtor that the debt collector can legally enforce the debt. Other courts have ruled to the contrary. Our suggestion is to check with your company's legal department to see where your company and your attorneys stand on that matter.

**Q:** Is it ever appropriate to file a Proof of Claim for post-petition debt?

**A:** Yes, for chapter 13 cases and certain types of debt (for example emergency medical debt). However, be mindful of the Proof of Claim bar date; claims are generally not accepted after the Proof of Claim bar date.

**Q:** Can only the original creditor or their attorney file a Proof of Claim?

**A:** No any authorized agent of a creditor can file a Proof of Claim on the creditor's behalf.

## Debt Sales and Bankruptcy

### Opportunity in selling your bankrupt debt

Today there are more debt buyers in the market than ever before. Individuals and small companies are realizing that there is profit to be made by purchasing debt. Many debt buyers are specializing in certain kinds of debt—like deceased or bankrupt debt. After they purchase debt, they immediately file proof of claims where the POC bar date hasn't passed. For those cases where a POC has already been filed, they will notify the court that they are now the legal owner of that debt and will file an amended POC with their contact information. They will monitor Chapter 7s for a conversion to a 13. They will also monitor Chapter 7s for notices of assets or dismissals.

If you are not set up to work your bankrupt debt—these debt buying companies give you a good way to recoup some revenue from these accounts. If you don't intend to work them yourself—you may as well collect a small portion on each dollar rather than just closing those accounts.

If you'd prefer to sell your bankrupt debt, then finding a debt buyer can be easy using the following websites:

Debt Buyers Association: [www.debtbuyers.com](http://www.debtbuyers.com)

Debt Marketplace: [www.debtmarketplace.com](http://www.debtmarketplace.com)

Debt Connection: [www.debtconnection.com](http://www.debtconnection.com)

## Credit Reporting and Bankruptcy

2015 has brought much discussion surrounding reporting bankruptcy activity on a consumer's credit report.

As mentioned above, in May of 2015 several large banks agreed to start updating consumer's credit reports after a discharge to: 1) show that the account has been discharged in bankruptcy, 2) show a zero balance (because once the discharge is entered, the debt is no longer owed), and 3) remove statements such as "past due" or "charged off". Therefore, if you regularly furnish data to consumer reporting agencies relating to a consumer's debt, you should also be updating the credit bureau with the proper information.

Many of our clients have asked if they should just delete the collection item from the credit bureau entirely.

However, because a credit bureau is supposed to reflect the full credit picture of a consumer, we suggest updating with the correct information, but not completely deleting the collection item.



## A Deeper Dive into Bankruptcy Dockets

### Opportunity in Review of the Docket for Critical Events

It is crucial to review the bankruptcy docket for events that may impact your property on a secured loan, and for events that may impact your position/claim in non-secured situations. Especially if the bankruptcy notices from the court are not sent directly to you. New technology offered in products like LexisNexis® Banko® Events now allow for you to be even more in touch with the activities happening daily within the bankruptcy docket. This technology can search through the docket for hundreds of specific events and deliver them to you as they happen. This helps eliminate the need for a manual docket review. For example:

- Many motions require response in less than a month (Final Cure, Motion to Redeem, Motion to Deem Current, Lift Stay matters, etc.).
- Activities may take place that affect the property secured by your loan (Abandonment, 363 Sale, Reaffirmation Agreement Objection, etc.)
- Objections may be made incorrectly to your proof of claim, which you will want to respond to immediately.
- The original plan may be amended and may change your position in the distribution of assets
- Adversary Proceedings may be filed against your company

For these reasons and more, you may want to continue to monitor the bankruptcy docket for these and other events that can take place over the lifecycle of the bankruptcy.

## Commercial Collections and Bankruptcy

Just because commercial collections are not covered under the FDCPA, doesn't mean that you should not pay attention to bankruptcy cases filed on your commercial collection accounts. You should still not be contacting the bankruptcy debtor directly during the bankruptcy proceedings. In fact, there are some special processes that you must be aware of when dealing with commercial collections.

For suppliers and vendors to commercial industry, Section 503(b) (9) of the Bankruptcy Code should be reviewed. This section allows for vendors to receive a priority for goods delivered immediately before the filing of a bankruptcy. If goods were delivered in the 20 day period before a customer's bankruptcy, you can receive administrative priority in the distribution process. Check with your company's attorneys or review section 503 to make sure you properly file your claim and protect your interests.

## Bankruptcy Terms

### The importance of bankruptcy notification and updates.

It is important to be aware of the various terms relating to bankruptcies and the important milestones relating to bankruptcy cases.

### Filings

Once a consumer has filed for bankruptcy, they are under protection by the Bankruptcy Act's Automatic Stay (USC Title 11, Chapter 3, Subchapter IV, Section 362). Paragraph 6 of this section states that "...any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case under this title..." is a violation of the Automatic Stay. Therefore, if collectors contact a consumer after they have filed for bankruptcy, they are in violation of the Automatic Stay and could be fined by the court or sued by the consumer.

## Dismissals

During the course of the bankruptcy, the bankruptcy debtor's case may be dismissed for some reason. The most common reasons for dismissal are:

- Failure to complete the Pre-Bankruptcy Credit Counseling and obtain and file the completion certificate
- Failure to file all necessary documents with the court within the timeline required for filing
- Failure to pay the filing fee
- Failure to keep up payments on a Chapter 13 plan

If a bankruptcy debtor's case is dismissed, the creditor or collector may continue with collection efforts. A bankruptcy file can be a good source of information. The Petition can reveal employment information, asset information and up-to-date address and phone information.

## Reinstated

Keep in mind that a dismissed case may be reinstated (the bankruptcy debtor may be allowed to reopen their same bankruptcy case that was previously dismissed). Since the 2005 Bankruptcy Reform Act, there has been a large upswing in the number of reinstated cases. Many times a reinstated case will show up on the docket as a "vacated dismissal." The most common reasons for reinstated cases are:

- Payments on the Chapter 13 payment plans are not kept current.
- The Pre-Bankruptcy Credit Counseling and Post-Filing Credit Counseling requirements are new since the 2005 Bankruptcy Act updates. Yet, even after all these years, many bankruptcy debtors, especially those filing Pro Se, are still filing without their Pre-Filing credit counseling certificate. Additionally, many are not attending the post-filing counseling needed to receive their discharge. Many bankruptcy debtors also file without the required credit counseling certificate in order to accelerate the process and stop a creditor from collection activities, such as foreclosure or garnishment. If the credit counseling certificate is not filed within 30 days after the initial bankruptcy filing, the trustee may either grant an additional 15 days for the bankruptcy debtor to obtain their credit counseling or may automatically dismiss the case.
- Bankruptcy debtors must also attend a pre-discharge financial management class, if they do not attend, the case may be dismissed until they attend and then reinstated and quickly discharged.

If a bankruptcy debtor's case is reinstated, collectors must again stop all contact efforts or they will be in violation of the Automatic Stay.

## Conversions

It's also important to monitor for cases that convert from Chapter 7 to Chapter 13. If a conversion does occur, creditors and collectors should immediately file a proof of claim to protect their rights to receive payments from the bankruptcy debtor's estate. There are also times when a case will convert from a chapter 13 to a Chapter 7 (if for instance the bankruptcy debtor can no longer make the payments agreed to in the Plan), if this happens, you may need to close and return the file to your creditor client.

## Notice of assets

Throughout the course of a Chapter 7 bankruptcy, if assets are found, the court will send out a Notice of Assets. It is important to watch for these so proof of claims can be filed promptly.

## Discharged

Discharged status is also important to note. This is a notification that the bankruptcy debtor has completed their bankruptcy and they are discharged from the remainder of their debts that have not been addressed in the bankruptcy.

## 341 Hearing

The 341 Hearing is also known as the First Meeting of Creditors. The purpose of this meeting is to allow the Trustee and creditors to confirm the accuracy of the bankruptcy petition and to ask the bankruptcy debtor any questions they feel necessary. Creditors or those representing creditor's should attend if they have questions for the bankruptcy debtor that have not been answered by the bankruptcy debtor's attorney, or if they feel that there is a problem with the bankruptcy filing, and they want to voice that problem to the Trustee.

## Closed

When working secured debt that hasn't been reaffirmed or redeemed, creditors and collectors should watch for the closed status. Most secured creditors live by the rule that repossessions should only be started after the final closing order has been issued by the court. There are many other closed statuses that are important when collecting bankrupt debt. Many of these statuses come shortly after the file has been opened. Some of the more prevalent closed statuses are:

- **Filed in error:** This means that the bankruptcy case was inadvertently filed, and the debtor is not in bankruptcy. If the creditor reported the bankruptcy to a credit bureau, they will want to re-report and remove the bankruptcy flag.
- **Discharge N/A:** This literally translates into "the discharge was not applicable". The case was neither dismissed nor discharged. It will most likely go on to be a closed without discharge status.
- **Discharge Revoked or Discharge Vacated:** The discharge previously granted to the debtor(s) has been removed or revoked. Creditors and collectors should look more closely into this bankruptcy to find out the reason for the revocation. This may be an indication that collections can proceed again. But it may also mean that the court is waiting for additional paperwork, and then they will discharge again. Close monitoring is recommended.
- **Discharge Withheld:** There are two main reasons that a discharge will be withheld, both of which can be remedied by the bankruptcy debtor filing certain paperwork with the bankruptcy court. These two reasons are for failure to submit a certificate of instructional course for personal financial managements (which can be remedied once the debtor completes the course and files the correct paperwork), and for failure to comply with domestic support obligations (which can be remedied by getting caught up on the domestic support obligations and showing proof to the court).
- **Discharge Denied:** The discharge is denied, and the case will either be closed as Discharge N/A or the bankruptcy debtor will file a motion to reinstate the case and finalize their discharge.
- **Transferred cases:** If a case is transferred to another court, collectors will see a "Closed-Transferred Out" status. This means that although the case has been closed in one court, it has been opened in another court. This is another case type that creditors and collectors will want to investigate. It's usually relatively simple to leverage existing data tools to investigate to find the new court, case number, etc., in order to follow the case.
- **Case split:** Similar to a transferred case, a split case means that a case that previously had two or more bankruptcy debtors has been broken into separate cases. This could happen because one of the bankruptcy debtors should file a Chapter 7 and the other should be filing Chapter 13. There are also other reasons for a split. If the case is split, the current case will close for one bankruptcy debtor and a new case will open for that bankruptcy debtor. Creditors and collectors will want to know the new information for the second case that has been created so they can track the progress of that case.
- **Consolidation:** This is the opposite of a case split. This is where two cases are consolidated into one case. In this instance, one of the two cases will close and the two bankruptcy debtors will be combined into one case. Creditors and collectors will want to update the new case information for the bankruptcy debtor whose old case was closed.

## Other Common Bankruptcy Terminology Used in Collections:

- **Petition:** The Petition is the initial set of paperwork filed by the bankruptcy debtor. It consists of a series of "Schedules" each relating to a different topic (general information, debts, assets, property, etc.)
- **Plan:** The Plan is filed in a Chapter 13 and explains how the bankruptcy debtor plans to repay their debts. It shows how much the bankruptcy debtor owes each creditor and how much they intend to pay back.
- **Automatic Stay:** The automatic stay goes into effect upon the filing of the bankruptcy petition by the bankruptcy debtor. Once the stay is in place, a creditor or collector may not contact the bankruptcy debtor directly (unless the bankruptcy debtor is acting Pro Se) and must work through the bankruptcy debtor's attorney. Most commonly we see this in collections when a creditor feels their property that is in the bankruptcy debtor's possession is in danger (such as the bankruptcy debtor has failed to continue with post-petition payments as promised).
- **Reaffirmation Agreement:** An agreement between the bankruptcy debtor and one of their creditors whereby the bankruptcy debtor agrees to repay the debt that would otherwise be discharged in the bankruptcy. This is voluntary for both parties.
- **Proof of Claim:** A form completed by the creditor stating the amount of monies owed by the bankruptcy debtor, and also submitting proof of the balance.
- **Final Cure:** This is an event that happens at the end of a Chapter 13 plan, as part of the process of determining whether or not a mortgage is current. The Trustee files the Final Cure Notice within 30 days after the bankruptcy debtor completes all payments under the plan. If the mortgage company does not agree that the mortgage has been paid current, then they must file an Objection to the Final Cure within 21 days of receipt of the Notice of Final Cure payment.
- **Motion to Redeem:** Motion filed by the bankruptcy debtor requesting to redeem their property (generally a vehicle) for a stated price. They name the price in the Motion and if this price is not objected to by the creditor, then the property can be redeemed by the bankruptcy debtor for the price requested. This must be paid in one lump sum.
- **Adversary Proceeding:** A lawsuit brought within the bankruptcy case. It will be given its own case number, and will be run separate from the bankruptcy case, although the results may bear on certain elements of the bankruptcy case. Typically we see these when a creditor continues to contact the bankruptcy debtor or continues to attempt to collect on the underlying debt while the bankruptcy's automatic stay is still in effect.

## Bankruptcy FAQs

- Q:** Although the updates to the Bankruptcy Act in 2005 were supposed to take care of serial filers, we are still seeing them. Bankruptcy debtors are filing and dismissing sometimes 5, 6 & 7 times in a row. How can we reduce risk for a serial filer like this?
- A:** If a bankruptcy petition is dismissed by the Court or if a debtor voluntarily dismisses a petition after a creditor filed for relief from the stay, the debtor cannot refile for 180 days. If you are a secured creditor, you should move for relief from the stay to reduce the opportunity for a refiling.
- Q:** If a consumer doesn't list a company/creditor as a creditor in their bankruptcy and they either add them a month before it is discharged or do not add them at all, it is OK to collect once discharged
- A:** A Chapter 13 discharge does not apply to a non-scheduled debt. A non-scheduled debt in a no asset Chapter 7 is subject to the discharge.
- Q:** Should we send a form 1099 or 1099C to consumers once the debt is discharged?
- A:** That is a personal preference, it is not required. If you do send 1099 or 1099C's post-bankruptcy discharge, IRS Form 982 is to be used by a debtor who receives a 1099C statement on a debt discharged in bankruptcy. This eliminates any tax consequences for the debtor.

**Q:** If I am a creditor and the debt attempting to be discharged was obtained fraudulently, should I honor the automatic stay? File a Proof of Claim?

**A:** A creditor must file a Complaint to have a fraudulently incurred debt declared non-dischargeable.

**Q:** How should I handle consumers that communicate “intent” to file bankruptcy?

**A:** If you manually check for bankruptcies, or only scrub periodically, you may want to keep a “Pending Bankruptcy” queue that you treat differently than your regular collection accounts, and manually check for a bankruptcy prior to each communication with the consumer. However, if you are monitoring for bankruptcies with a bankruptcy vendor, this shouldn’t be an issue, because you should know within 24-48 hours of when your consumer has filed bankruptcy.

**Q:** Are there any exceptions on sending a notice to a discharged debtor? For example loan modification expiring, etc.

**A:** Once a debtor has received a discharge, billing statements for secured debt should disclose that personal liability on the debt has been discharged.

**Q:** Can you modify a loan that was discharged in bankruptcy?

**A:** Unsecured debts are no longer collectible. Personal liability on secured debt is also discharged. An act to “modify” a secured loan cannot be implemented to impose personal liability on the borrower.

**Q:** Once a Motion for Relief has been granted, can the creditor resume the billing?

**A:** You should wait until the bankruptcy has been discharged, and then resume after the discharge.

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6 Statistic compiled from the American Bankruptcy Institute website, <[www.abiworld.org](http://www.abiworld.org)>.

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Canter and Bedard bring extensive knowledge and broad experience to the collection industry. Their practices focus on helping creditors, collectors, and asset buyers stay in compliance with consumer protection laws. They also focus on defending these companies against consumer litigation. Nationally recognized authorities in the financial services area, Canter and Bedard travel the country auditing and training creditors and collectors on state and federal financial services laws. The duo is active in leading trade associations including ACA International, NARCA (National Association of Retail Collection Attorneys) and DBA International and regularly lectured to Federal and state bar associations and industry groups.

Ronald Canter has been recognized as a Maryland Super Lawyer by Super Lawyers Magazine for the past five years. He is also the recipient of the 20th Annual Professionalism Award from Montgomery County, Maryland Bar Association for exemplary service to the legal profession.

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