



## Tip of the Month February 2020

### Ensuring a “Fresh Start” after Bankruptcy: Credit Reporting

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Consumers in need of bankruptcy protection often seek it not only to provide much-needed relief from their debts, but also to ensure a “fresh start” that they can build from once the bankruptcy is over. However, a discharge order by the Bankruptcy Court guarantees only a portion of that “fresh start”. Discharged debts are no longer legally owed, but that does not necessarily mean that creditors or debt collectors are accurately reflecting the discharge on a consumer’s credit report.

Creditors and debt collectors frequently fail to update consumer credit reports after a bankruptcy discharge, leaving reports littered with past-due balances and other derogatory information, thereby denying post-bankruptcy consumers their “fresh start”. A [congressionally mandated study](#) on credit report accuracy found that one in five consumers had an error on at least one of their three major credit reports (Equifax, Experian, and Trans Union), with some consumers experiencing inaccuracies that can depress credit scores by over 100 points. While it is important for all consumers to have accurate credit reports, for consumers on the other side of a bankruptcy who are trying to rebuild their credit, the need for accuracy is imperative.

There is a federal statute specifically designed to protect consumers within the credit reporting arena. The Fair Credit Reporting Act, 15. U.S.C. § 1681 *et seq.* (“FCRA”), promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. Importantly, under the FCRA, consumers are entitled to a free copy of their credit report each year from each credit reporting agency. Consumers can request their credit reports online for free from the three major credit reporting agencies at [AnnualCreditReport.com](#), or by filling out and mailing in a one-page [form](#).

For consumers exiting bankruptcy, pulling their credit reports for free and reviewing them for accuracy can help ensure that all their accounts are accurately reflecting their “fresh start”. After all, credit files are what prospective creditors and employers review when extending a new opportunity – not necessarily a bankruptcy docket to verify which accounts were discharged.

Upon receiving their free credit reports, if a consumer spots inaccurate information, under the FCRA, a consumer can dispute the inaccuracies directly with the credit reporting agency that reported the information\*. A dispute must provide enough identifying information for the credit reporting agency to know whose account it needs to review (e.g. name, address, copy of ID, last four of SSN, copy of the report, etc.). It can be mailed or done online through the credit reporting agency’s website. However, when in doubt, certified mail is usually the safest and most reliable course of action.

After receiving a dispute from a consumer, a credit reporting agency must investigate the dispute, send the dispute to the creditor whose account is at issue, receive and review the creditor’s reinvestigation, and then provide the consumer with a complete reinvestigation disclosure to show whether or not the

issue(s) was/were corrected. If all goes well, the inaccurate information will be removed from the consumer's report and the account(s) will now report correctly.

However, even if the credit reporting agency or creditor (or both) fails to correct the inaccurate information and instead affirms it as accurate, all hope is not yet lost. A consumer can bring a lawsuit under the FCRA to force the credit reporting agency and/or creditor to finally fix the inaccuracy they created. Moreover, under the FCRA, if the consumer prevails – in addition to actual damages and/or statutory damages – the consumer is entitled to their attorneys' fees and costs in bringing the action. That typically means that a consumer can hire a consumer protection attorney to bring the case for the consumer on a contingency fee, so the consumer never pays out-of-pocket to litigate the matter.

All told, from pulling the report to disputing the inaccurate information, and (if need be) litigating a case to enforce protections under the FCRA, it costs the consumer nearly nothing out of pocket, save some mailing costs. Given the significance of accurate credit reporting after bankruptcy, the virtually free cost to review and dispute inaccurate information, and (should the consumer need it) the likely free out-of-pocket cost for legal representation to prosecute a case under the FCRA, a post-bankruptcy consumer should absolutely pull and review their credit report to make sure they truly receive the "fresh start" to which they are entitled.

*\*For a list of common inaccuracies, information on the dispute process, and samples of dispute letters, the [Consumer Financial Protection Bureau website](#) contains a wealth of information. Otherwise, reach out to a consumer protection attorney for additional help or information.*