

## **Maryland Bar Bulletin**

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### **Bankruptcy = Fresh Start? Maybe Not!**

By Sonya A. Smith-Valentine

A bankruptcy discharge is supposed to mean a fresh start for an individual. All of his or her debts have just been wiped out. Now they can begin to rebuild their credit history. Or can they?

Debtors don't often know (and bankruptcy attorneys don't often advise them) about the problems they will experience with their credit reports after a bankruptcy discharge. It's just not discussed during the bankruptcy process.

When a debtor reviews his credit report after bankruptcy, what the debtor finds will keep him up at night – it's a nightmare. While a bankruptcy should affect an individual's credit report and credit score, what often happens instead is a total thrashing of the credit report. It's the rare occasion when the credit bureaus actually report the discharged accounts correctly.

In a perfect world, when debts are discharged, they should be reported as discharged in bankruptcy on the debtor's credit report. The balances should be listed as \$0. In reality, the debtor's credit report often looks like a war zone. The bankruptcy may be listed under the public records section of the credit report, but the discharged accounts are often still listed as open with balances and missed or late payments.

And that's only the beginning of the problem.

Usually, a bankruptcy discharge will not prevent an individual from obtaining credit, employment or insurance. However, the incorrect reporting of the discharged debts on a debtor's credit report will block the attainment of future credit and can cost an individual employment or insurance opportunities. Worst of all, the incorrect reporting is through no fault of the debtor. These mistakes happen at the hands of the credit bureaus.

One example of how this problem affects debtors is when an automobile is surrendered in a bankruptcy. The automobile loan should be reported as discharged in bankruptcy on the debtor's credit report. However, it is often reported as a repossession. When an account is listed as a repossession, as opposed to discharged in bankruptcy, it is an even greater bar towards obtaining new credit or employment.

Liens and judgments are also frequently a problem after bankruptcy. While the lien or judgment was removed as part of the debtor's bankruptcy, the credit report will reflect that the lien or judgment still exists. Even more so than a repossession, liens and judgments are almost always complete bars to new credit and will cause insurance premiums to rise.

The ripple effect of this problem can be felt by more than just the debtor. Frequently with joint accounts, the bankruptcy will also be reflected on the co-debtor's credit report although the co-debtor paid their bill on time and did not file for bankruptcy. This reporting has an adverse impact on the creditworthiness of the non-bankrupt individual. They are often denied credit although they in fact met their financial obligations.

Debtors need to be advised to review their credit reports approximately two to three months after they receive their bankruptcy discharge. It usually takes one or two months before the incorrect reporting about the discharged accounts begins to appear on the credit report. The sooner a debtor is aware of the mistakes, the sooner they can begin to take the necessary steps to repair

their credit report. Additionally, as more and more employers and insurance companies use credit reports in their decision-making process, the more important it becomes to correct these errors.

Maryland residents are entitled to one free copy of their credit report from each of the three credit bureaus each year. Additionally, an individual is entitled to a free copy of their report if he or she has been denied credit and the company states that the denial was due to something on the person's credit report.

Under the Fair Credit Reporting Act (FCRA), credit bureaus and creditors have a duty to correct inaccurate information. There are some steps that an individual can take themselves to correct the mistakes. Debtors should request a copy of their credit report from each of the three credit bureaus:

- Experian  
P.O. Box 2104  
Allen, TX 75013  
[www.experian.com](http://www.experian.com)
- Equifax  
P.O. Box 74021  
Atlanta, GA 30374  
[www.equifax.com](http://www.equifax.com)
- Trans Union  
P.O. Box 2000  
Chester, PA 19022  
[www.transunion.com](http://www.transunion.com)

Once an individual receives their credit reports, he or she should check it carefully for errors. The debtor should compare their bankruptcy discharge to the accounts listed on their credit report. Every account that was discharged should be listed as discharged in bankruptcy with a zero-balance owed. Liens and judgments should show that they were removed in bankruptcy. Any accounts not properly listed on the credit report should be disputed in writing with the creditor and the credit bureaus.

The FCRA requires the credit bureaus to complete their investigation of an individual's dispute within 30 days of receipt of the dispute. The credit bureaus are also required to forward any disputes to the creditor within five days of receiving a dispute. An individual should expect to receive the results of the investigation approximately 45 days after sending in his or her dispute.

If the results of the investigation do not correct the errors on the individual's credit report, the FCRA allows individuals to sue the credit bureaus and creditors to recover their actual damages, statutory penalties and attorney's fees and costs for violations of the Fair Credit Reporting Act.

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