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Debts

When you purchase something “on time” or borrow money, the merchant or bank is a “**Creditor**” and the obligation to pay the Creditor is called a “**Debt**”.

There are generally two kinds of Debts: “**Unsecured Debts**” and “**Secured Debts**”. This Brochure discusses how Secured Debts are handled in Chapter 7 Bankruptcy. The treatment of Secured Debts in Chapter 13 Bankruptcy are beyond the scope of this Brochure.

Secured Debts

The Creditor will often take a “**Lien**” on some of your property to ensure they are paid. The property the Creditor takes a Lien on is called the “**Collateral**”.

If the Collateral is real property or land such as your home, the Lien takes the form of a real estate mortgage or simply a “**Mortgage**”.

If the Collateral is personal property such as furniture or a car, the Lien takes the form of a “**Security Agreement**” or a “**Security Interest**”. Sometimes a Creditor will take a Lien without your approval. This might occur when you are sued and the Creditor obtains a “**Judgment Lien**”. If you have been sued, ask for our Brochure on Judgment Liens.

Generally in bankruptcy if you want to keep Collateral subject to a Lien, you must pay what you owe the Creditor on time and you may need do reach some other arrangement acceptable to the Creditor.

Home Mortgages

If you own real estate such as the home where you live (“**Homestead**”), the Lien will likely be done with a Mortgage. If you have a Mortgage, you will most always be required to catch up on your payments shortly after you file for bankruptcy if you want to keep the Collateral.

Purchase Money Liens

If the Creditor that sold you the property (or purchased the Debt from the seller) holds the Lien, they have a Purchase Money Security Interest (“**PMSI**”).

On PMSI Liens you almost always need to get caught up on your payments shortly after you file bankruptcy if you want to keep the Collateral.

Non Purchase Money Liens

A Creditor has a “**Non PMSI Lien**” if they did not sell the Collateral to you and did not loan the money to you to purchase the Collateral.

“ . . . If you want to keep Collateral subject to a Lien, you must pay what you owe the Creditor on time and you may also need to reach some other Arrangement acceptable to the Creditor”

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In Chapter 7 Bankruptcy we can often cancel or “**Void**” *Non* PMSI Liens on certain household goods. This includes property such as furniture, appliances and normally one television and one VCR (“**Household Goods**”). It does not include other property such as sporting goods, guns, lawn mowers, vehicles and the like.

Reaffirmation

If you want to keep property subject to a valid Lien, the Creditor will often want you to “**Reaffirm**” the Debt. This means you must sign a written document (a “**Reaffirmation Agreement**”) promising to repay all or a part of the Debt as though you had not taken bankruptcy.

Normally when this is done you are in default on the Debt or the Creditor is making a concession by giving you a longer period of time to repay the Debt.

Be very careful in Reaffirming Debts, because you will owe the Debt after the bankruptcy just like you had never filed bankruptcy.

Options for Secured Debts

You will normally have the following options:

- ◆ **Reaffirm the Debt in Full** which means that you agree to repay the Creditor the full amount owed and the Creditor is not entitled to recover any of the Collateral *if* you pay as required by the Reaffirmation Agreement.
- ◆ **Partially Reaffirm the Debt** by agreeing to pay a portion of the Debt in exchange for an agreement for you to keep the Collateral. This is possible *only* with the agreement of the Creditor.
- ◆ **Redeem the Collateral** by offering to pay the Creditor a fixed sum of money which would entitle you to keep all or part of the Collateral.
- ◆ **Void the Lien** if it is a Non PMSI on Household Goods or a very limited number of other items. This only works on Non PMSI Liens.
- ◆ **Do Nothing** in the assumption that the Creditor will make no attempt to try to recover the Collateral because of its limited value. It is possible that a Creditor will not go to the expense of filing an action in the State District Court to recover the Collateral, but they certainly may and if they do, the Creditor will be able to recover the Collateral.

The Author

Larry D. Lahman, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School. He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and other organizations. He was a parachute officer with the U. S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the Army Reserves.

Caveat:
This brochure is
designed to give
general advice only.

Specific Questions
should be directed
to your Lawyer.