Chapter 7

Financial Difficulty for Seniors

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SYNOPSIS

7-1. Financial Difficulty for Seniors

Seniors may be particularly vulnerable to the economic difficulties facing many Americans today. This chapter is intended to provide resources to tackle some of the common issues confronting seniors.

For more information on identity theft, consumer fraud, and other prevention tools and consumer protections, see Chapter 22, "Arm Yourself with Consumer Protection Information."

7-2. Credit Card and Consumer Debt

There are options to lower the interest you are paying. Credit card rates, and even outstanding balances, can often be negotiated down by simply calling the credit card company. There are also nonprofit debt relief companies that can help; however, do your research first! There are fraudulent debt consolidation and credit repair services, so make sure you research the company first. A list of credit counseling agencies approved by the U.S. Department of Justice can be found at section 7-5, "Resources."

Am I Obligated to Pay the Debts of My Spouse After His/Her/Their Death?

Secured Debt: Any property that a person owns at the time of death that is subject to a secured debt (such as a car loan or a home mortgage) is subject to collection by the secured creditor unless regular payments are made on the loan. Secured creditors can always recover against the security, such as repossessing the car.

Unsecured Debt: For unsecured creditors, such as credit card debt or medical debt, some assets are exempt from collection. Some of the exemptions include a homestead exemption for up to $350,000 of home equity (this exemption is only available to a surviving spouse or a disabled or elderly dependent who resides in the home); an exempt property allowance of up to $44,000 worth of property; a family allowance of $44,000; life insurance proceeds paid to a beneficiary; and assets held in or paid from a pension, retirement plan, IRA, or other similar account. The remaining assets of a decedent's estate are generally available to unsecured creditors.

Married Couples: If a married couple have both signed a debt obligation, they are generally both responsible for repayment, even if one of them dies. Some creditors claim that surviving spouses are responsible for certain debts incurred individually by their deceased spouse if the debt is a "family expense."

Family Members: In Colorado, family members who are not spouses, such as children, parents, grandparents, brothers, sisters, or other family members, have no obligation to pay the decedent's debt unless they co-signed on the debt obligation.

IRS: If the creditor is the IRS, state exemptions from creditors do not necessarily apply.

Before Paying Debts: A personal representative for an estate must be very careful to properly pay estate debts. It is highly recommended that anyone thinking about serving as a personal representative consult with an attorney before making any distributions from an estate, including payments to creditors.

If a personal representative distributes estate assets to beneficiaries before all creditors are paid, those beneficiaries and/or the personal representative could be liable to creditors up to the amount improperly distributed. See Chapter 21, "What to Do When Someone Dies: Responsibilities of the Personal Representative and Trustee Under Probate," for more information.

Debt collectors may contact parents, friends and neighbors, or anyone believed to be handling the estate. Any person contacted by a debt collector has certain protections under federal and Colorado law regarding debt collection. This is discussed in detail in Chapter 22, "Arm Yourself with Consumer Protection Information."

7-3. Taxes

Tax Problems

Low-income taxpayers with a tax controversy can contact:

1) University of Denver Low Income Taxpayer Clinic, Graduate Tax Program: 2255 E. Evans Ave., #390, Denver, CO 80208, (303) 871-6331, litc@law.du.edu.

Property Taxes

1) Senior Property Tax exemption for Seniors 65 years or older

Colorado law provides for a Senior Property Tax exemption for: (1) seniors 65 years or older who live in Colorado and (2) have owned their Colorado homes as their primary residences for (3) at least 10 years.

Qualifying taxpayers get a 50 percent break on their property tax bill, up to $200,000 of property value. This exemption is also available to 100 percent disabled veterans and to the widow or widower of a qualifying senior.

You must file your application by July 15 of the year for which the exemption is requested.

2) Property Tax/Rent/Heat Rebate Program for Low-Income Seniors aged 65 or older, widows or widowers aged 58 years or older, and disabled persons.

Qualified applicants can receive a rebate of up to $1,178 based on the applicant's actual rent, property tax, and heating expenses.

Applications are available at every county assessor's office, through the Colorado Department of Revenue, Division of Taxation at (303) 238-7378, or online at https://tax.colorado.gov/PTC-rebate. Free assistance in completing the application is available. You can file an application for this year and two prior years. Please note Colorado has periodically suspended this program when tax revenues are expected to be low (2009-2011).

3) Colorado Senior Property Tax Deferral Program

This program is for homeowners aged 65 years or older where the state makes tax payments directly to the county to pay the property tax due. These payments are loans, and the state will file a lien against the property, but no payment is due on the loan until the home is sold or the senior no longer qualifies for the program. The state charges interest at a market rate for the loan. Seniors can use this program for multiple years.

To qualify, the home must be owned and occupied by the senior, and the property cannot generate rental income. The mortgage lender must agree that the state's lien will come first, before the mortgage. Applications and information are available at your local county treasurer 's office. See additional information online at https://colorado.propertytaxdeferral.com/faq.

Refund Anticipation Loans

A lot of businesses offer to loan you money until you get your tax refund from the IRS. Be careful about using these services. It is easy to electronically file your tax returns, and plenty of free help is available if you need it (see section 7-5, "Resources.") You can have the IRS deposit your refund directly into your bank account, which often takes only eight to 15 days, and all of your refund goes right to you. If you borrow money in anticipation of your refund, the lender gets part of your tax refund — sometimes a big chunk.

7-4. Bankruptcy

Theory Behind Bankruptcy

Bankruptcy is a legal proceeding started when a person or business is unable to repay outstanding debts or obligations. It offers an individual (or business) a fresh start by forgiving debts that the person or business cannot pay. In some cases, creditors have a chance to get some repayment based on the assets available for liquidation or based upon current income after expenses.

All bankruptcy cases in the United States go through federal courts. A bankruptcy judge makes decisions, including whether a debtor is eligible to file and whether they should be discharged of their debts.

In general, the bankruptcy law requires a debtor to list all property of any kind and all debt. In a bankruptcy proceeding, the debtor may list property which he or she intends to keep and for which he or she intends or is able to maintain the payments.

Caution: The bankruptcy law is complex. Filing for bankruptcy can impact your credit (both positively and negatively). It is a good idea to consult a bankruptcy attorney before acting. Most attorneys practicing in this area offer a free consultation.

Types of Bankruptcy

An individual can file under one of four different "chapters" of the bankruptcy code. Each has different criteria for filing and some differences in the type of relief offered. Most people file under Chapter 7, which is called a liquidation. It allows debtors to get rid of certain debts and to retain certain property.

Chapter 7

This is the most common type of bankruptcy for individuals. It is known as a "liquidating" bankruptcy. This allows a person to dispose of unsecured debts, such as credit card balances and medical bills.

In Chapter 7 cases, you are allowed to keep all property that is "exempt" (protected) from the claims of creditors. "Exempt assets" are property you can keep. "Nonexempt assets" are a possible means to pay back creditors. ***Note:*** The list below is just a sample of what may be available and how the bankruptcy exemptions work. An experienced bankruptcy attorney can assist you to put together a plan to retain a large portion of what you own.

Colorado Bankruptcy Exemptions Protect the Following Property:

- Home, including mobile homes – up to $250,000 in equity, or $350,000 for age 60 and older or disabled or a family member living within the household who is over 60 or disabled;
- Household goods – up to $6,000;
- Bank Accounts – up to $2,500 or $5,000 if a couple (***Note:*** there are certain tax exemptions that do not apply. Please seek legal advice);
- Food & Fuel – up to $600 or $1,200 if a couple;
- Motor Vehicles – up to $15,000 in equity in vehicles or bicycles. $25,000 if age 60 and older or disabled;
- Tools of your trade – up to $60,000; or up to $20,000 for tools from a secondary business from which you have income from time to time;
- Clothing – up to $2,000 or $4,000 if a couple;
- Jewelry – up to $2,500 or $5,000 if a couple;
- Firearms and fishing equipment – up to $1,000 or $2,000 if a couple;

- Miscellaneous – up to $2,000 in books and family pictures; one burial site for the individual and each dependent; health aids; up to $3,000 for library of professional person. (Seek the advice of an attorney for a complete list of exempt property).

Other exempt assets may include disability insurance payments; life insurance proceeds; state pensions; ERISA-qualified benefits; veterans' benefits; individual retirement accounts; public benefits; some earnings up to certain limits; and certain agricultural assets, including livestock and equipment, with a value of up to $100,000. There may be other exemptions available for certain assets and benefits, so be sure to talk with your attorney.

The trustee in a Chapter 7 case is vested with authority and discretion to sell nonexempt assets, and the proceeds will be used to pay creditors according to their statutory priority for repayment. If there are no nonexempt assets, the creditors receive nothing. This is what occurs in most Chapter 7 bankruptcy proceedings.

Chapter 13

This is the second most common type of bankruptcy for individuals, also known as a "wage earner's" bankruptcy. This allows individuals with regular income to put in place a court-approved plan to pay all or part of their debts over three to five years. This type of bankruptcy allows a debtor to keep his or her property as long as the debtor complies with the repayment plan.

Chapter 12

This is similar to Chapter 13 but is specifically for debtors who are family farmers or fishermen.

Chapter 11

This is known as "reorganization." This is rarely filed by an individual but is commonly filed by businesses. It allows a commercial enterprise to continue operation of a business and repay creditors through a court-approved plan.

Filing for Bankruptcy

To file a bankruptcy case, you must complete and file a Voluntary Petition for Individuals Filing for Bankruptcy. However, the Bankruptcy Code requires that an individual receive a credit counseling briefing within 180 days *before* filing a case. The briefing must be done by a nonprofit budget and credit counseling agency approved by the United States Trustee. (*See* section 7-5, "Resources") There are certain exemptions to the credit counseling requirement if an individual is incapacitated, disabled, or on active military duty.

An individual must file a Certificate of Credit Counseling or a motion (written request) seeking an exemption to the credit counseling when filing the Verified Petition. (*See* United States Bankruptcy Court District of Colorado, Guide for Debtors Filing Bankruptcy Without an Attorney, *available at* www.cob.uscourts.gov/sites/default/files/misc/Pro_se_guide.pdf).

Caution: Any person filing for bankruptcy is required to strictly adhere to the Bankruptcy Code, applicable local rules, and/or court orders. This means an individual is held to the same compliance standards as an attorney. Failure to comply with the rules and due dates may result in the dismissal of the case. For this reason, it is highly recommended that an individual consult with an attorney *before* filing for bankruptcy.

Pro Se Bankruptcy Clinic: The Colorado Bar Association has a free program that helps people with Chapter 7 bankruptcy cases. The Clinic gives limited scope and legal advice to individuals that do not have lawyers. (*See* www.cobar.org/bankruptcy or call 720-633-8866).

What Happens Once I File?

- **Automatic Stay.** Filing for bankruptcy will result in an automatic stay where creditors must halt all efforts to collect debts. This allows the filer to get their financial affairs in order free from creditors' interference. However, there are exceptions or exclusions to the automatic stay.
- **Judge and Case Trustee.** Upon filing, a bankruptcy judge and a case trustee will be assigned. If filing Chapter 7, the case will be randomly assigned to one of the case trustees appointed by the United States Trustee Program. If filing Chapter 13, one of the two standing Chapter 13 trustees will be assigned.
- **List of Creditors.** An accurate and complete list of creditors must be filed, which includes name, mailing address, and zip code of each creditor.
- **Meeting of Creditors (341 Meeting).** After filing the initial Verified Petition, the Clerk of the Court will mail all parties and creditors a Notice of Bankruptcy Filing. This notice will include the date, time, and location of the *mandatory* 341 meeting with the case trustee. The debtor must attend and answer under oath all of the trustee's and creditors' questions regarding financial circumstances, a repayment plan, and related information. This proceeding is by Zoom conference and is conducted over the internet.
- **Personal Financial Management Course.** A statement of completion of a course concerning personal financial management is required if seeking discharge of the bankruptcy. This course must be provided by an approved course provider. You will receive a notice from the Court to file this certificate. Failure to file this certificate may result in your case being closed without a discharge.
- **Discharge.** If all of the requirements of the bankruptcy law are met, certain types of debt will be discharged, meaning that the debtor does not have to pay them, and the creditor cannot pursue a claim against the debtor. Generally, a discharge removes the personal liability for debts incurred before the bankruptcy was filed. Receiving the Discharge Order is very important.

Debts that Cannot be Discharged

Most debts are covered by discharge, but not all. It also depends on the type of bankruptcy. Below are common debts *not* discharged in bankruptcy:

- Spousal support (alimony), some property settlements, and/or child support;
- Student loans;
- Debts subject to pending adversary proceedings;
- Debts for fines, penalties, and/or criminal restitution obligations;
- Debts that were not properly listed in the bankruptcy schedules and list of creditors (in some cases but not others);

- ✦ Debts for certain types of loans owed to pension, profit sharing, stock bonus, and/or retirement plans; and
- ✦ Debts for death or personal injury caused by the debtor operating a vehicle while intoxicated.

7-5. Resources

United States Department of Justice:

List of approved credit counseling services.

www.justice.gov/ust/list-credit-counseling-agencies-approved-pursuant-11-usc-111

Colorado Attorney General Consumer Resource Guides

Consumer resource guides available on many topics, including credit and lending.

https://coag.gov/file-complaint/resource-guide/

AARP Elderwatch Colorado

A partnership between the Colorado Attorney General's Office and the AARP Foundation, Elderwatch is a clearinghouse for complaints, educational information, and training materials dealing with the financial exploitation of elderly Coloradans.

(800) 222-4444, option 2
www.aarp.org/money/scams-fraud/elderwatch

Disability Law Colorado

Disability Law Colorado provides help for people with disabilities and older people in Colorado by using the legal system to protect and promote their rights through direct legal representation, advocacy, education, and legislative analysis. They educate consumers through their many consumer-oriented publications, group training, and one-on-one coaching.

P.O. Box 300309
Denver, CO 80203
(303) 722-0300 (TTY)
(800) 288-1376 (TTY)
dlcmail@disabilitylawco.org
https://disabilitylawco.org

AARP – Finances

AARP publishes several bulletins, including "Eliminate Credit Card Debt." AARP also makes several money tools available, including a Health Care Costs Calculator and Credit Card Payoff Calendar, and resources surrounding bankruptcy.

www.aarp.org/money

Colorado Legal Services:

Colorado Legal Services offers resources regarding legal assistance to low-income Coloradans, including information specific to consumer debt, property and income tax, and bankruptcy.

General information may be found at:
www.coloradolegalservices.org
1560 Broadway, Ste. 1100
Denver, CO 80203
(303) 837-1313

Alamosa (Alamosa, Conejos, Costilla, Mineral, Rio Grande, and Saguache counties)
715 Main St., Alamosa
(719) 589-4993

Boulder (Boulder and Broomfield counties)
2935 Baseline Rd., Ste. 301, Boulder
(303) 449-7575

Colorado Springs (El Paso, Lincoln, Teller, and Freemont counties)
102 South Tejon, Ste. 430, Colorado Springs
(719) 471-0380

Craig (Clear Creek, Eagle, Grand, Gunnison, Jackson, Lake, Moffatt, Pitkin, Rio Blanco, Routt, and Summit counties)
1111 W. Victory Way, Craig
(800) 521-6968 (call before visiting)

Denver (Adams, Arapahoe, Broomfield, Denver, Douglas, Elbert, Gilpin, and Jefferson counties)
1560 Broadway, Ste. 1100, Denver
(303) 837-1313

Durango (Archuleta, Dolores, Hinsdale, La Plata, Montezuma, Ouray, San Juan, and San Miguel counties as well as Ute Mountain Ute and Southern Ute reservations)
679 East 2nd Ave., Ste. B, Durango
(970) 247-0266

Fort Collins (Larimer, Logan, Phillips, and Sedgwick counties)
215 W. Oak St., Ste. 800, Fort Collins
(970) 493-2891

Grand Junction (Delta, Garfield, Mesa, and Montrose counties)
P.O. Box 327, Grand Junction
(970) 243-7940

Greeley (Kit Carson, Morgan, Washington, Weld, and Yuma counties)
912 8th Ave., Greeley
(970) 353-7554

La Junta (Baca, Bent, Cheyenne, Crowley, Kiowa, Otero, and Prowers counties)
401 Santa Fe Ave., La Junta
(719) 384-5438

Pueblo (Huerfano, Las Animas, and Pueblo counties)
1000 W. 6th St., Ste. I, Pueblo
(719) 545-6708

Salida (Park, Chaffee, and Custer counties)
1604 H St., Ste. 201, Salida
(719) 539-4251
Consumer rights information available at:
www.coloradolegalservices.org/consumer-rights/

Tax Resources

AARP Foundation Tax-Aide
AARP Foundation Tax-Aide offers services for people who pay low to moderate income taxes, with special attention for those 60 years or older. Service sites throughout Colorado.
www.aarp.org/money/taxes/aarp_taxaide/

Denver Asset Building Coalition (DABC)
Free tax preparation services for Colorado residents with low to moderate income. The Denver Asset Building Coalition also has seasonal offices in Aurora, Denver, and Arvada.
2475 W. 26th Ave.
Denver, CO 80211
(303) 388-7030
www.denverabc.org

Mile High United Way
Dial 211 to get information about free tax-preparation sites throughout Colorado, as well as information about emergency shelter, legal aid, housing, utilities, home repair, senior issues, and more.
www.unitedwaydenver.org/2-1-1

Tax Help Colorado
A partnership between the Piton Foundation and the Colorado Community College System offers free income tax return preparation for low-income taxpayers, including assistance with earned income tax credits and applications for the Property Tax/Rent/Heat Rebate Program. The Piton Foundation operates 27 tax sites in Colorado in cooperation with Colorado colleges and other agencies.
https://taxhelpco.org

Wall Street Journal
"For the Families of Some Debtors, Death Offers No Respite."
Wall Street Journal (Dec. 3, 2011), *available at*
http://online.wsj.com/article/SB10001424052970204224604577030043890121710.html

Other Tax Resources:

- IRS forms and publications can be found at: www.irs.gov/forms-instructions.
- Colorado forms and tax information can be found at: https://tax.colorado.gov/individual-income-tax-forms.

- ✦ A website providing links to a number of tax-related topics is: www.taxtopics.net.
- ✦ Public libraries often provide print or online access to tax forms and tax information.

Bankruptcy Resources

AARP *See* section 1-5, "Resources"

AARP has a website devoted to money issues, including credit, loans, and debt. There are several useful articles available at:

www.aarp.org/money

Denver Bar Association

The Denver Bar Association offers a free bankruptcy clinic on the second Tuesday of each month at the U.S. Bankruptcy Court. (This clinic is currently operating remotely. Call (720) 633-8866.))

721 19th St., Rm. 183
Denver, CO 80202
www.denbar.org/Public/Pro-Bono-Legal-Assistance

United States Courts

"Bankruptcy Basics" guides and videos are published by the administrative office of the United States Courts.

www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics