

# DEBT



## Debt Reduction

We thought we'd seen it all with the mortgage broker scams and then the loan modification scams, where some poor schmuck is told something too good to be true, pays for said miracle to the unscrupulous vendor (never reading the paperwork to see if it matches what is being said), and then ends up losing everything. Well, the scammers have just moved on to the latest hotbed of activity: the Debt Settlement Solutions Scam.

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## RADARS BEWARE!

Don't worry just yet... there is a way you can fight those pesky radar tickets!

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## Debunking Bankruptcy Myths... ■ By Scott Reece

*Since the implementation of the Bankruptcy Reform Act of 2005, the bankruptcy process has undergone some changes. Unfortunately, these changes have been either misreported or misunderstood, leading many people who might benefit from such a move to reject bankruptcy outright. All of the following statements are FALSE...*

**Bankruptcy relief is no longer available – FALSE!** – Almost all of the relief available prior to the Reform, survives in today's code. It is somewhat more involved but it still works.

**You can't file bankruptcy if you have a job – FALSE!** – The "means test" was developed to divert some filers who make more than the median income for households of their size in their state of residence to Chapter 13. You MUST have a job to file a plan in Chapter 13.

**Medical bills can't be discharged in bankruptcy – FALSE!** – Almost all unsecured contract debt, like credit cards, personal loans, and medical bills remain dischargeable in bankruptcy. The law as-described-by-bill collectors might imply otherwise.

**Chapter 13 plans require repayment in full of debt – FALSE!** – Chapter 13 plans range from plans that pay general unsecured creditors nothing to plans that pay 100%, with every variation calculable in between. How much you must pay in 13 is driven by the interplay between your disposable income, the value of your non exempt assets, and the total of priority debts you have.

**Bankruptcy represents personal or moral failure – FALSE!** – Over 90% of bankruptcies are traceable to job loss, illness, or divorce, factors largely out of anyone's control. Bankruptcy is a fresh start.

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## “The Show” Avocado Man in Bankruptcy

The 341(a) meeting, or creditors meeting, is a required rite for all those filing for bankruptcy under Chapters 7, 13, and other Chapters under the Code. The meeting has two purposes: It gives the appointed trustee the opportunity to question the debtor about his finances and the truthfulness of his filed documents. It also gives creditors of the debtor a chance to show up in support of their claims and question the debtor as well, although on a very limited basis. The meeting is held in a large room with about thirty debtors and their attorneys waiting to be called for their turn. It's very informal and in most cases not stressful, lasting about five minutes for each debtor.

Recently, while waiting for a client to be called, I was witness to the creditor meeting for “Avocado Man”. Avocado Man was the owner of a now-defunct business which dealt in the wholesale avocado trade. In addition to his attorney and the trustee, a representative of one apparently unsecured creditor had shown up.

The trustee, a seemingly good-natured man who had practiced as a CPA for over thirty years was also quite clever and on the hunt for anything that didn't

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## Debt Settlement! ■ By Tina Locklear

### Where the Scammers have landed now...

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This occurs when a Debt Solutions Company approaches someone with high credit card or other debt, offering to slash that amount to less than half, stating the debtor will only have to make small monthly payments to pay off the negotiated amount. The Debt Solutions Company writes all the creditors advising them to only contact Debt Solutions Company and leave the debtor alone. (This is at first a welcome relief for the debtor, but if the company is being unscrupulous about what settlement activity is – or isn't – being achieved, then they have now cut off the ability for the debtor to be noticed that a lawsuit is coming.)

Next, Debt Solutions Company has the debtor set up a bank account which the debtor funds monthly. Their contract provides the settlement company get paid a percentage of

the savings (usually 25% to 35% of what they “saved” you), and that they get paid first. So in essence, Debt Solutions Company draws out all their fees from that account that was funded monthly long before any creditor gets paid. In the meantime, as the creditors aren't getting paid a thing, they often do not enter into settlement arrangements and instead proceed with litigation against the debtor. This then forces the debtor to pay large sums of money to defend litigation which should not have occurred. The debtor often incurs the expenses for



the creditor's attorneys fees which are usually written into the original credit terms and conditions.

Many times I've had clients come in with lawsuits that were filed during the time period they were allegedly represented by the Debt Solutions Company who said they would protect them from having this happen. Most of the contracts I've read from Debt Solutions Companies, paint a very different story than what they have verbally told the client will

happen. They tell the client the settlements will be entered into right away, so the client starts funding the account. The Agreements usually state the Debt Solutions Company have three to five years to enter into these agreements with the credit card companies. There is never a written guarantee that a lawsuit won't be filed or the creditors won't come after you during this time.

Although debt settlement can be done ethically – wherein your total debt amount is reduced and the creditors get paid, without it costing you a fortune in legal fees – you must be cautious about whom you engage on this. An ethical negotiator will charge you by the hour for the time put in on a case. Or, they will get a small deposit up front, and then get paid a specified bonus amount for each creditor who executes a settlement agreement with you. They will keep you apprised of the progress, or lack thereof, so you can strategically plan for alternatives in advance of a lawsuit being served on you.

Another stark reality is, that debt settlement is only successful if ALL the creditors get on board. If one creditor won't play, it will sue, and get a judgment to levy against the debtor's wages and bank accounts, thereby thwarting the ability to fund the settlement for the rest of the creditors who would play ball. ■



## Radars Beware!

You look up and to your surprise (and mortification), you see the flashing red and blue lights.

■ By Shirley Kong

### RADARS BEWARE!!!

*It's a clear sunny day, one that reminds us of why we love living in Southern California. There's a slight breeze blowing and you're enjoying the rarely quiet and traffic-free street until you hear the dreaded sound of a police siren behind you. You look up and to your surprise (and mortification), you see the flashing red and blue lights of the California Highway Patrol. You quickly pull over and brace yourself.*

The officer walks up to you and tells you that he caught you speeding and that his radar recorded your speed at 43 m.p.h. while you were in a residential zone. Were you really driving that fast on that quiet suburban street? Could it be that you missed a marked black and white CHP vehicle? Where's that rewind button when you need one?

Don't worry just yet. There is a way to fight those pesky radar tickets! With a little bit of research and some worthwhile time spent disputing the ticket, you may be able to get the citation dismissed, avoid

paying the fines and penalties associated with the ticket, avoid traffic school, and avoid an increase in your insurance premiums. If that sounds attractive to you, read on.

If you got a speeding ticket and there was a radar involved, you most likely got cited for

***“Don't worry just yet... There is a way to fight those pesky radar tickets!”***

violating Vehicle Code Section 22350. A copy of the California Vehicle Code can be found on the Department of Motor Vehicles website: [www.dmv.ca.gov](http://www.dmv.ca.gov). Vehicle Code Section 22350, also known as the “Basic Speed Law,” states “No person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the

safety of persons or property.”

To fight this ticket, you should dispute this ticket by filing a Request for Trial by Declaration (Form No. TR-205). This form is available to you either via a request to the Court when you post your bail (necessary to dispute your ticket) or via the following website: [www.courtinfo.ca.gov/forms/](http://www.courtinfo.ca.gov/forms/). It's a relatively simple form to complete; however, you need to provide a brief statement about the facts surrounding your citation (such as when you were cited, location where you were cited, driving conditions, etc.) and the law(s) supporting your claim that your citation should be dismissed.

There may be several different legal bases to dispute your citation. Keep a lookout for our next newsletter to see if it fits your situation. ■



## The Show

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look right. The trustee asked him how it was possible to have a \$28 million business in 2009, and now (January) have no receivables evident in his filing, but only payables (debt). Avocado Man really didn't have an answer. The trustee wasn't pleased. In the questions that followed, Avocado Man claimed that someone from a creditor's company had threatened him, several times, and that he was in fear for his life. The trustee, nonplussed, asked him about his business records and Avocado Man revealed that all of his records were in a large truck trailer stored at a warehouse in downtown Santa Ana. The trustee ordered him to deliver all of the records to his office by 9:00 A.M. the next morning. His creditors meeting would be continued at a later date.

I'm going to continue to periodically follow-up on this case. The moral of the story is this: Most individuals filing for bankruptcy whiz through the creditors meeting in about five minutes. Rarely does a creditor show up. If your filed documents are in order and your attorney has prepared you for the meeting, it is stress-free and behind you in a short period of time and, while your waiting you may get to see “The Show.”

■ By Scott Reece



## Bankruptcy Myths Continued - (From Page 1) ■ By Scott Reece

**People who file bankruptcy can't get credit for 10 years – FALSE!** – People in Chapter 13 borrow money during the case. People who file for Chapter 7 obtain credit after discharge. The rates are higher, but credit is available. This myth probably got its start in the fact that the Fair Credit Reporting Act allows the reporting of a bankruptcy for 10 years.

**You lose everything you own in bankruptcy – FALSE!** – Over 95% of bankruptcy cases filed by individuals are “no asset” cases in which the debtor keeps everything he owns. That’s because exemptions provide for assets that the debtor can keep and some assets, like pensions, are beyond the reach of the court. That exemption may allow you to keep your home and many assets.

**Bankruptcy costs society too much – FALSE !**

Credit card issuers are wildly profitable despite the small percentage of loans discharged in bankruptcy. Banks, however, have cost society an incredible amount. ■

## Statistics

### Speeding

- Over 100,000 people a day receive a speeding ticket in this country.
- Over 95% of people who receive a speeding ticket never contest it and just pay the fine.
- A police officer will fail to show up to court 30 to 50% of the time.

### DUI

- About one-third of all drivers arrested or convicted of driving while intoxicated or driving under the influence of alcohol are repeat offenders.
- Over 1.46 million drivers were arrested in 2006 for driving under the influence of alcohol or narcotics. This is an arrest rate of 1 for every 139 licensed drivers in the United States.

### Bankruptcy

- Consumer bankruptcy filings reached 113,274 in December 2009.
- 28% Of consumer filings were Chapter 13, with the majority of consumer filings were for Chapter 7.
- 2009 had roughly 1.4 bankruptcy filings.

## New Laws for 2010 – By Scott Reece

The State Assembly and Senate toiled tirelessly last year in an effort to “fix” the State’s faltering economy. That didn’t work, but there are some new laws this year that might be of interest to you.

There are now two new official days of recognition. March 30, to show appreciation for Vietnam veterans, and May 22, designated as Harvey Milk day.

Starting in 2011, sellers of ammunition for handguns will be required to keep a log of sales information, including the buyer’s thumbprint, signature and drivers license information.

A new test program will allow judges to require

first-time DUI offenders in Los Angeles, and three other counties, to require installation of breathalyzer locks on every vehicle they own.

A new law created an offense, mortgage fraud, punishable by up to a year in prison. This makes it a crime to make a misstatement, misrepresentation or omission to anyone in the mortgage lending process with the intention that it be relied upon.

Charter schools will now have access to about \$900 million in voter-approved bond money for construction.

Companies selling textbooks in California colleges or universities will be required to make them available electronically by 2020.



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*We are a federally designated debt relief agency pursuant to Title 11 of the US Code.  
We provide legal assistance and help people file for bankruptcy relief under the Bankruptcy Code.*