



## Can One Keep A Credit Card When Filing Bankruptcy?

### The Zero Balance Credit Card

It's a common question for any bankruptcy lawyer. Clients to some extent are in a state of withdrawal from credit cards, and the idea of not having them seems unsettling. I'm old enough to remember the first credit cards. Before that time, for thousands of years, people got along without them.

It is understandable that a client would want to keep just one, for any of a thousand reasons. In bankruptcy that decision is not in the client's hands. When a petition is filed in the bankruptcy court, it must list all assets and all creditors. This petition is filed under penalty of perjury. Intentional omissions of either a creditor or an asset is a serious matter. No competent attorney would condone it, and no sensible client would consider it.

So does that mean never, ever? No. The key is the requirement to list all assets and all debts. If a credit card is neither a debt nor an asset, then there is no reason to list it.

The Bankruptcy Code defines a debt. 11USC§101(12) states that

*The term "debt" means liability on a claim. 11USC§101(5), states that a "claim" is either A) a right to payment....or B) a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment.*

A credit card with no balance has no amount owing and the creditor has no claim. If it's not a debt and there is no claim then there is no obligation to list the card.

Is that the end of it? Well, not exactly.

1. The creditor will discover the bankruptcy at some time, and can cancel the card.
2. If there is an annual fee for the card, that IS a debt and the card must be listed.
3. The card cannot be used during the bankruptcy.
4. A credit card with a credit balance is an asset and must be listed as such.
5. If the payment that made the card zero balance so large and so recent as to suggest a preferential payment in anticipation of bankruptcy then it must be disclosed.

In 99.9% of my cases I advise the client to list all credit cards, even a no balance card. After all, the whole point of bankruptcy is to get out of debt, not to preserve the opportunity to charge back into it.