

The Real Truth About Bankruptcy

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This book is not legal advice. Reading this book does not establish any type of attorney client relationship or privilege between us. The only way that I can provide legal advice is if you hire me as your attorney for this matter. For you to hire me a written agreement must be signed by you, and this is called a retainer agreement. This agreement lays out the terms of my representation in your case and also outlines the details of the attorney client relationship between us, including the costs involved.

Only after I have been retained and hired as your bankruptcy attorney, with your signature on the retainer agreement, can I provide legal advice to you. Until I am hired as the bankruptcy attorney in your case I can only give you some useful information, which may help you educate yourself about the bankruptcy facts and ways to deal with your creditors.

**Get The Facts
About
Bankruptcy**

Richard West

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Foreword

I would like to introduce myself. My name is Richard West, and I am an attorney who specializes only in bankruptcy law. I am the founder and senior partner in the law firm West, Hurley, & Malkiewicz, and I have been practicing bankruptcy law since 1986. I have specialized in bankruptcy law so that I can represent honest and hardworking individuals like you, good people who need bankruptcy advice and assistance because of some tough times financially.

I handle bankruptcy cases only, unlike many attorneys who may handle different legal areas, which means I represent hundreds of clients each year in bankruptcy cases. I am a member of several professional organizations, including the Ohio Bar Association and the National Association of Consumer Bankruptcy Attorneys. I have considerable knowledge and expertise in bankruptcy law and cases, and I continue my education and keep current with developments and trends in this legal field. This allows me to provide the best legal representation possible to my clients. I even teach bankruptcy law to other attorneys.

When I first started my law firm I made the decision that the only way to offer the best help possible to my clients was to specialize in bankruptcy laws and those concerning fair debt collection. I chose to focus on these legal areas because of the large number of people who have had their lives affected by surprise situations and events that were not expected. These changes can be devastating to your financial situation, and often are not anything that you are responsible for or at fault in any way.

It is human nature to become overwhelmed when a crisis hits, whether it is a medical crises or a financial one, and the overwhelming nature of the problem causes most people to slip into denial. The goal of our law firm is to show individuals that addressing these problems can resolve the issue for good, and that there is hope.

If you are having financial problems or seem to be struggling, then this book can help you. You will learn that there is a future after filing for bankruptcy, and be able to address your financial struggles and problems without becoming overwhelmed.

You do not have to agonize over how you will make that next mortgage or car payment, or whether you will need to go without needed prescriptions so that you can manage to make the payment on your credit cards. Every day living does not have to include wondering how you will feed your children, or dreading the ringing of the phone and the daily mail delivery because of bill collectors and past due notices.

Many Americans live paycheck to paycheck, and if you are one of them then even a short term employment setback or financial emergency can mean mounting debt and unmanageable bills. Bill collectors are not known for being reasonable or sympathetic, and they are frequently very aggressive and even rude or hostile at times. If you are experiencing any financial difficulties or are being contacted about past due debts I can help you resolve these issues.

The credit system is stacked against the individual consumer who has few resources. You simply want to get by financially, meet your obligations, and take care of those you love. Without a lot of wealth and resources the credit industry is tilted against you, but having the law firm of West, Hurley, &

Malkiewicz as your advocate can change this, and tip the scales in your favor. We will work with you to navigate your path through the debt that is crushing you, and fight your creditors on your behalf so you get a fresh financial start and a much brighter future.

It is important for you to remember that if we are to work together as a team to resolve your debt and financial problems you have to be focused on finding the solutions to your financial issues and debt. You will want to be truthful with me, and provide all of the documentation requested so that I can represent you in the best way possible. You should respond to my phone calls and communications just as promptly as I will respond to yours. No two bankruptcy cases are identical, because each situation is different. We are here to help you get the results that you want, and the freedom from debt that you deserve. To achieve this we will work together on your case, and that means good communication both ways.

This book was written for the purpose of answering some of the most common bankruptcy questions you may have when you are considering this step. While going through the book consider your situation right now, and look back on how you have reached this point. Maybe you lost your job in the recession, or became divorced and were ordered to pay many of the debts of the marriage. Illnesses and medical conditions can also cause financial hardships. The point is there may not have been anything you could have done to change the current circumstances you are in, but there are steps you can take now to resolve your debts permanently.

Does your phone ring off the hook, but you do not answer because you are trying to avoid bill collectors? Do you fear you are about to face repossession or foreclosure on your home or vehicle? Does it seem like you are drowning in debt, with no way out that you can see? I can help you get the answers you want and need, so you get back on the right track to financial freedom.

Do you need some breathing room from creditors and crushing debt? This is the one thing that creditors do not want you to have, and they are against allowing you to get a fresh start under the Bankruptcy Code. Your creditors do not want to work with you or offer any type of real help. They do not care about your personal situation, or whether you lost your job after eighteen years and suddenly find yourself with little or no income. All your creditors care about is getting a payment from you, regardless of the effect that this may have on your family or finances. It is important to remember that you do have options and choices available.

We can help you, and we understand your concerns and fears. Filing bankruptcy is often viewed as embarrassing, but you should not feel this way. Most people who file for this protection are just like you, good people who have worked hard and who have had circumstances beyond their control affect their financial situation and security. Very few bankruptcy filers take this step to shirk their debt obligations or try and pull a fast one on the system, most simply want to live a normal life and meet their financial obligations, but their circumstances have changed so this is no longer possible.

As you go through this book and read the contents remember that you do have options available to you. Bankruptcy is one of these options, and many people take this step to debt relief every single day. Roughly two million individuals and couples filed for bankruptcy in the last year alone. You too can get the help with debt that you want and need, and the choice of whether to accept this help or not is up to you.

Chapter 1: How Did I Get Into This Mess?

A number of different paths can all lead to bankruptcy. This may be the result of a job loss, the death of a spouse or other family member, or even a divorce after years of marriage. Other individuals may arrive at bankruptcy because of poor financial management or the need for instant gratification that Americans seem to have. No matter what has led to the bankruptcy, the statistics show that most people incur their debt with every intention of making good on the payments.

A common occurrence is using credit cards to pay for needed groceries, or to cover payments on utilities or other credit cards. This happens when finances become tight, and can start a downward spiral. You may take out a second mortgage to pay off your credit cards and other unsecured debts, or make use of a home equity line of credit. You might get a loan on your retirement plan.

If this sounds like the juggling act you have been performing you are not alone. You may have already discovered that these steps are only short term fixes, because before long you start to use your credit cards again or rack up more debt. All that has been done is that you have ended up accumulating even more debt that you can not afford to pay off.

Mortgage companies and credit card lenders have a large responsibility for the current financial crises that most consumers are facing. A large number of credit card companies charge interest rates which are above the legal limit, and then add in over the limit and late fees which are outrageously high.

These companies often have deceptive practices that are used to lure consumers into incurring substantial amounts of debt that soon becomes impossible to afford. When your payments are late because of financial struggles then your interest rates are raised. Some card lenders will even raise your interest rate if your payment on a different credit card is not paid on time, even though the cards in question are from different banks. The truth is that these companies profit from keeping your debt level high, so their aim is to ensure you never pay off your debt completely.

The financial problems experienced by many individuals are caused by predatory loans which were received in the last decade. These loans may include prepayment penalties which are very high, little or no documentation loans, loans based on stated income, interest only loans with negative amortization rates, and other types. A common scenario involves interest only and adjustable rate loans. The typical goal would be to refinance on better terms before you made the first principal payment or before the interest rate could adjust. With the recent troubles in the housing market refinancing became much more difficult, and now many people are stuck with a mortgage payment that is not affordable, and that may climb even higher in the future if an adjustable rate mortgage was chosen.

In my experience, filing bankruptcy is not something that most people do without a lot of thought and prayer beforehand. Most people would prefer to pay their bills but because of circumstances that could not be foreseen this is no longer possible. This may be because you lost your job, your spouse or child passed away, or because of unexpected medical expenses that you just can not afford to pay off.

Bankruptcy is listed as one of the top stressful events in life that you can go through, right up there with the death of a close family member, a job loss, a major illness or medical condition, and divorce. Because this is so stressful it is highly doubtful that you would choose this route if you had another option instead, which shoots down the theory that bankruptcy is used frivolously.

There is no specific formula to follow to determine if you should file for bankruptcy or not. There are some signs that indicate you are in financial trouble though, and these signs indicate that you should examine your options now instead of putting this off until later.

- Are you late on your bills frequently?
- Do you live from one paycheck to the next?
- Have you maxed out your credit cards?
- Do you juggle your bills constantly to keep the creditors away?
- Is your checking account frequently overdrawn?
- Are you behind at least one payment on your mortgage?
- Is the number of credit cards you have more than three?
- Do your credit cards involve interest rates that are double digits?
- Are you behind at least one payment on your vehicle loan?
- Do you frequently pay over the limit fees or late fees, or both, on your credit cards?
- Do you know the exact total of all your bills at this moment?
- Are you in pre-foreclosure on your home?
- Do you commonly use your credit cards to purchase necessities, which can include gas, groceries, and prescription medications?
- In the last three months have you taken out a payday loan or title loan?
- Do you make the bare minimum payment on your credit cards each month?
- Do you have to raid your savings or retirement funds just to pay your expenses?
- Do collection agencies call you or send you letters and notices in the mail?
- Have you recently had a vehicle which was repossessed?
- Is your auto or home loan upside down?
- Is the finance company threatening you with repossession?
- Have you had credit applications rejected?
- Has your employment or insurance been affected by your bad credit?
- Have you been denied a security clearance because of your credit rating?
- Have you had to borrow money from family members or friends in the last ninety days to help pay your expenses and bills?

If the answer to any of these questions is a yes then you should take a proactive approach instead of being in denial and putting off these issues for a later day. What if you did not have to worry about these things anymore? What if you were finally in a situation where you could afford food for your family, pay for gas in your car, and purchase your necessary medications? What if this even included paying for heat in your home during the winter and being able to buy Christmas presents? If you could get your life back on track and make all of these things possible would you? Would you believe there is a way to stop the bill collection calls and demanding letters, which can be rude or even nasty many times? You can take the first step towards the fresh financial start that you deserve, but the question is are you ready? Hopefully the answer is yes. If you are still doubtful then continue reading....

Can Bankruptcy Help?

Take Control of Your Life Back!

Bankruptcy offers beneficial psychological benefits. When you file for bankruptcy you are taking control of your life back. With past due bills piling up and your creditors hounding you constantly it is impossible to keep control or even think straight at times. Trying to deal with your creditors can be stressful, and it is obvious they have the control in this situation. They dictate how much you pay or else the calls and letters will continue, and they may even sue you in court and garnish your wages or seize your property. Your family, expenses, and well-being are not part of their concerns, and as long as they get the money they are seeking your creditors do not care if your entire family ends up on the street with nothing.

Filing for bankruptcy means there is a good possibility that all of your unsecured creditors will walk away with nothing, or very little if they receive any payment. The specific amount you pay any unsecured creditors will vary, depending on the amount you must pay into a plan for Chapter 13 bankruptcy. Under the bankruptcy code and laws secured creditors receive payment first, before any unsecured creditor claims are considered. If these payments take up all of the available resources then your unsecured creditors get little or nothing. This offers you restful nights and peace of mind. Your level of stress will drop drastically. This step also frees up the finances you need to pay bills and feed your family, so you are no longer struggling financially.

Put An End To Those Annoying Phone Calls And Letters From Bill Collectors And Creditors

Are you humiliated by collection calls on the job? Are you annoyed with the constant calls from creditors during your evening family time? Are you embarrassed because you have your children screen calls with the caller ID, so creditors do not have to be dealt with?

Bankruptcy can help with all of these situations. Filing puts an end to the constant harassment and high stress levels. Filing for bankruptcy means an automatic stay is put in place, and your creditors can not make any attempt to collect while this stay is in effect. This means no more nasty phone calls, demanding letters, garnishment enforcements, or repossession and foreclosure activity by creditors.

Secured Debt Can Be Restructured

One of the biggest benefits of filing bankruptcy under Chapter 13 is that your secured debt is reorganized. This means that if you have missed vehicle loan payments or mortgage payments you can make up these amounts over an extended time period, instead of immediately with a lump sum payment.

How does Chapter 13 work? When you file for Chapter 13 bankruptcy protection you will continue to make your current monthly home payments when they are due, as long as you have sufficient monthly disposable income. Any delinquent amounts owed on these accounts are added to the payment plan under your Chapter 13 petition.

With an auto loan you can rewrite the loan terms under the Bankruptcy Code. In many cases you can extend the life of the loan significantly, because you are given several years to fulfill the payment plan in most cases. If you have an auto loan that was originally for six years, you have paid on it for three years, and you file for Chapter 13 bankruptcy this could extend the loan payments for as long as five more years in some situations.

It is important to remember that there are no quick fixes or fast solutions when it comes to bankruptcy. Anyone who says bankruptcy is cut and dried is lying, because every situation is different and unique, and requires a unique solution instead of a one size fits all answer. You did not suddenly find yourself in the current financial situation after a few days, and it will take time to get your financial life back on track. There is good news though:

It Is Possible To Resolve Your Financial Problems And Get A Fresh Start!

Chapter 2: Doing Nothing Makes It Worse

One fact is certain, if you continue to ignore the financial difficulties you face then these problems will only become worse. Experts compare financial problems to a deep rooted infection, and if the underlying problem is not addressed the infection will worsen until your life is threatened.

When you fall behind on your bill payments then you are hit with late fees. With credit card payments you may also be charged for over the limit fees as well, and your interest rates may be raised due to a late payment. If your checking account is overdrawn for any reason then you will also have to pay up fees for insufficient funds. All of these factors only make your financial situation even worse off, and as long as this cycle continues you can not get any relief.

If making your scheduled payments is a financial hardship on you, then where is the extra money going to come from to pay all these additional fees and higher interest rates? You are already struggling financially, and bill collectors and creditors are ringing your phone and sending letter through the mail constantly, trying to get a payment from you that you just do not have right now. The phone calls seem endless, starting at eight in the morning and possibly continuing until nine in the evening. You may receive calls at your job which can be embarrassing, at home which can be annoying, or even on your cell phone which can be costly if you have a minute plan.

Any personal references that you gave when you applied for the credit card or loan may also receive phone calls. The goal is to harass you so badly that you pay the creditor to make them go away and leave you alone. Another tactic is to use embarrassment or humiliation in an attempt to get you to pay. The problem is that you can not pay money you do not have, regardless of how many phone calls or letters you get. Calling you will not give you your job back, or bring a family member back from the dead. This will also not eliminate any medical condition you may have or cure any problems in your marriage which are causing you to go through a divorce. We all know that the creditors calling do not care about the reasons why you can not make a payment, they only care about taking your money without a thought as to where this would leave you and your loved ones.

Once you have fallen behind on your credit card payments or other bills the collection agencies will start to send you letters and call you on the phone in an attempt to collect. These collection agencies charge fees for this service, and these fees are added on to the amount you owe, increasing your debt even further.

If the collection agency does not get a payment from you then the next step is for the bank or collection agency to sue you in court. You face difficulties in these types of lawsuits, because you will usually not be able to prove that you did not make the purchases listed and often do owe. A failure to respond or a loss in court will result in a judgment against you, and this amount will include the original debt plus court and service costs, attorney fees, and interest as well.

Once a judgment has been issued then the creditor can get a writ of garnishment to take money from

your paycheck or your bank account. Your property may also be seized. If you are in default on your mortgage payments then foreclosure is the obvious result. With an auto loan your vehicle will be repossessed by the finance company if the payments are not kept current. In Ohio, lenders can obtain a deficiency judgment from the court, so if your home or vehicle is sold at a loss the finance or mortgage company can garnish your pay or financial accounts to collect any remaining debt. As long as the debt is not paid in full interest will continue to accrue on the outstanding balance, creating even more debt for you. For homes foreclosed on in Ohio, lenders have two years to collect. For cars in Ohio, there is no such limit, they can collect until the debt is paid, including all the costs, interest and other expenses.

You can bet that the creditor will have the benefit of an attorney when a lawsuit is filed seeking a deficiency judgment against you. You may even be ordered to pay the fees for this attorney, as well as any costs the lender has incurred to file the lawsuit against you.

A lot of consumers attempt to seek help from debt counseling services, to try to avoid having to deal with collection agencies and creditors. The services offered by these companies include creditor negotiation, to try and revise your terms on the debt, and these revisions can focus on lowering the interest rate, the balance due, and the monthly payment amount. The debt counseling services take your monthly payments, and then they make the required payments on your debt from these funds. These businesses consolidate all of your debt, and you have the convenience of only making a single payment each month. You pay the stated amount to the debt counseling company each month, and they pay off your creditors.

Often using a debt counseling service can be a big mistake. These services have been proven to have many problems. Payments made by clients are not credited properly, and creditor payments are not made on time when the payment was made in a timely manner by the client. Debt counseling services may sell your account to another business, and often the typical result of trying to handle your debt using these businesses is a default status, and the collection activity being resumed by your creditors.

A large number of consumers who use debt counseling services give in to temptation and continue to use the credit cards they have, and also apply for and accept new credit cards as well. This situation will only drag you further into debt, and make your financial circumstances even worse.

A common method used by consumers who are financially struggling to make ends meet is a payday loan. An initial examination of this practice seems like it can be a convenient way to solve your problems with money. These loans have very high interest rates and are given for very short terms, so they are not really a permanent solution for your money difficulties and can be outrageously expensive.

These loans are usually given for a time period of between fourteen and thirty days, with average interest rates charged of fifteen percent or even higher in many cases. You may not think this is a lot of money at first, but when you borrow an amount of three hundred dollars and have repayment terms of fourteen days this is an annual percentage rate for the loan which is close to twelve hundred percent. In other situations this may be considered predatory lending practices.

Taking action immediately once you start to realize you are facing financial difficulties is essential. Ignoring your financial problems will not make them go away, they will only get worse as time goes by. If you do not take action at the first sign of money problems you could end up facing a garnishment, foreclosure, or repossession.

Chapter 3: Bankruptcy May Be The Best Option

The purpose of the Bankruptcy Code is to allow consumers who are overwhelmed financially to have a new beginning and fresh financial start. Most people who take this step feel humiliated, and are embarrassed because they really do want to pay their bills but simply can not. Almost all bankruptcy filers are honest people who are struggling, not scam artists trying to find an easy way out of debt. These filers are typically hardworking, just like you are, and because of hard times and changes in circumstances relief is needed.

I have never met a client in my practice who was dishonest, or who did not want to pay his or her obligations. Almost everyone feels that it is a moral responsibility to take care of your debts, and if you borrow money you should pay it back. This frame of mind is what makes the option of filing for bankruptcy so disturbing and the choice so difficult for most consumers.

These feelings should not be a factor in your decision though, because bankruptcy is completely legal as long as you follow the laws. Until bankruptcy becomes illegal there is not a single reason why you should not use this method to recover from financial difficulties. The fresh start offered by bankruptcy is one that you deserve, and you can finally get the peace of mind that comes along with this action. No more creditor phone calls and demanding letters. You will be able to meet your living expenses and take care of your family while your finances and money problems are ironed out. At the West, Hurley, & Malkiewicz Law Office helping you is our number one commitment. We will help you every step of the way during the bankruptcy process, and make the experience as free from stress as possible. We assist you in understanding the process so that there are no unpleasant surprises in store for you.

What Is A Chapter 7?

Chapter 7 bankruptcy allows qualified consumers who meet the guidelines to discharge most or all of any unsecured debt they owe. Before October of the year 2005 the requirements for consumers to file Chapter 7 bankruptcy were not as strict. The current bankruptcy code includes a means test, which determines whether or not you meet the eligibility requirements to file under Chapter 7 or not.

If you have an annual income which is higher than the median income in your state for your family size, it can be presumed that you should be able to pay some if not all of what you owe to your creditors for unsecured debt. You would have to complete the entire means test before you would know if you qualify for chapter 7. You will need to show the court that all of your monthly expenses fall within both the local and national standards as set by the IRS. This includes expenses for utilities, housing, transportation, and other necessary expenditures. You will be allowed to file under Chapter 7 if you show the court that once your monthly expenses are paid then you have no money left to pay towards your unsecured debt. If it is not possible for you to demonstrate this financial situation then you may have to pay a minimum of one hundred dollars each month for up to six years under Chapter 13 bankruptcy instead.

What Is A Chapter 13?

Bankruptcy under Chapter 13 is a plan that consolidates all of your debt, and allows you to restructure this debt and pay on it for between three and five years before you receive a bankruptcy discharge. Sometimes you may have to file a Chapter 13 if you can not pass the means test that is required to file under Chapter 7. Sometimes you don't qualify for chapter 7 for other reasons, and for still others, chapter 13 is the better choice because there is much more that you can do with a chapter 13 than you can in a chapter 7.

To qualify for Chapter 13 bankruptcy you must have sufficient income left over after you have met all of your monthly expenses to pay money towards the repayment plan included under this bankruptcy type. The payments that you make on the bankruptcy plan will be used by the bankruptcy trustee and be applied towards administrative costs and fees to oversee the case, your attorney fees, claims that have priority including child support and certain taxes, and claims which are secured including vehicle loans and home mortgage amounts delinquent. Once these debts are taken care of then any claims which are unsecured including medical bills and credit card debt are paid last if there are funds available.

Your monthly disposable income is used to determine just what your payments will be under a Chapter 13 bankruptcy. All of your income from every source is added together, and then your expenses each month are deducted to arrive at your monthly disposable income amount. Under the Bankruptcy Code you must pay all of your monthly disposable income into the plan with Chapter 13. If you are married but are not filing for bankruptcy jointly with your spouse you will still need to provide complete information about the income and expenses of your spouse as well, even if you keep separate finances and accounts.

Once your Chapter 13 plan has been confirmed or approved by the bankruptcy court then you simply continue to make your payments according to the plan submitted and make sure to comply with all of the terms of your Chapter 13 bankruptcy. If you experience a change in the financial circumstances of your household you should contact the attorney immediately to protect your interests and make sure any appropriate motions or paperwork is filed with the court.

Chapter 4: How Bankruptcy Really Works

There is a solution to the financial problems you face. I want to help you evaluate all of your options, and help you discover the truth about what really happens when you file for bankruptcy. It is important that you take action now to resolve your financial problems instead of putting this crucial step off, because denial about this situation can be disastrous in the long run. Sorting through the myths and facts can be confusing but we can help you with this process.

The Most Common Bankruptcy Myths

Myth #1: A Bankruptcy Filing Damages Your Credit For A Long Time

Filing for bankruptcy is an action that will appear on your credit reports for seven years, but this does not mean this step damages your credit for that long. As soon as your discharge is final you can start to rebuild your credit and keep your report clean. These steps usually mean you will qualify for a mortgage loan in around eighteen months to two years after your bankruptcy discharge is issued.

The first step to rebuilding your credit after bankruptcy is to get a credit card, and then use this card each month. Pay off the balance except for five dollars each month, and avoid any cards that have high interest rates or annual fees involved. You should also stay away from secured credit cards which do not automatically revert to an unsecured card once you have made your payments on time for eighteen months in a row. Another method you can use to rebuild your credit after bankruptcy is to get a personal or installment loan, and then make your payments before the due date each month.

If you still owe a student loan after your bankruptcy has been discharged make sure you make your payments on time. This can help you reestablish good credit.

Myth #2: Everyone Will Find Out About Your Bankruptcy Filing

Bankruptcy filings are public court records, but usually no one who knows you will find out that you have filed a bankruptcy petition unless you tell them about it. The court employees, the attorney you have hired, and the staff of your attorney will be aware of the fact, but most people will not know unless you disclose this information.

Myth #3: The New Bankruptcy Laws Mean You Can Not File

It is true that the bankruptcy laws have changed concerning the method of qualifying to file under certain chapters of the Bankruptcy Code, and that the intended purpose of these changes was to increase the difficulty in filing for this relief. Most of the time consumers will get the same or even better debt relief than they did before these changes took place though.

Myth #4: Filing For Bankruptcy Makes You A Bad Person

For some people there is the belief that filing for bankruptcy makes them bad or that this action has a

social stigma attached. Unfortunately many times good people have bad things happen that are beyond their control. Around two million consumers will file for bankruptcy protection this year, and these people are not bad or lazy people. In fact the opposite is true, these people work hard and are just good folks who need answers to their financial difficulties, just like you. Bankruptcy offers the fresh start financially that you deserve but could not get using any other method.

Myth #5: Married Spouses Must File For Bankruptcy Together

If you are married then you can file jointly with your spouse or separately without them. The choice is yours. It is a wise move to consult an experienced bankruptcy lawyer before you make this decision though, so you are aware of any advantages or drawbacks involved and can make the right choice for your specific financial situation.

Myth #6: Delinquent Taxes Can Not Be Discharged Under Bankruptcy

Sometimes it is possible to eliminate back taxes owed through bankruptcy, if the taxes are delinquent by more than three years. There are a number of requirements that must be met for these unpaid taxes to be eliminated through discharge, but even if only a portion of these debts are taken care of it is better than owing the total amount after bankruptcy. Filing for bankruptcy will not eliminate any sales taxes or employer withholding that you owe, and these debts must be paid.

Myth #7: You Are Only Allowed To File For Bankruptcy One Single Time

There is no limit to the number of times that you can file for bankruptcy, but there is a limit to how frequently you can have a bankruptcy discharged. For a Chapter 7 filing you can receive a discharge once for every eight year period, and with Chapter 13 this discharge limit is once for every four year period. If you have a discharge for a Chapter 7 case, you can not get one for a Chapter 13 case for a four year period, and if your discharge is for Chapter 13 you can not receive one for Chapter 7 for eight years. These times are measured from the filing date.

If your bankruptcy case does not get discharged you can refile the case as often as you want for an unlimited number of times. You should be aware that the bankruptcy court can punish you for serial filing activities or filing frivolous cases by not allowing you to file for a specified time period, usually six months or more.

Myth #8: Bankruptcy Means You Will Never Be Approved For Credit Again

Even before your bankruptcy is discharged you can start taking steps to rebuild your credit. Your bankruptcy discharge will eliminate your debt, and this is actually good for your credit score. If you have chosen to keep property and continue to make payments on time towards this debt you can also help improve your credit score after bankruptcy.

Myth #9: Creditor Harassment Will Continue Once You File For Bankruptcy

As soon as you file for bankruptcy an automatic stay is put in place, and your creditors can not make any attempt to collect on your debts. Your creditors can not get in contact with you for any reason at all, and this includes calling you, sending you threatening letters, or even sending you a bill for the amount owed. If you are contacted by a creditor once you file for bankruptcy you should tell your bankruptcy

lawyer immediately. Your attorney will understand the remedies that are available for these situations under the Bankruptcy Code, and address the issue to prevent it from happening again.

You should not assume that you would not qualify to file for bankruptcy. Speak with a bankruptcy lawyer who is experienced to evaluate whether or not you could be a good candidate for bankruptcy, and the fresh start that this process offers.

Chapter 5: How To Find The Best Attorney For You

Do You Need An Attorney To File Bankruptcy?

If you are already having financial problems you may be tempted to try and file for bankruptcy without hiring an attorney, making this decision based on your economic situation. This step may save you some money initially, but could cost you a lot more in the long run. Representing yourself in a bankruptcy case can be a costly error, because you will end up paying much more later on in most cases. A simple clerical error in the forms, information that was left out, or a missed deadline could cause your bankruptcy case to be dismissed, or you could face sanctions by the court. In some circumstances you could lose the filing fee paid and have to start over from the beginning.

Is a few hundred dollars worth of savings up front really worth these risks, and ruining your chance at a fresh financial start? Retaining a bankruptcy lawyer does have costs involved, and with your current financial struggles it may be very tempting to try and avoid these fees. Remember what this fee gives you in terms of experience and knowledge where the Bankruptcy Code is concerned. You would not hire a handyman to build the home of your dreams from scratch, but many people believe that saving a few hundred dollars on a bankruptcy attorney is a smart move. This is a common mistake that could prove very costly later on, in money, aggravation, and time.

Hiring an experienced bankruptcy attorney is an investment in your financial future. Do you want the best possible results from your bankruptcy? Wouldn't it be better to pay an attorney and resolve your debt permanently, instead of sending this money to a creditor who will just hound you again in a month or two and expect more? Did you know that most of the attorney fees involved can be paid under a Chapter 13 plan? You could see some savings at first by representing yourself, but the end cost could end up being more than you possibly imagined when you take this step.

Another common reason why some people may choose to file for bankruptcy pro se, which is when you represent yourself in bankruptcy court, is that you can find the information and forms for this process on the Internet. A successful bankruptcy case requires a lot more than simply filling out and filing some paperwork. The forms required must include a large amount of your personal and financial information, including some that most consumers would have difficulty understanding or providing on their own. The bankruptcy process is also very complicated and can be quite technical, with strict deadlines and required steps that must be followed properly. The following are just a few of the common mistakes which are made by consumers who try to represent themselves during bankruptcy.

Failing To Correctly Select Or Apply Your Exemptions

Consumers who file for bankruptcy are allowed to claim certain exemptions under the Bankruptcy Code to protect some or all of their property. The exemptions you are allowed will depend on where you live, because these can vary from one state to the next. You may be able to claim the state exemptions, the federal exemptions, or even possibly a combination of both. Failing to select the correct exemptions or to apply these exemptions properly could cause you to end up having property seized. This property could be liquidated by the bankruptcy trustee, with the net proceeds from the seizure and liquidation being distributed among your creditors.

A bankruptcy attorney experienced in this area will thoroughly understand the exemptions available to you according to the state you reside in. Your attorney will ensure that you receive all the exemptions you are eligible for and entitled to. This maximizes the property protection you get, and makes sure that the trustee and your creditors can not touch any property that should be exempt under the Bankruptcy Code.

Failing To Completely List All Of The Assets You Have

If you fail to list all of the assets you own then the bankruptcy court may view this as an attempt on your part to hide these assets. This could cause you to be sanctioned by the court, and these sanctions could result in your losing the ability to claim the exempt property in your bankruptcy, or even in the judge dismissing your case. When filling out the bankruptcy forms it is very important that all of your property is included. This includes stocks, bonds, investment accounts, tax refunds, any lawsuits, retirement accounts, and even property that belongs to you but may not be in your possession currently.

Reaffirming Debts That Are Unreasonable

Pro Se filers are frequently taken advantage of by creditors. This is done when the creditor attempts to convince you to reaffirm a debt, with the argument that if you want to keep certain property the debt must be reaffirmed. This is sometimes not true, and in most cases reaffirmation is an option but is not required. The exception to this is certain types of vehicle loans. As long as your payments are current with no delinquent amounts and you continue to make your payments voluntarily then you can keep possession of the property which stands as the loan collateral.

When you reaffirm a debt you are agreeing that not only will you pay this debt, but also that this debt will be excluded from your bankruptcy discharge when your case is finished. Once you reaffirm the debt if you default on this obligation later on then all possible remedies can be sought by the creditor. The bankruptcy attorney you choose will assist you in deciding whether you should reaffirm a debt, or if this step is not in your best financial interests.

Not Filing A Chapter 13 Plan, Or Filing A Plan That Is Not In Compliance With The Bankruptcy Code

Many people who file for bankruptcy without hiring a qualified attorney end up with their case being dismissed because of the Chapter 13 plan. You must understand how to put together a plan that complies with the Bankruptcy Code, and also understand the objections of the trustee and how to overcome these objections. The recent changes in the Bankruptcy Code have made creating a Chapter 13 plan much more challenging, with technical requirements that may be difficult for most consumers to understand. An attorney experienced in your local bankruptcy requirements can draft a Chapter 13 plan which is feasible and work to resolve any trustee objections that may occur, so that your plan is accepted by the court and confirmed.

How To Hire An Attorney

Hiring the best possible bankruptcy attorney, and one that is the right choice for your case, is important. You want a qualified bankruptcy lawyer who is experienced and knowledgeable in all of the intricate

workings and technical aspects of the Bankruptcy Code, not one who handles a few bankruptcy cases here and there each year. What is the best way to find the right bankruptcy lawyer for you?

Your Local Yellow Pages?

No. You can browse through your local Yellow Pages and will probably find hundreds of attorneys. But this method of advertising can be done by anyone who has the money to pay for the advertising space, and will not tell you whether the attorney in question has the expertise and experience you are looking for.

Online Listings And Internet Directories?

No. This space is sold in the same way as listings in the Yellow Pages. Just because an attorney is listed does not mean they have experience or expertise in bankruptcy. With Yellow Pages and Internet Directories you may get lucky, but more often than not you will not find the best bankruptcy lawyer to meet your needs in this way.

Ads On The Radio And TV?

No. Once again this air time is paid for as advertising space. Anyone can purchase advertising on the radio and television, but they may not be qualified or the best attorney possible to handle your bankruptcy case.

Get Referrals From Family Members And Friends?

Possibly. If a friend or family member filed for bankruptcy and were happy with their lawyer and the results you may want to consider that attorney for your bankruptcy needs. To be considered the attorney should specialize only in bankruptcy, and be experienced as well as capable of handling the complexities of your case. Just because Uncle Joe had a divorce attorney that was great does not mean this lawyer should handle your bankruptcy case.

Get Referrals From Another Lawyer?

This can be one of the best ways to find the right bankruptcy attorney to meet your specific needs. If you know a lawyer who handled a different type of case ask them for a bankruptcy specialist referral.

Ask For A Referral From Local Or State Bar Associations?

Definitely. Depending on your specific location the State Bar Association in your state may offer a referral, but this is not always true. You can also contact local bar associations but be aware that often these referrals are given on a rotating basis among association members.

When you first meet with any prospective bankruptcy attorney there are a number of important factors that need to be evaluated.

Did you receive information from the attorney prior to your consultation so you could prepare for this meeting? Due to the extensive work that is required for a successful bankruptcy case you should look for a lawyer who gives you some guidance before your first meeting, concerning the documents you

should start getting together to prepare for your case.

An experienced bankruptcy lawyer will provide you with a pre filing list of questions and important information, before he meets with you, so that you can begin your bankruptcy preparations before you meet with the lawyer. This step shows organization, and indicates that the bankruptcy attorney is very knowledgeable about the process and experienced in handling these cases. Many attorneys will make this list of questions available on their websites, so you can download them before the meeting. Alternatively, they might ask you to arrive early for the appointment, and fill them out in the waiting room, like you would fill out a medical history before seeing the doctor.

Some questions that you should ask during any bankruptcy consultation include:

What is the number of bankruptcy cases that you file every year?

Pay close attention to the number given. If the lawyer does not file hundreds of bankruptcy cases each year then they probably do not have the experience you want for your case. If the attorney only files fifteen or even fifty cases a year then they dabble in bankruptcy but do not practice mainly in this area, and file bankruptcy cases as a sideline to their main area of practice.

How many of your bankruptcy cases have been successfully discharged?

The answer you should be looking for should represent a majority of the bankruptcy cases the lawyer has filed. If a large percentage of cases filed by the attorney are not discharged successfully this may be an indication of a problem. It is possible that the attorney is not zealous in their representation against creditors, and you want someone who will represent you zealously. Some case dismissals are not the fault of the attorney though, because some cases are dismissed due to the actions of the consumer in the case. These reasons can include refusing to perform certain actions, like not paying the fees and costs for filing, failing to make scheduled payments on the bankruptcy plan, or failing to complete any required credit counseling or financial management class.

What is the percentage of Chapter 13 cases you have filed that are actually confirmed?

The answer to this question can be an important indicator of the experience that this attorney has. If a large number of cases handled by the lawyer are not confirmed this can be a hint that the lawyer is not experienced in handling these cases, and they may not be the best choice for your bankruptcy needs.

Asking these questions can help you choose an experienced bankruptcy attorney, one that your creditors will respect for the best results. The lawyers and law firms that represent your creditors are frequently in bankruptcy court on a daily basis, and they know exactly which bankruptcy specialists are aggressive and successful in their client representation and which ones only dabble in this area. You want a bankruptcy lawyer that will advocate for you and fight for your rights, not one who simply takes the occasional bankruptcy case for extra money.

Additional questions that you should ask any bankruptcy lawyer:

Do you belong to any bankruptcy associations? Which ones?

Attorneys who belong to bankruptcy associations on a local or national level normally develop an

extensive network with other bankruptcy professionals. Membership in these associations allow the member attorney to access continuing legal education classes and information, as well as excellent training and resource networks. This allows the lawyer to stay current with the newest developments in this field.

Is your full time practice devoted to bankruptcy cases?

The most effective professionals in the legal field specialize in only a few areas of the law, or one specific field. This allows the lawyer to be the most effective as a client advocate, and is important in helping you choose the right attorney for your case. The legal system in the USA has become increasingly complicated and technical, and this has caused more attorneys to choose to specialize in only one or a few fields in the legal profession.

The bankruptcy laws are very complex, and the process is very technical. To be successful in most cases you need an attorney, one that has experience and specializes only in bankruptcy cases for the best possible outcome. The Law Office of West, Hurley, & Malkiewicz only handles consumer bankruptcy cases, and this is true of all the attorneys who are employed by the firm.

Remember that while you are interviewing any possible bankruptcy lawyer you are also being interviewed by them as well. Be prepared to answer numerous questions concerning your finances, assets, income, and debts. When you answer questions the lawyer will be performing an evaluation about your directness, honesty, and responsiveness. Another telling factor is whether you have completed the pre filing questionnaires before the consultation. If this paperwork was provided and is not complete when you meet with the attorney this may indicate that you are not really serious about your bankruptcy case and financial problems.

Chapter 6: What Happens After You Hire An Attorney?

What Happens After I Hire An Attorney?

When you hire an attorney for your bankruptcy case there are a number of forms to be filled out and signed, as well as certain steps that need be followed. These include:

The Retainer Agreement

The very first form that requires your review and signature is the retainer agreement. This retainer includes the specific terms of our agreement to represent you. This retainer is a promise that our loyalty is to you, and that we are committed to providing the best and most aggressive legal representation possible in your case. This agreement also outlines that we will handle your case with professionalism, courteousness, and a dedication to getting you the best results possible in your specific case.

The Case Evaluation And Initial Interview

When you hire us to represent you in your bankruptcy case we will conduct an initial interview that is very extensive, so that we completely understand your situation and circumstances. Every financial situation and bankruptcy case is different, so it is critical that each case is evaluated individually. This allows us to address and make preparations for any unexpected or unusual situation or circumstances that can occur during the bankruptcy process.

Documentation Review

When you hire an experienced bankruptcy attorney a documentation review should be done as part of the case preparation. This is normally done by a paralegal, under the supervision of an attorney, who will make the final determination as to whether all the documents meet the legal requirements. If needed we can obtain copies of any specific legal documents that are missing, including divorce decrees, judgments, liens, and other court decrees and public records. We will also assess the validity of your debts and any liens.

Credit Counseling Required For Bankruptcy Discharge

We will help you with the counseling requirements that must be met. The BAPCA requires pre bankruptcy counseling, and we will give you assistance in meeting this requirement.

Legal Issue Analysis

When you retain our law firm we provide a complete analysis of all the legal issues involved in your bankruptcy case. This includes the exemptions chosen and applied, the validity of specific judgments and liens, and any other legal issues that could create problems for you.

Drafting The Bankruptcy Petition And Related Forms

When we represent you in your bankruptcy case we will take care of drafting the petition and all of the schedules and other required documents that must be included according to the Bankruptcy Code. This includes the Chapter 13 plan if you are filing this bankruptcy type.

Petition Review

We will schedule a meeting with you to go over your petition together, before it is filed with the court. We will go over the entire petition with you, to ensure that all of the required information is listed and correct, and that there are no mistakes or omissions. This review ensures the petition and other documentation are accurate and complete before the petition is filed.

Filing The Petition

As your attorney we will handle filing the bankruptcy petition and appropriate supplemental forms with the court for you.

Any Pending Litigation In Your Case

If any of your creditors have started a lawsuit for a debt you owe, started the foreclosure process on your home, or are threatening you with repossession then we will ensure these creditors receive a Notice of Bankruptcy Filing as soon as your petition has been filed with the court.

The Meeting Of Creditors For Your Case

As your legal counsel in this matter we will attend the Meeting of Creditors with you to ensure your rights are preserved and to be sure that the trustee is satisfied with the petition and documentation.

Pre Discharge Bankruptcy Counseling

We will help you meet the personal financial management course requirements necessary for your bankruptcy to be successfully discharged. If you do not complete this course your case will not be discharged and could be dismissed instead. We will file the required certificate with the court.

Objections Of The Trustee And Creditors

If any of the creditors or the bankruptcy trustee in your case files an objection concerning your Chapter 13 plan we will work hard to eliminate these objections before your confirmation hearing is held so there are no delays or problems with your case.

The Confirmation Hearing

Most of the time in Ohio, there is no actual hearing We will meet with you before the confirmation hearing to prepare you for this event if it is necessary. We will also attend the meeting with you as your legal representative. We ensure that any documentation that the trustee requires to confirm your Chapter 13 plan is available and is sufficient for this purpose.

Defending You Against Creditor Actions

If there are any motions filed by your creditors for action against you we will review and evaluate this pleading and discuss possible defenses against the motion. This can include a complaint to determine the discharge ability of a debt or any other type of creditor action that could affect your case in any way.

Reviewing Creditor Proofs Of Claim

A complete review is done on every proof of claim that is filed by any creditor in your case. If it is necessary we will file an appropriate objection with the court. Once the deadline for these claims has finished we will take appropriate action to keep any late proofs of claims from being considered, by filing a motion and required notice if necessary.

Debt Reaffirmation

As your bankruptcy attorney we will go over each of your secured debts and evaluate whether the debt should be reaffirmed or not. If you choose to reaffirm a debt we will start handle the paperwork involved, and mail to you the copies you need to sign and return to us. We also review the reaffirmation agreement before you sign this document to make sure it is correct and complete, and we will attend and represent you at any hearing that is the result of your debt reaffirmation.

Avoiding Liens When Possible

Our firm will evaluate any existing liens against your property. If warranted we will file a Motion to Avoid Lien in your case. You, however, must tell us if you have any such liens, as we don't know unless you tell us that you have them. This is the same as the debts. You have to tell us who you owe.

Miscellaneous Issues And Unexpected Events

If any bankruptcy related issues or events occur we will evaluate these circumstances and will advise you accordingly. We also prepare and file any necessary motions to address these issues and prevent any delays or problems with your case.

A Final Review Of Your Case

A final review of your case is done to ensure that all of the necessary elements and documents are completed for a successful discharge of your bankruptcy.

Every bankruptcy case is different. Some cases will require all of the steps above, while others may not be as complex and may not require some of the steps. At the Law Offices of West, Hurley, & Malkiewicz we can help you get the bankruptcy discharge and fresh start that you want in the least number of steps possible, saving you time and preventing any delays or issues that would affect your discharge.

What Else Happens After The Petition Is Filed?

As soon as your bankruptcy petition is filed an automatic stay goes into effect. This stops creditor collection efforts while you are in the bankruptcy process. A Motion for Relief from Stay must be filed by a creditor and granted by the court before the creditor can resume collection efforts. The bankruptcy court will serve each of your creditors with notices (this means mail them a copy) that your case has been filed. This document will contain your case number as well as the date, time, and location of the Meeting of Creditors. This meeting will take place roughly thirty days after your petition has been filed. We will make sure you are prepared for any meetings and hearing in your case, and we will attend these with you and aggressively represent you.

Chapter 7: West, Hurley, & Malkiewicz: Dedicated To Consumer Debt Relief

What Sets Our Law Office Apart?

At West, Hurley, & Malkiewicz we realize that most people are only a single medical emergency or job loss away from needing bankruptcy protection, and an experienced lawyer in this field. We are one of the largest filers of consumer bankruptcy cases in Southern Ohio.

The number one goal of our firm, and every lawyer and paralegal working in it, is to ensure that our clients receive the maximum benefits possible from our legal services. We work hard to get our clients the fresh start they need and truly deserve. We specialize only in consumer bankruptcy law so that our clients receive the best legal representation possible, and we do not take business bankruptcies or any other legal cases. We are highly experienced at handling bankruptcy cases, and our success rates show this fact. We have many satisfied clients every year, and we aggressively represent each and every individual client with the same zeal, compassion and understanding.

All of the bankruptcy lawyers in our firm recognize that bad things often happen to decent and hardworking people. We have a commitment to help as many consumers as we possibly can. We can assist you in getting a fresh financial start if you:

- Had a previous bankruptcy case dismissed
- Have never filed bankruptcy before
- Started out representing yourself but realize now you need legal representation
- Have had a previous bankruptcy case that was successful
- Are self employed

We offer prospective clients telephone consultations and online case evaluations at no charge in an effort to serve you better. Your personal information is always kept confidential and is never shared because we value your privacy.

Richard West is the founder and managing partner of West, Hurley, & Malkiewicz. He has been practicing consumer bankruptcy law since 1986 and is a Board Certified Consumer Bankruptcy Specialist by the American Board of Certification. He is one of only eleven such certified attorneys in the entire state of Ohio.

Here Is What Our Clients Have To Say

The decision to file, although necessary, was not easy. The organization, professionalism and knowledge of Mr. Hurley and the law firm staff was not only instrumental, but made filing a little easier. We are appreciative of your help and support, and hold your firm in the highest regard. We will recommend you to any family or friend who need debt relief counsel.

— DebtFreeOhio Client, Springboro

I also want to thank all of you for all your help and also for making me not feel like a failure for filing bankruptcy. I also wanted to pass along that the reason I chose your firm was due to your website where it states that filling does not make you a bad person or a failure. I would also like to say that the Dayton office is absolutely fantastic.

— Debt Free Client

You recently handled my bankruptcy proceedings and I have received the discharge papers from the court. I wanted to write and express my appreciation for the courteous and professional manner in which my wife and I were treated by you and your entire staff. I was always treated with respect and all questions answered by your office staff whenever I called during the process. Once again thank you for your help and guidance during a difficult period.

— Debt Free Client

I wanted to thank you and your office staff for your assistance in filing bankruptcy. You and your office staff made me feel very comfortable and relieved all my worries and embarrassment in filling bankruptcy. I also wanted to let you know that Mr. Malkiewicz was very knowledgeable and easy to work with. My case was discharged in and since the discharge date, my credit score has improved by 100 points. Thank you again for all of your help. Please pass along my thanks to your staff and to Mr. Malkiewicz. It has been a pleasure dealing with your office and if there is anything I can do to help your firm out in the future, please do not hesitate to contact me.

— Debt Free Client

Thank you for taking the time to talk to me this morning, although our case was filed 3+ years ago. Thank you for your advice!

— DebtFree Client from 2006

To Whom it may Concern,

I like many others found myself overwhelmed by debt. I worried bankruptcy would make (me) surrender my property. I was so wrong! When your attorney is organized things go very smoothly, which takes a lot of stress away. Compassion and competency were the two things that made my bankruptcy go smoothly.

— Debt Free Client

Mr. West, Just wanted to wish you the best for the holidays and thank you for all you and your staff did for me to help give me a fresh start. I've since been able to get a 2004 car, save some money and have peace of mind. Your help will not be abused!

— Debt Free Client

My wife and I would like to say how pleased we are with you Mr. West and staff for everything you have done for us in this case. At first we were not sure of the whole process, but now we realize how professional you all are. After being in front of the trustee and seeing other cases that were presented it showed how well prepared you and your staff were.

— Debt Free Client

Mr. West,

My wife and I just want to thank you and your staff for your help in our filing of chapter 7 bankruptcy. You guided us all the way and made the journey pain free. Each step was exactly like you predicted and we were discharged of our debts in a very short time. We just wished we had filed a couple of years earlier, when we owed even more. Our worries are over as we start a new debt free life. Thank you again.

— Debt Free Couple

I sincerely appreciate all you have done personally along with your highly competent staff to guide me through this tumultuous life event.

Sincerely,

Debt Free Client June 2010

— Debt Free Client, Dayton

Our bankruptcy has been discharged for almost one year. I want to thank you for promptly responding and answering any questions we have had even after our case was discharged. You have been extremely helpful, and we are very appreciative. Thank You!

— DebtFreeOhio Client

Thanks ever so much for taking the extended amount of your time to develop and explain all of the bankruptcy options you presented to me. It was the instrumental difference in helping me choose my future course of action on this matter as well as choosing your services to represent me.

— Debt Free Client

In Closing

When you have an initial consultation with a lawyer at West, Hurley, & Malkiewicz you will have your case thoroughly evaluated, and you will receive a legal opinion on what course of action is best for your specific circumstances. We will also discuss the possible results of your options based on the extensive experience we have in this area. We can not make any guarantees with your case, because each bankruptcy is different. We will, however, guarantee to fight for you the same as if we are fighting for our own personal case, with aggressiveness and zeal.

We are proud of our successes and the fact that we get the expected outcome in most of our cases. Once the judge receives your bankruptcy case we can not guarantee what the outcome will be. Judges are individuals just like everyone else, and it is not always possible to determine what will happen once a judge gets your case. We will fight tirelessly on your behalf though, and take all possible steps to get you the outcome you want while considering your specific situation.

Regardless of whether you are on the edge of a financial disaster or you are just now starting to run into money problems it is important that you take action right away. You have taken the first step by requesting this book and honestly looking at your finances, which will help you resolve your financial problems and turn you life back around. If you have questions, comments, would like more information, want to schedule a consultation, or are looking for a referral to an experienced bankruptcy lawyer in your local area please visit us at www.debtfreeohio.com. We will assist you in any way possible to get the fresh start you deserve.

Notes