

Top Ten Consumer Debt Myths



CAUTION

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ConsumerWarrior.com

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About John Skiba, Esq.	3
Disclaimer	4
Introduction	5
Myth #1 - If a Creditor “Charges Off” a Debt You No Longer Owe It!	6
Myth #2 – Filing Bankruptcy Allows You to Eliminate the Debt on Your Car and House!.....	8
Bankruptcy Can Lower Your Payment	9
Redeeming Your Car.....	9
The Cram-Down.....	10
Myth #3 – If I Don’t Pay My Debts I Will Go to Jail!.....	12
Myth #4 – If I Don’t Pay My Credit Card Payment They Will Garnish My Wages	14
Myth #5 – If I File Bankruptcy I Will Never Have Good Credit Again	15
Myth #6 – There is Nothing I Can Do About All These Collection Calls!..	17
Myth #7 – The Creditor is Always Right	19
Myth #8 – Logic Governs the Debt Collection Process.....	21
Myth #9 – You Will Lose Everything You Have by Filing Bankruptcy.....	23
Myth #10 – You are a Bad Person Because You are in Debt.....	25

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About John Skiba, Esq.

I have dedicated my professional life to helping and representing families who are going through some of the greatest struggles of their lives. I understand the frustration, the anxiety, and even depression that people go through in trying to claw and scrape their way out of debt. I have been there for the tears and seen the relief and peace that getting back on the right track offers.



I am an attorney in the State of Arizona and licensed to practice before all state and federal courts there as well as the United States Court of Appeals for the Ninth Circuit. My law practice is focused on bankruptcy and consumer issues. Daily I help people deal with their debt problems and fight back against collectors and creditors who are crushing the souls of consumers. I am the founder of the [Skiba Law Group, PLC](#) and regularly write articles on consumer debt and bankruptcy issues on my [Arizona Consumer Blog](#).

In my spare time I am a blogger on consumer issues and “how to” guides at [ConsumerWarrior.com](#). It is my hope that the information I provide in this book as well as my websites can help you as you fight through your debt problems and hopefully help you maintain your dignity and determination to become debt free!

Disclaimer

The information contained in this guide is for informational purposes only.

While I am a lawyer, I am only licensed to practice law in the State of Arizona. Nothing within this book should be considered legal advice nor does this guide create any type of attorney-client relationship. And when you think about it, how could it? I have likely never met you and do not know the facts of any specific legal issue you may be having. If you are having legal troubles it is best to meet with an attorney in your state who knows the laws specific to your state.

Introduction

The old adage “what you don’t know can hurt you” is very true when it comes to dealing with your debt, credit, and general financial well-being. My daytime job is that of a consumer rights lawyer with a strong emphasis on bankruptcy cases. Over the years I have met with literally thousands of families who are searching for answers on how to deal with their debt problems. Long before anyone ever takes the step to come meet with a lawyer like me they undoubtedly talk to friends and family about their problems and ask for advice.

Some of this advice is not only incorrect; it can put you in a worse situation and might even be criminal. I have put together this guide in hopes of dispelling some of the myths and rumors out there and hopefully help you avoid some of the common mistakes that can set you back in your quest to get out of debt and regain control of your finances.

What follows are ten of the most common myths or misunderstandings about debt, bankruptcy, and general financial issues I have encountered through the thousands of meetings I have had with families just like yours. When you are struggling financially you are vulnerable. People can be prone to making wrong decisions out of desperation. People make wrong decisions simply to make the collection calls stop.

My goal with this guide is to provide you with information to help you avoid those wrong decisions and empower you on your way to finding the peace that comes when you have control of your finances.

Myth #1 - If a Creditor “Charges Off” a Debt You No Longer Owe It!

This is a common misunderstanding that often comes up with my bankruptcy clients when I go over what debts they owe. They will often reply that they don't owe a particular debt because it was “charged off.” Usually they have gone over their credit report and noticed that the account was closed or charged off and are lulled into a sense of complacency. The thought is now that the debt has been charged off there is no need to worry because the creditor has given up. You win! Right? Wrong...

Silent But Deadly (“SBD”) can take on new meaning when it comes to charged off debts. These are the debts that usually disappear for a while and then reappear—this time all dressed up in a wage garnishment! Understanding the charge off process will help you understand why these debts are alive and well and what you should do about them.

A debt is charged off (or written off) when a company makes the internal decision that the debt is no longer (or not likely) collectible. There is no set time for this to occur but with most companies they will charge it off once it becomes 90 – 180 days late, or when a determination is made that the debt will not be collected. When a company makes the decision that a debt will be charged off it merely means that the debt is no longer considered an asset on its books thus reducing its taxable income. It is important to understand that this is done to reduce the tax the company pays and really has nothing to do with you.

The company is free to continue attempting to collect the debt or may decide to sell the debt to an outside debt buying company who can then continue with the collection process. Most of these “debt buyer” companies pay very little – often as low as 2 cents to 20 cents on the dollar – for the charged off debt they are purchasing. This means that for a \$1,000 debt the “debt buyer” company paid about \$20 bucks. Once purchased the new “owner” of the debt can now call you on the phone, sue you, and even garnish your wages. And anything they get over the \$20 they paid for it is profit – good work if you can get it!

Regardless of whether they collect it themselves or sell it, “charge off” does not mean that you don’t need to worry about the debt. It is still out there lurking and you need to address it, whether you pay it, file for bankruptcy, or settle the debt for less than what is owed. Do something.

Myth #2 – Filing Bankruptcy Allows You to Eliminate the Debt on Your Car and House!

This myth is somewhat understandable because logically you are filing bankruptcy to eliminate debts, so why not your mortgage and your car loan? The technical answer is that you can eliminate these types of debts; however you will not be able to keep your house and your car at the same time.

The first thing I do when I meet with potential bankruptcy clients is break down their secured and unsecured debts. *Secured debts* are any type of loan that is secured by collateral/property such as a house or car. *Unsecured debts* are typically debts like credit cards, medical bills, etc.

In bankruptcy, if you want to keep the collateral attached to your secured debts you have to continue to pay them. So, if you want to keep your house, you keep paying on it. If you don't make the monthly payment eventually the bankruptcy court will allow the bank to take your home. You can still eliminate unsecured debts like credit card debt through bankruptcy even though you are keeping your house or car along with their associated debts. You can also eliminate the mortgage and your car loan, but you have to give up the house or the car.

Bankruptcy Can Lower Your Payment

Both chapter 7 and chapter 13 bankruptcy have powerful tools that allow you to reduce the amount that you pay for your car. These tools are known as redemption and the cram-down.

Redeeming Your Car

In a chapter 7 bankruptcy you have the option of *redeeming your car*. What this process does is allows you to pay what your car is worth, not what you owe. For example, if you have a car that you owe \$20,000 but it is only worth \$12,000 the bankruptcy court would allow you to pay the \$12,000 it is worth and you get the title free and clear.

But, there is a catch. You have to pay the full \$12,000 in one lump sum payment. You may be asking yourself how in the world can someone who is in bankruptcy come up with that type of money. It is true. Most people who are in the middle of a chapter 7 bankruptcy do not have the cash available to pay for the car. That really leaves you with two options: you can loan the money from a family member or friend, or you can loan it from a bank.

Often people will get a loan from a family member to take advantage of this process. If a family loan isn't an option (or if you don't want it to be an option!), then you can look into obtaining financing. Again this leads to the question of how you are going to get a bank to give you a loan while you are in bankruptcy. There are lenders out there with special redemption loans that are set up for this very purpose.

A good lender I refer my bankruptcy clients to is www.722redemption.com . The loans through this site are financed through U.S. Bank. They loan you the amount you need to pay off the value of your car and then you pay them like you would your prior bank or lender. The interest rates are higher than normal in these loans but the overall savings can be significant.

The Cram-Down

The *cram-down* is very similar to redemption. However, the cram-down is only available in chapter 13 bankruptcy cases. In a chapter 13 bankruptcy case you will be required to make monthly payments to your creditors based on various factors. In your chapter 13 case you can propose to pay the value of your car over the life of your case. The typical chapter 13 case can take anywhere from three (3) to five (5) years to complete.

This means that if you owe \$20,000 on your car but it is only worth \$12,000, that you will be able to pay the \$12,000 over a three (3) to five (5) year period. Further, you can reduce whatever your interest rate is down to about 4% to 5%.

But...there is a catch. In order to cram-down your car loan through the chapter 13 you must have purchased your car at least 910 days (about 2 1/2 years) before you filed your bankruptcy. If you bought it sooner than that you can't take advantage of the cram-down. This stops people from buying a new car and then filing a chapter 13 a few months down the road. You can, however, still take advantage of the reduction in interest rate no matter when you bought the car.

There is no free car in bankruptcy. There is no free house in bankruptcy. If you want to keep it, you have to pay for it (but you may end up paying a lot less!).

Myth #3 – If I Don't Pay My Debts I Will Go to Jail!

In the old days (and I mean *old* days) if you didn't pay your debts you could be sent to a debtor's prison. Debtor's prisons were outlawed in the United States back in 1833. Debtor's prisons



never made much sense to me. If you can't pay the debt, they throw you in jail until you can pay the debt? I guess they figure if you were in jail it would provide a lot of incentive for your family to get some money together.

There are however, times when neglecting your obligations can result in you being put in the slammer.

Child Support: In most states if you don't pay your child support you can face possible jail time. If you live in Arizona, like I do, you no doubt have seen Sheriff Joe Arpaio go out on his annual round ups for dads who are not paying their child support. Not only do they end up in jail but they often get their 15 minutes of fame on the nightly news report.

Taxes: Wesley Snipes. Let's all learn from Mr. Snipes. If you don't pay your taxes, you can end up in jail. Not much more to say on that.

Civil Arrest Warrants: In some states not abiding by a court order can result in a civil arrest warrant being issued. In Arizona

this most often happens after a creditor has sued someone and been awarded a judgment. The creditor will request that you appear in court to divulge all of your assets. If you don't appear, the creditor can ask that the court issue a civil arrest warrant, which means that the next time you get pulled over for speeding you could end up going "downtown".

Each state has their own specific laws when it comes to not paying your debts and the possibility of going to jail. However, in general if you can't make your credit card payment or fall behind to the orthodontist you don't need to worry about ending up in jail.

Photo Credit: [Kenteegardin](#)

Myth #4 – If I Don't Pay My Credit Card Payment They Will Garnish My Wages

This is one I hear a lot. Someone falls behind on their credit card payments and then falls directly into panic mode that their wages are going to be garnished. The creditor will often call and threaten to garnish wages – which they can do – eventually.

Creditors such as credit card companies are usually unsecured creditors. This means that there is no property/collateral securing the loan. Common examples of secured loans are mortgages or car loans. If you don't make the monthly payment your car will get repossessed or you will lose your house to foreclosure. However, if there is no property securing the loan the creditor has to jump through a lot more hoops if they want to take stuff from you.

Before a creditor can garnish your wages they must sue you in a court of law. And if the system is running right you will have plenty of notice that this is happening. You will receive a complaint and summons from a process server, have an opportunity to object to it, and possibly even go through a trial. After all of that if the creditor is awarded a judgment against you then – and only then – can they seek to take your stuff or garnish your wages.

This is why unsecured creditors like credit card companies are so loud and annoying when payment is not made. They don't have a lot of power over you until they sue you. So, if you fall behind on your payments they are left with calling you and generally being annoying. Once they get that judgment, watch out!

Myth #5 – If I File Bankruptcy I Will Never Have Good Credit Again

This is a big concern. Many people need the relief that a bankruptcy filing will bring but fear that it will mean they will never be eligible to buy a car or a house again. This simply isn't true.

When it comes to car loans many people are shocked that they will qualify for a car loan almost immediately (and in some cases even while they are still in the bankruptcy). The interest rates will be nothing to brag about, but if you need to finance a car you will be able to do it.

When it comes to buying a home there will be a longer waiting period but it is shorter than most people think. Here is a chart that a local mortgage company gave me a while back:

	<u>Conventional</u>	<u>FHA</u>	<u>VA</u>
Chapter 7 Bankruptcy	4 years from discharge or dismissal date.	2 years from discharge or dismissal date with exception for extenuating circumstances.	2 years from discharge or dismissal date.
Chapter 13 Bankruptcy	2 years from discharge date or 4 years from dismissal date.	1 year of the chapter 13 payout must have elapsed with on time payments.	1 year of the chapter 13 payout must have elapsed with on time payments.
Foreclosure	7 years from completion date.	3 years from completion date.	2 years from completion date.
Deed-in-Lieu of Foreclosure	4 years from completion date.	3 years from completion date.	2 years from completion date.
Short Sale	2 years 80% max LTV	1 year from sale date if there	2 years from sale date.

	4 years 90% max LTV 7 years Max LTV allowed	were no lates payments, otherwise 3 years from sale date.	
Consumer Credit Counseling		1 year of payout must have elapsed with timely payments.	1 year of payout must have elapsed with timely payments.

Based upon this chart if you file a chapter 7 bankruptcy and have good payment history after your case is discharged you may be able to qualify for a new home loan within two (2) to four (4) years.

Bankruptcy has lasting consequences. It will stay on your credit report for ten (10) years and will lower your credit score as soon as you file your case. But if you use your bankruptcy case as the “fresh start” it is intended to be, you will recover much sooner than you might think.

Myth #6 – There is Nothing I Can Do About All These Collection Calls!

The first dose of reality that you get when you fall on hard times is you suddenly become very popular. Your phone is ringing off the hook! Your creditors will call you. A lot. I have heard horror stories from clients that are receiving 50+ phone calls every day.

These phone calls are a constant reminder of the tough situation you are in and make you feel lower than dirt. Worse, if you actually answer them you are often berated on the phone by someone who could care less about the situation you are going through. Many people believe that there is nothing that can be done about the phone calls and that they are something simply to be endured. Wrong. There is a federal law known as the Fair Debt Collection Practices Act (“FDCPA”) that governs these annoying calls and it places strict rules on the collector on the other end of the line.

For example, did you know collectors cannot:

- Call you after 9:00 p.m. or before 8:00 a.m.
- Contact you if the collector knows you are represented by an attorney.
- Call you at work if it is inconvenient or they know that your employer prohibits such calls. (seriously, when would this *not* be inconvenient).
- Contact your friends, neighbors, relatives, or employer about your debt.

- Engage in any conduct that is harassing, oppressive, or abusive.
- Threaten violence or criminal conduct.
- Use obscene, profane, or abusive language.
- Call you repeatedly with intent to annoy, abuse, or harass.
- Collectors may not use false, deceptive, or misleading representations.

It is important to note that these rules apply only to collection agencies and some collection lawyers. If the company you actually owe the money to violates one of these rules you will likely not have a claim under the FDCPA. However there may be laws in your state that would still allow you to file a claim.

So, what if they do break one of these rules? The FDCPA allows up to \$1,000 in damages plus attorney's fees. Most FDCPA attorneys take these cases for no money up front and make the collector pay any lawyer fees.

A great resource on FDCPA actions is attorney Pete Barry's website (www.lawpoint.com). Mr. Barry is known nationally for aggressively pursuing collectors that violate the FDCPA. You can also access the text of the FDCPA by clicking on the [Federal Trade Commission's site](#).

Myth #7 – The Creditor is Always Right

This myth permeates much of society. Most people believe that if a creditor is hounding you for a debt, it must be legitimate and you are a dirt bag for not paying it. I even see this bias in judges. On more than one occasion I have argued on behalf of my clients in court that a debt was simply not owed by my client or at a minimum that the creditor has not proven that the debt belongs to my client, only to get a look from the bench that seems to say “c’mon, we all know that they owe this.”

Moral judgments of those people who find themselves in the crosshairs of a debt buyer are usually harsh. That is until the shoe is on the other foot and it is them that gets the knock at the door and the lawsuit served by a company they have never even heard of.

In times past there may have been some truth that when a person was sued the debt was likely owed. But with the rise of the debt buying industry this assumption needs to change. The debt buying industry purchases old debts in groups numbering in the tens of thousands. The information they purchase is usually limited to a name, address, telephone number, amount owed, and is often outdated.

I have had clients that have been victims of identity theft or where the debt buyers have simply sued the wrong person. This is particularly prevalent for people who have common names or who have a father or child with the same name (i.e. Jr., Sr.). Just because a collector is calling or a lawsuit has been filed does not mean the

creditor is in the right – and it certainly doesn't mean the debt is owed.

Creditors, particularly debt buyers, must prove that they are the rightful owner of a debt and that the debt is actually owed by the person they are suing. Without documented proof the creditor/debt buyer is really asking us all (including the court system) to *assume* that they have the right to collect payment. That is not how the debt collecting or legal system works. If they want payment, they have to prove it.

Myth #8 – Logic Governs the Debt Collection Process

You would think that with all the smart guys on the creditor's side that all policies and actions by a creditor or debt buyer would be based on sound reasoning and logic. You would think that until you actually have to try and resolve a dispute with them.

I see this a lot with debt settlement. Most people want to pay their debts. Most people (if not all) do not want to file for bankruptcy. So before people ever come to meet with me about filing for bankruptcy they often try and work with their creditors to settle their debts. They may not have the full amount but would like to at least try to pay what they can.

So, they approach the creditor and offer either a payment plan or a lump sum. The creditor turns it down, requests more (even though they know the person can't afford it), and then continues with the collection process. The person ends up coming to visit with me, realizes that they can eliminate the debt completely through a chapter 7 bankruptcy filing and proceed to do so.

It would seem, logically, that the creditor would rather receive something in the form of a payment or lump sum payment rather than have the debt be eliminated completely in bankruptcy. But they don't. Usually, they take the \$0.00.

Why is this? It doesn't make sense. There are a couple of reasons. I have a relative that works for a big national company and I picked his brain on this topic. His response was that big companies deal with a lot of employees and customers. Because of this the policies

of the company are gospel. If a national company tried to address each of the variables in each customer account it would take an enormous amount of manpower and frankly may not even be possible.

Because of this, policies are put into place and regardless of whether they make any sense at all, that is what the company does – even if it actually hurts the company. I can understand this (kind of). I used to be a criminal prosecutor early on in my legal career and we had a huge policy manual as to how crimes would be charged and prosecuted. While it didn't fit every case perfectly, the more important principle was that everyone be treated the same – even if it produced some crazy outcomes every now and again.

The second reason why creditors will often take \$0 over the payment you are proposing is that when a debt becomes delinquent the company can simply charge off the debt and by doing so will get a tax deduction. The money owed is no longer an asset but is written off as a loss, thus reducing the company's total tax liability.

I'm sure each company has their own reasons and policies for everything they do, but just remember when you are trying to take care of a debt problem that what seems right and logical to you may not even register with the creditor you are speaking with.

Myth #9 – You Will Lose Everything You Have by Filing Bankruptcy

Some people needlessly delay filing for bankruptcy, even though they really, really need it, because they are afraid that they will lose everything they have. Dreams of eliminating all their debt are overcome by nightmares of homelessness with not a single asset to their name.

Most people that file for bankruptcy file under chapter 7. While chapter 7 is a liquidating bankruptcy, and by liquidating I mean that you can lose non-exempt assets, most people that go through the process don't lose a thing. The reason is exemption laws.

There are two sets of exemptions, the federal set of laws and the state set of laws. Most states have crafted their own exemption laws that exempt certain assets from the reach of your creditors. A common exemption most people are familiar with is the homestead exemption that protects your home.

In addition to the homestead most states (and the federal exemptions) protect things like retirement accounts, household goods, your car, and other general items. In my bankruptcy practice the people that lose assets are those who have toys like boats or ATV, but in some states even those types of property may be protected.

Prior to jumping in a bankruptcy you need to hire a lawyer that practices bankruptcy law to review your assets to determine if you have any risk of losing them. You should know going into your bankruptcy what may be at risk and what is not. That is one of the

many benefits of hiring a bankruptcy attorney to assist you through that process.

Bankruptcy is not a completely painless process, but for most the process does not leave you destitute.

Myth #10 – You are a Bad Person Because You are in Debt

If this one is true, not only are most of the people in the country bad, but the country itself is seriously bad. Debt. No one likes it but we all seem to carry some of it around. Over the years I have literally sat with thousands of families and listened to their stories as to why they found themselves needing bankruptcy. I have never once asked a client why they ended up in my office, but people tell me.

All of my bankruptcy consultations start out with me asking how I can help them. All are very uncomfortable with the fact that they are meeting with me. Too many are scared that I am judging them or thinking poorly of them. One thing that meeting with all of these families has taught me is that financial crisis can happen to anyone.

No matter how responsible you are in your finances, no matter how much money you make. One day, something may happen and you too will be faced with the unpleasant reality of having intense collection activity focused on you. For most it is a reduction in income, a loss of job, or a medical issue that arises that results in a financial crisis. These are things that can, and do, happen to anyone.

Being in debt is no fun. Feeling like you have to take the abuse of debt collectors is humiliating. Many people I meet with are in a true depression because of their financial state. The one thing I tell people over and over is that you must do something. You must act.

It sounds stupid (and deep down we know it is) but a surprising number of people just totally ignore their debt issues hoping they

will just go away. You may go weeks or months or even years without hearing from a particular creditor and this can lead us to believe that maybe, just maybe they have forgotten about us. But in today's aggressive world of debt buyers, collection efforts may resume at any time and on multiple fronts.

You are not a bad person because you find yourself in debt. But you do need to act. You need to educate yourself on the rules of the game and put together a game plan to get yourself back on the right financial track.

So, there they are. The top ten misunderstandings of the law and outright myths when it comes to consumer debt. More than ever you need to be vigilant in taking care of your finances and periodically checking what is showing up on your credit report.

If you run into a debt problem, do something. DON'T' IGNORE IT. Get help. Inform yourself. Empower yourself. You must act. After all, it is the way of the [Consumer Warrior!](#)