

Chapter 8

Financial Difficulty for Seniors

Jamie J. Roth, Esq.
Trust & Estate Advocates, LLP

SYNOPSIS

- 8-1. Financial Difficulty for Seniors
 - 8-2. Credit Card and Consumer Debt
 - 8-3. Taxes
 - 8-4. Bankruptcy
 - 8-5. Resources
-

8-1. 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.

8-2. Credit Card and Consumer Debt

Chapter 11, “Arm Yourself with Consumer Protection Information,” has a helpful discussion about credit repair, debt collectors, and debt collection in court. There are options to lower the interest you are paying. Credit card rates and even outstanding balances can often be negotiated down by calling the credit card company or by working with a nonprofit debt relief company. You can find a list of credit counseling agencies approved by the U.S. Department of Justice in the resources in Section 8.5 of this chapter. Beware! Debt consolidation and credit repair services are rife with fraud. Make sure to check out the credentials of any company before working with them.

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

When someone dies in Colorado, any property that person owns that is subject to a secured debt (such as a car loan or a mortgage) is subject to collection by the secured creditor unless regular payments are made on the loan. Some assets are exempt from collection. Some of the exemptions include a homestead exemption for up to \$105,000 of home equity; an exempt property allowance of up to \$35,000 worth of property; a family allowance of \$35,000; 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.

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

A surviving spouse or other family member who is acting as 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. 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 28, "What to Do When Someone Dies: Responsibilities of the Personal Representative and Trustee Under Probate," for more information.

If a husband and wife 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." This is an unclear area in Colorado law. Different states have different rules regarding debt between spouses. 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.

Debt collectors may contact parents, friends and neighbors, or anyone believed to be handling the estate. The *Wall Street Journal* ran an article on December 3, 2011, regarding debt collection firms specializing in estate debts who have applied pressure to family members to pay credit card debts or medical bills that surviving family members had no legal obligation to pay. 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 11, "Arm Yourself with Consumer Protection Information."

8-3. Taxes

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 8-5, "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.

Tax Problems

Low-income taxpayers with a tax controversy can contact two clinics in Colorado:

- 1) San Luis Valley & Southern Colorado Low Income Tax Clinic: 401 Church Pl., P.O. Box 57, San Luis, CO 81152; (719) 672-1002, slvlitc@centurytel.net.
- 2) 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

Colorado law provides for a senior property tax exemption for seniors 65 years or older who live in Colorado and have owned their Colorado homes as their primary residences for at least 10 years. This exemption is also available to 100 percent disabled veterans and to the widow or widower of a qualifying senior. Qualifying taxpayers get a 50 percent break on their property tax bill, up to \$200,000 of property value. Details and applications are available from your county assessor's office. Please note Colorado has periodically suspended this program when tax revenues are expected to be low (2009-2011). You must file your application by July 15 of the year for which the exemption is requested.

Colorado offers a Property Tax/Rent/Heat Rebate Program for low-income seniors aged 65 years or older, widows or widowers aged 58 years or older, and disabled persons. Qualified applicants can receive a rebate of at least \$300 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 www.colorado.gov/pacific/tax/PTC-Forms. Free assistance in completing the application is available. You can file an application for this year and two prior years.

The Colorado Senior Property Tax Deferral Program is a program 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://treasury.colorado.gov/senior-and-veteran-property-tax-programs>.

8-4. Bankruptcy

Theory Behind Bankruptcy

Bankruptcy allows a person in debt to file financial information with the court showing the need for bankruptcy, and to receive a "discharge" or relief from certain types of debt. In *Local Loan Co. v. Hunt*, the U.S. Supreme Court explained the purpose of bankruptcy is to give "the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt."

Bankruptcy carries significant disadvantages and has limitations. It should be considered only when other debt-management options have failed. Bankruptcy has adverse effects on your credit rating for at least 10 years, and may prevent you from receiving any type of loan or credit for some time after you file.

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.

Chapter 7

This is known as a “liquidating” bankruptcy. The debtor will describe to the court all of its assets and debts. Certain types of assets are exempt from creditors. This varies from state to state. In Colorado, exempt assets may include real estate or mobile homes with a value of up to \$105,000 if the homeowner is over 60 years of age; disability insurance payments; life insurance proceeds; state pensions; ERISA-qualified benefits; veterans’ benefits; retirement accounts, up to certain limits; public benefits; vehicles worth up to \$12,500 if the owner/debtor is over age 60; home furnishings worth up to \$3,000; some earnings up to certain limits; tools of trade up to \$30,000; and certain agricultural assets, including livestock and equipment, with a value of up to \$50,000. Any nonexempt assets will be sold, 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. A debtor will be presumed to be filing an abusive petition if the debtor’s aggregate current monthly income over five years, net of certain statutorily allowed expenses, is more than (1) \$13,650 or (2) 25 percent of the debtor’s nonpriority unsecured debt, as long as that amount is at least \$8,175.

Chapter 13

This is 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 fisherman.

Chapter 11

This is known as “reorganization.” This type of bankruptcy 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.

Consultation with a bankruptcy attorney will help you decide if bankruptcy will help you, and what type of bankruptcy is best for your situation.

Filing for Bankruptcy

A debtor must pay a filing fee, and, along with the petition, must file a schedule listing all assets and liabilities, a schedule listing all income and expenses, a statement of financial affairs, a schedule of all contracts and leases, copies of tax returns, a list of all creditors, a list of all property, disclosure of all income, a list of all monthly living expenses, and a certification of attendance at credit counseling. Depending upon the type of bankruptcy filed, the debtor may also be required to file a statement of all interest in qualified educational funds and/or a repayment plan.

What Happens Once I File?

Filing for bankruptcy will result in an automatic stay where creditors must halt all efforts to collect debts. This stay can be lifted if a creditor requests relief from the court, or if the debtor is found to be delaying or otherwise abusing the bankruptcy process.

A creditor's meeting will be scheduled at the bankruptcy courthouse. The debtor must attend and answer under oath all of the creditors' questions regarding financial circumstances, a repayment plan, and related information.

The court will appoint a bankruptcy trustee, who is an impartial third party who can investigate or liquidate assets. The trustee has "avoiding powers" that allow the trustee to reverse payments the debtor made to favored creditors within 90 days of filing for bankruptcy (called "preferential payments"). The trustee can also take other actions to protect the integrity of the bankruptcy proceeding. The trustee can recommend that the court approve a repayment plan, or that the court dismiss a bankruptcy petition for fraud or other non-compliance.

If all of the requirements of the particular type of bankruptcy are followed by the debtor, certain types of debt will be discharged, meaning that the debtor does not have to pay them and the creditor cannot pursue the debtor.

Debts that Cannot be Discharged

Certain types of debts cannot be discharged in bankruptcy. The type of debt that is dischargeable depends on the type of bankruptcy. Under § 523(a) of the bankruptcy code, debts that cannot be discharged include certain tax claims, child support, alimony, debts arising from willful or malicious injury caused by the debtor, governmental fines or penalties, student loans, overpayments by government programs, personal injury judgments resulting from the debtor driving under the influence, debts owed to retirement plans, secured debts, and debts to homeowner associations.

8-5. Resources

Resources Regarding Debts, Lending, and Collection Practices

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.

www.stopfraudcolorado.gov/resource-guide.html.

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 Coloradoans.

(800) 222-4444

(303) 222-4444

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.

455 Sherman St., Ste. 130

Denver, CO 80203

(303) 772-0300 (TTY)

(800) 288-1376 (TTY)

<https://disabilitylawco.org>

dlcmail@disabilitylawco.org

332 N. 8th St.

Grand Junction, CO 81501

(970) 241-6371 (TTY)

(800) 531-2105 (TTY)

AARP

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.

www.aarp.org/money/credit-loans-debt

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradoans, and has legal information for the public, including information specific to consumer debt. Offices in Alamosa, Boulder, Colorado Springs, Craig, Dillon, Durango, Fort Collins, Grand Junction, Greeley, La Junta, Pueblo, and Salida.

1905 Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

www.coloradolegalservices.org

Consumer rights information available at:

www.coloradolegalservices.org/node/45/information-about-debt-bankruptcy-and-other-consumer-issues

Wall Street Journal

Article referenced in section 8-2:

“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>

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

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.

1705 17th St., Ste. 200

Denver, CO 80202

(303) 628-3800

(303) 628-3834 (fax)

<https://taxhelpco.org>

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradans, and has legal information for the public, including information specific to income and property taxes.

1905 Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

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

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: www.colorado.gov/pacific/tax/individual-income-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

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

www.aarp.org/money/credit-loans-debt

Colorado Legal Services

Colorado Legal Services offers legal assistance to low-income Coloradoans, and has legal information for the public, including information specific to bankruptcy.

1905 Sherman St., Ste. 400

Denver, CO 80203

(303) 837-1313

www.coloradolegalservices.org

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

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/Legal-Clinics