# Creditors and Bankruptcy

Did you know that when you buy from certain creditors the items you puchase maybe considered "secured"? Even the items you charge on a credit card?

You'd think a simple word like "secured" wouldn't mean much, but it does when it comes to credit.

Secured loans have always been used on big ticket items, like your car or your home. The creditors knew that if you defaulted (didn't pay) they can just go and take possession of the property or the car. They can then sell it and you'd be left owing the balance.

Regretfully, many other businesses have moved their installment loans and credit card purchases into being "secured" by the items you obtained. That in and of itself doesn't really present a problem, as long as you pay. But if you don't, there can be some serious consequences.

First, like the big ticket items, creditors can send someone to re-possess your items. Selling them at deeply discounted prices, leaving you both without the item and still owing the bill.

Second, if you file bankruptcy while still possessing the items, you may still end up paying the bill.

While Sears, who pioneered this predatory method of recovering their monies, no longer does this; regretfully they wrote the blueprint for other creditors to follow.

Individuals who look to bankruptcy to solve a bad situation, normally seek "low cost" attorneys to provide this service. The biggest problem with low cost attorneys is that they fail to do lien checks. Liens do not automatically go away when an individual files bankruptcy. Lien checks are expensive and time consuming.

Basically, what is to be happening in Bankruptcy is that all creditors are to inform of the situation. Some creditors file papers with the court in hopes of recovering some of their monies. One creditor maybe secured, another may not be. Creditors are not required to file papers with the court.

During bankruptcy many secured creditors will notify the court and have you sign a re-affirmation of the debt, meaning that you intend to pay them in full. If you don't, they will re-posses the items. Cars and homes are normally handled this way. (Never having been through bankruptcy myself, this is what I understand it to happen...I also know that this is very simplified.)

The blueprint that Sears developed, which is now being immitated by others occurs as follows:

First the creditor (aka lien holder) doesn't file papers with the court.

AFTER bankruptcy is finalized, or discharged, and you believe the worst is finally over, the lien holder/creditor, through an attorney, creates a "replevin". This is were the sheriff sends you notice that he is coming to pick-up the stuff that you bought, they usually list the items the sheriff is to get from you.

Many, because they don't want to lose their household items, in a panic call the creditor's lawyer and confirm their debt. So much for Bankruptcy, hun? If all creditor's did this then bankruptcy would provide little relief for individuals.

You might ask -- how can they do this? The best answer is "because they can." They have a secured debt and they filed a lien, that's why. To read a court decision on this procedure which was founded in Sears favor click here.

So what is a person to do?  There are several options.

First would be to not file bankruptcy and consider go to a debt couseling group. We have been very impressed with those that are affiliated with a church (Lutheran Brotherhood has one).  Many of these groups do not require you to be a member of that church.

Second is to not hire the cheapest bankruptcy lawyer you can find. To do searches for liens is both time consuming and costly.  Good lawyers charge for lien searches.  But doing a lien search, your attorney maybe able to take additional action to remove the lien and give you clear title.

Third is if you do get a replevin notice from the Sheriff for a debt that should of been included in bankruptcy...consider letting them take it and go get new. They can't make you pay the balance.  If you don't have it - oh well - just tell the sheriff that you no longer have it.  Remember, the Sheriff isn't the bad one in this situation - they are only doing their job.

If you do go and get new - this time get something that doesn't cost as much and something you can pay for within a short period of time - preferably within six months. Or just do without it. The worst thing you can do after bankruptcy is fall into the same trap you were before.

by ACCESS Staff Writer

**********UPDATE on Sears 11/11/04**********

An informed consumer recently e-mailed us the changes that occurred when Citigroup took over Sears' credit card division.

It stated that Sears will "no longer takes a security lien on your purchases."  Which is great for consumers and bad for Sears' thousand's of attorney's that participate in this action.

However, Sears cards are now considered predatory. Citigroup clearly states that they are attaching 20.74% to the prime lending rate for all Sears cardholders.  This is much more abusive than the security lien because it affects over 50 million Sears cardholders every month.

Regretfully, while Sears may no longer be doing this, they did set a president for placing a security lien on cardholder' purchases.

Please read our related article on "How to read Credit Card Agreements."

Thanks Diana for providing us this updated information.

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in becoming an informed consumer and feel strongly about these issues.  By registering, you will have even more information available via our website.
You will also receive our monthly news-bytes, detailing breaking news in the area of privacy and credit.
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