


<h1>Bankruptcy Outline</h1> <p>By Mark Saiki November 27, 2009</p>	
<p>See also my <a href="#">List of Bankruptcy Memos</a> or <a href="#">.pdf file</a>.</p>	<p>How can I get <a href="#">started</a>?</p>
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<p><b>1. <a href="#">Rights.</a></b> You have a Constitutional Right to file for Bankruptcy.<sup>1</sup> Congress provided a safety value, so that individuals could get a fresh financial start, unhindered by burdensome debts. By admitting past mistakes, fully disclosing all of your debts and assets, filling out applicable paperwork and filing for Bankruptcy, your dischargeable debts will be forgiven. Your legal liability to pay those debts will be extinguished. You will still have to pay certain non-dischargeable debts, such as most taxes, child support and student loans.</p> <p>Understand also that Bankruptcy is a fast-changing area of the law. Every month there are new Legislative, procedural and Judicial interpretations and decisions. Unless your attorney specializes in Bankruptcy, is zealous, into customer service and has high quality standards, you might not be able to maximize benefits and reduce risks.</p>	
<p><b>2. <a href="#">Credit Rating</a> (1.1), or <a href="#">.pdf file</a>.</b> Your credit rating is a FICO score that many lenders use to determine whether or not they will extend loans to you, and at what interest rate. Although in some ways filing for Bankruptcy is financial death, in other ways it helps you get back in the game, and on the road to fiscal recovery. Which it will be depends upon how well you monitor your monthly budget after filing for Bankruptcy.</p> <p><b>a) Should I file for Bankruptcy?</b> Is Filing for Bankruptcy the Right thing to do? How guilt, shame and fear deter many people from filing for <a href="#">Bankruptcy</a> or <a href="#">.pdf file</a>.</p> <p><b>b)</b> How will bankruptcy affect my <a href="#">credit rating</a> or <a href="#">.pdf file</a>?</p> <p><b>c)</b> How can I recover after filing for Bankruptcy? How Can You Repair Your <a href="#">Credit Rating</a> or <a href="#">.pdf file</a>?</p>	
<p><b>3. <a href="#">Guilt</a> (1.2), of <a href="#">.pdf file</a>.</b> This memo addresses issues of social stigma, guilt and responsibility, which are associated with the filing for Bankruptcy.</p>	

<sup>1</sup> U.S. Constitution, Article I, Section 8. The Congress shall have power . . . To establish . . . uniform laws on the subject of bankruptcies throughout the United States.

The [Federal Bankruptcy Code](#): Wise Policy that Favors the Little Guy, or [.pdf file](#).

Am I a bad person because I filed for bankruptcy?  
How bad should you feel because you filed for Bankruptcy?

4. [Discharge](#) (1.5), or [.pdf file](#). A discharge is a forgiveness of debts. If the Judge signs a discharge order, this will release you from the legal liability for paying most credit card debts, medical bills, deficiency, repossession fees, and ordinary loans.

What types of debts can I get rid of?

[Discharge of Taxes](#) or [.pdf file](#)

Which taxes will I have to pay?  
Which taxes can I get rid of?

[Non-Dischargeable Debts](#) (1.5), or [.pdf file](#). Non-dischargeable debts include taxes, child support and most student loans. These are debts that you will have to continue paying on.

What types of debts will I have to continue paying?

Longer and updated list of [non-dischargeable debts](#) or [.pdf file](#)

What types of debts can I get rid of?  
What types of debts will I have to pay?

5. [Exemptions](#) (1.4), or [.pdf file](#). Exempt property are items listed by the Colorado legislature, which debtors are allowed to keep when they file for Bankruptcy. Arguably, Colorado debtors are allowed to supplement these state exemptions with Federal exemptions to a limited degree.

What types of property am I allowed to keep, if I file for bankruptcy?  
How can I make Bankruptcy and exemption laws work for me?

[Non-Exempt Property](#) (1.4) , or [.pdf file](#). Non-exempt property are items that you must turn over to the US Trustee. Failure to turn non-exempt property over the Trustee may result in dismissal of your case without a discharge.

What types of property will I have to turn over, if I file for Bankruptcy?  
What can I do to protect my property?

[Pre-Bankruptcy Planning](#) or [.pdf file](#).

How can I maximize my fresh start?  
How can I transfer non-exempt assets into exempt assets, prior to filing for bankruptcy?

[Wills, Spendthrift Trusts and Non-Alienation Clauses](#) or [.pdf file](#).

How can I protect my inheritance?  
How can I protect my pension plan?

6. [Chapter 7 Bankruptcy](#) (1.9), or [.pdf file](#). Chapter 7 is sometimes referred to as a liquidation, however, with intelligent planning, most debtors do not turn over any of their property to the US Trustee. Around ninety percent of all Bankruptcy filings are “no asset” cases, means that no property is actually turned over to the US Trustee.

What are my rights and responsibilities under Chapter 7?

[Procedures](#) (1.10), or [.pdf files](#).

What steps will I have to follow, if I decide to file a Chapter 7 Bankruptcy?

7. [Chapter 13 Bankruptcy](#) (1.13), or [.pdf file](#). Chapter 13 is a three-to-five year payment plan, which you draft and propose, with the assistance of an experienced Bankruptcy attorney. In general, debtors choose to file for Chapter 13 because it offers them some advantage, like freezing penalties and interest, while you pay tax debts over a 36 month period. In other cases, Chapter 13 may help you catch up on house arrears, and prevent foreclosure.

What advantages does a Chapter 13 Bankruptcy offer?

[Procedures](#) (1.14), or [.pdf file](#).

What steps will I have to follow, if I decide to file a Chapter 13 Bankruptcy?

8. [Secured Debts](#) (1.6), or [.pdf file](#). There are several different ways of holding onto secured collateral under Chapter 7 and 13. Some Options in Dealing with Secured debt. If you have house, car loans, or other secured debt, the Bankruptcy Code provides some flexibility on how you can retain your collateral.

What are reaffirmation, redemption, lien stripping, cramming down, voiding out non-purchase money security interests, and judgment liens?  
What can I do to protect my house and car?

9. [House](#). Under Chapter 7, you can generally keep your house by making current payments, and by providing homeowners insurance. This depends on the amount of equity in your residence. Under Chapter 13, you can stop foreclosure, by making current house payments and by catching up on the arrears over a three-to-five year period.

How can I protect my house and car, if I decide to file for Bankruptcy?

[Foreclosure: How Long can I stay in my house?](#) Or [.pdf file](#).

How does foreclosure work?  
What is the foreclosure time line?

[FED](#): How much longer can I stay in my house? Or [.pdf file](#).

What is FED?  
How much longer can I stay in my house?

If you are behind on your house payments, Chapter 13 is one way of saving your house by making current payments, and catching up on the arrears over a three-to-five year period. Chapter 13 and [Foreclosure](#) (3.1), or [.pdf file](#).

Loan modification is another way of saving your home. [Loan Modification](#) (3.2), or [.pdf file](#).

Under Chapter 13, you may be able to get rid of your second mortgage payments, under certain circumstances. [Lien Stripping](#) and Chapter 13 (3.3), or [.pdf file](#).

The decline in real estate values, is what makes lien stripping possible. [Lien Stripping and the Housing bubble](#) (3.4), or [.pdf file](#).

Foreclosure, Social Stigma And [Economics Of Home Ownership](#) (3.5), or [.pdf file](#). How do fear, guilt and overblown notions of social stigma keep people paying on home loans, when they are substantially under water? How to engage in strategic foreclosure, put money in the bank, and some out ahead in twenty years.

Loan Modification and [Social Stigma](#) (3.6), or [.pdf file](#). How loan counselors take advantage, of heightened fears of guilt and social stigma, to deny homeowners the loan modifications that they need and deserve.

10. **Means Test Debtors** (3.12, 3.15). In 2005, Congress passed the Bankruptcy Reform Act Amendments. The legislature attempted to discourage persons, with ability to pay a substantial portion of their debts, from filing for Chapter 7 relief. Their goal was to encourage them to file a Chapter 13 payment plan and repay a significant portion of their debts, rather than walking away from accumulated debt. They chose a Means Test and Motions to Dismiss, to achieve these goals.

If my income is above the norm in Colorado, can I still file for Bankruptcy?

What is the IRS' [Means Test](#) (1.11)? or [.pdf file](#). To stay under Chapter 7, debtors with above median income in Colorado must pass the IRS' Means Test.

[Motions to Dismiss](#) (1.12), or [.pdf file](#). One of the U.S. Trustee's alternatives is to file a Motion to Dismiss: if your income is above median income in Colorado, there is "abuse," "bad faith," or

under the “totality of the circumstances. Find out what income levels and other factors, have influenced Court decisions.

[Help passing the Means Test](#) or [.pdf file](#)

How can I pass the Means Test and file a Chapter 7, even though my income is above the Median in Colorado?

[Chapter 13 option](#) (1.15), or [.pdf file](#). If your income is above median income in Colorado, Chapter 13 may be an option. Find out what other debtors pay on a monthly basis, and what percentage they repay their unsecured creditors. These other cases give you an idea, what your plan will look like.

11. [Court Suits](#). Chapters 7 or 13 can be used to stop most forms of garnishment and wage assignments. In general, bankruptcy will not stop taxes, and child support from being garnished. However, wage assignments for credit cards, medical bills, and deficiency judgments for houses and cars are generally dischargeable.

Anatomy of a [Court Suit](#) (4.1), or [.pdf file](#). What are the steps and procedures in County or District Court suits?

Court Suits: [Rights and Procedures](#) (4.2), or [.pdf file](#). What are some of your rights in County or District Court?

[Secured Creditors](#): Rights and Procedures (4.3), or [.pdf file](#). What are some options in dealing with secured debts?

[Garnishments](#) and Wage Assignments (4.4), or [.pdf file](#). What happens when your employer is served a writ of garnishment?

12. [Attorney](#). Bankruptcy is a complicated process, and the laws change every month. If you do not hire a Bankruptcy specialist, there is no reason to believe that they will be zealous advocates, and be on top of Congressional, procedural and Judicial changes.

How can they protect your legal rights, when they do not know what they are?

How do I select the right Attorney for me?

Should I hire an [Experienced Bankruptcy Specialist](#), or just do it myself? Or [.pdf file](#)

Would I be better off hiring a cut-rate attorney, bankruptcy petition preparer, or just do it myself?

Attorney Comparison [Checklist](#) or [.pdf file](#).

Low cost attorneys vs. [quality legal service](#) (2.1), or [.pdf file](#). To a large extent, you get what

you pay for. I know that several bargain basement attorneys have been disbarred for working cut-rate operations with bankruptcy petition preparers (non-attorneys), providing minimal supervision, and for not zealously representing their clients. I think that their clients believe that all attorneys are the same, and provide similar legal and customer service. This is simply not the case. Some attorneys withdraw from your case, if you do not make payments, and object to discharge. Others withdraw from Chapter 13 cases, after confirmation, which is often just when you need legal advice the most concerning Motions for Relief From Stay, Motions to Dismiss for Nonpayment, etc. While other clients have to protect themselves against their own attorneys and have to goad them into fulfilling their legal obligations. Several bankruptcy petition preparers have grievances, court suits, fines and penalties against them for giving legal advice (something that only attorneys are supposed to do), bad opinions and wrong information. Your goal in bankruptcy court is to avoid errors, protect your property and discharge debts. You do not want to make mistakes and errors, and then have to deal with the mess left over.

How hard do you think those cut-rate attorneys will work?

Will bargain basement attorney fee quotes really save me money?

Or will they wind up costing me more money in the long run?

**Bankruptcy petition preparers**, are non-attorneys; they are generally about as qualified to help you as an average paralegal or legal assistant. They are not allowed, by law, to give you legal advice, which includes pre-Bankruptcy planning, or even to help you fill out the forms. Basically, you get an expensive typing service. They charge between \$200 - \$800 just to type up your forms. The vast majority have never been to Bankruptcy Court, they do not know the US Trustees, the Judges, and they have no experience doing Bankruptcy hearings or trials. Actually, they are comparable to low-cost attorneys mentioned above, except largely inexperienced attorneys claim that they oversee their operations, and that someone with little or no experience accompanies you to court. I would not advise anyone to hire either cut-rate attorneys or bankruptcy petition preparers. Bankruptcy is a complex federal court suit, that is difficult to manage properly for lay persons and attorneys, who are learning the ropes by trial and error.

[Bait and Switch Advertising](#) and Price Gimmicks (2.2), or [.pdf file](#).

How come I do not qualify for those advertised low-low prices?

What add-on fees are those attorneys not telling you about their rock bottom prices?

Who actually qualifies for those misleading price quotes?

Medium and High Volume attorneys vs. [Personal Attention to Detail](#) (2.3), or [.pdf file](#). I have clients, who switched from high-priced attorneys to me. I personally return phone calls and answer email; you can talk directly with an Attorney, not a paralegal, legal assistant or secretary. I show you copies of your schedules and redraft petitions based on your input. I advise you of your legal rights, options, risks and alternatives. I do not double-book appointments, or allocate ten minutes of time to meet with the attorney. I spend the time necessary to get your schedules just right; my goal is not to do the least amount of work for the highest monetary return. We pick a date of filing, that benefits you. Unlike high volume bankruptcy mills, I do not file as it fits into my packed schedule.

Would you rather deal directly with an experienced attorney, a paralegal, legal assistant or secretary?

How do high volume bankruptcy mills cut costs and maximize profits?

Do high priced, fancy attorneys provide a better return for my hard earned money?

Quality Legal Care and [Customer Service](#) (2.4), or [.pdf file](#). A good Attorney needs a balance of skills. They need to be good speakers, fast on their feet and flexible, when they present information to the US Trustee and to Bankruptcy Judges. They also need to be very good listeners. The strength of most cases are in the character of our clients and detailed knowledge of your individual case. Instead of fitting round pegs into square holes, a sharp Attorney fits the facts of your situation into the legal categories within the Bankruptcy Code.

What are Mark Saiki's core values and principles?

What standard of care and customer service can I expect from Mark Saiki?

Should I hire an [Attorney](#) (2.5)? or [.pdf file](#). I have seen cases, both with and without an attorney, where debtors have made embarrassingly painful mistakes. Cases have been dismissed before the First Meeting of Creditors, they have been dismissed based upon failure to pay the filing fee in a timely manner, failure to appear at the 341 Meeting, failure to bring required documents, improper filling out of Trustee Information forms, failure to respond to Motions for Relief From Stay, failure to make plan payments, not paying non-exempt assets over to the U.S. Trustee, and by not responding to motions and/or adversary complaints, etc. Even though experience is the name that we give when we learn from our own mistakes, I avoided almost all of these errors in my first two years of practice. Fifteen years of experience in reading case law and statutes, and filing thousands of Chapter 7 and 13 cases, has taught me a lot.

What are some of the risks, of drafting, typing and filing my own Bankruptcy?

Will Mark Saiki's costs be offset by the advice I receive?

What is bankruptcy planning?

How can I maximize my exemptions and minimize risks?