

# INFORMATIONAL DISCLOSURES

- *Disclosure – 11 U.S.C § 527(a)(1) & § 342(b)(1)*
- *Full Disclosure & Accuracy - 11 U.S.C. § 527(a)(2)*
- *Disclosure - 11 U.S.C. § 527(b)*

## **Purposes, Benefits, and Costs of Bankruptcy**

The United States Constitution provides a method whereby individuals, burdened by excessive debt, can obtain a fresh financial start and pursue newly productive lives unimpaired by past financial problems. It is an important alternative for persons mired deep in financial difficulty. The federal bankruptcy laws were enacted to provide debtors with a fresh start and to establish a ranking and equity among all the creditors who are clamoring for the debtor's limited resources. Bankruptcy helps people avoid the kind of permanent discouragement that can prevent them from ever reestablishing themselves as hard-working members of society. Also, creditors are ranked so that the debtor's nonexempt property can be fairly distributed according to established rules guaranteeing identical treatment to all creditors of the same rank.

This discussion is intended only as a brief overview of the types of bankruptcy filings and of what a bankruptcy filing can and cannot do. Anyone considering this course of action is encouraged to seek the advice and assistance of an attorney specializing in bankruptcy law.

## **Types of Bankruptcy**

The Bankruptcy Code is divided into chapters. The chapters which usually apply to consumer debtors are chapter 7, known as a Liquidation, and chapter 13, known as an Adjustment of the Debts of an Individual with Regular Income. An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically "stays" or forces an abrupt halt to repossessions, foreclosures, evictions, garnishments, attachments, utility shutoffs, and debt collection harassment. It offers debtors a breathing spell by giving the debtor and the trustee assigned to the case time to review the situation and develop an appropriate plan. Creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

## **Chapter 7**

In a chapter 7, or liquidation case, the bankruptcy court appoints a trustee to examine the debtor's assets and divide them into exempt and nonexempt property. Exempt property is limited to a certain amount of equity in the debtor's residence, motor vehicle, household goods, life insurance, health aids, specified future earnings such as social security benefits and alimony, and certain other personal property. The trustee may then sell the nonexempt property and distribute the proceeds among the unsecured creditors.

Although a liquidation case can rarely help with secured debt (the secured creditor still has the right to repossess the collateral), the debtor will be discharged from

the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrearages. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.

## **Chapter 13**

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay all creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession and is allowed to keep both exempt and nonexempt property. The debtor's plan is a simple document outlining to the bankruptcy court how the debtor proposes to pay current expenses while paying off all the old debt balances. The debtor's property is protected from seizure from creditors, including mortgage and other lien holders, as long as the proposed payments are made. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements can be made to have these payments made automatically through payroll deductions.

### **What Bankruptcy Can and Cannot Do**

*Bankruptcy may make it possible for financially distressed individuals to:*

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
2. Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.
3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
5. Restore or prevent termination of utility service.
6. Lower the monthly payments on debts, including secured debts such as car loans.
7. Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

*Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:*

- a) Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to take payments over time in the bankruptcy process, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.

- b) Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, some student loans, certain court ordered payments, criminal fines, and some taxes.
- c) Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay the loan.
- d) Discharge debts that are incurred after bankruptcy has been filed.

### **Bankruptcy's Effect on Your Credit**

By federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. Whether or not the debtor will be granted credit in the future is unpredictable. In some cases, it may actually be easier to obtain future credit, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that the debtor cannot again file bankruptcy for at least the next eight years. Debtors have the option after bankruptcy of voluntarily paying some creditors, such as a doctor or hospital, with whom they wish to maintain credit. The payments are voluntary and do not reaffirm the past obligation.

### **About Credit Counseling Agencies - 11 U.S.C. § 342(b)(1)(B)**

#### **Credit Counseling:**

If you are not disciplined enough to create a workable budget and stick to it, can't work out a repayment plan with your creditors, or can't keep track of mounting bills, consider contacting a credit counseling organization. Many credit counseling organizations are nonprofit and work with you to solve your financial problems. But be aware that, just because an organization says it is "nonprofit," there's no guarantee that its services are free, affordable, or even legitimate. In fact, some credit counseling organizations charge high fees, which may be hidden, or urge consumers to make "voluntary" contributions that can cause more debt.

Most credit counselors offer services through local offices, the Internet, or on the telephone. If possible, find an organization that offers in-person counseling. Many universities, military bases, credit unions, housing authorities, and branches of the U.S. Cooperative Extension Service operate nonprofit credit counseling programs. Your financial institution, local consumer protection agency, and friends and family also may be good sources of information and referrals.

Reputable credit counseling organizations can advise you on managing your money and debts, help you develop a budget, and offer free educational materials and workshops. Their counselors are certified and trained in the areas of consumer credit, money and debt management, and budgeting.

Counselors discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems. An initial counseling session typically lasts an hour, with an offer of follow-up sessions.

## **Debt Management Plans:**

If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in a debt management plan (DMP). A DMP alone is not credit counseling, and DMPs are not for everyone. You should sign up for one of these plans only after a certified credit counselor has spent time thoroughly reviewing your financial situation and has offered you customized advice on managing your money. Even if a DMP is appropriate for you, a reputable credit counseling organization still can help you create a budget and teach you money management skills.

In a DMP, you deposit money each month with the credit counseling organization, which uses your deposits to pay your unsecured debts, like your credit card bills, student loans, and medical bills, according to a payment schedule the counselor develops with you and your creditors. Your creditors may agree to lower your interest rates or waive certain fees but check with all your creditors to be sure they offer the concessions that a credit counseling organization describes to you. A successful DMP requires you to make regular, timely payments, and could take 48 months or more to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan. You may have to agree not to apply for — or use — any additional credit while you're participating in the plan.

## **IMPORTANT INFORMATION ABOUT BANKRUPTCY**

**Disclosure - 11 U.S.C. § 527(b)**

### **IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER**

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney.

THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.

1. Ask to see the contract before you hire anyone. ““The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.
2. Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations.
3. To file a bankruptcy case, documents called a Petition, Schedules, and Statement of Financial Affairs, as well as in some cases a Statement of Intention needs to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to

attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

4. If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

5. If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

6. If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

7. Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice."

### **FULL DISCLOSURE & ACCURACY - 11 U.S.C. § 527(a)(2)**

#### **If you file bankruptcy –**

**A.** The information that you provide to your attorney, the bankruptcy trustee, and the court during your bankruptcy, both before and after you file your bankruptcy petition, must be complete, accurate and truthful.

**B.** All of your assets (everything you own that has value, such as real estate, personal items, vehicles, money, etc.) and all of your liabilities (all of your debts) are required to be completely and accurately disclosed in the documents filed to start your case, and the replacement value of each asset must be stated in those documents were requested after reasonable inquiry to establish their value. The value should be your best understanding of how much it would cost you to replace the item in the same or similar condition.

**C.** You must provide your attorney with a monthly budget, including your current monthly income, all of your regular expenses, and the amount of your income that is left over after deduction of expenses. In listing your income and expenses, try to avoid guessing or estimating, and do your best effort to be accurate and truthful. For income, you are required to provide information about all sources of your income, including your employment, any government assistance you may receive, social security, pension or other retirement income, income from side jobs, investment income, and similar sources.

**D.** The information that you provide to your bankruptcy attorney, the bankruptcy trustee, or the bankruptcy judge may be audited and will be available for inspection by the office of the United States Trustee, which is a branch of the U.S. Department of Justice. If you fail to provide information honestly and fully about your property, income, expenses, and other financial circumstances, your case could be dismissed, and you could be subject to criminal sanctions.

**ACKNOWLEDGMENT OF RECEIPT**

The undersigned acknowledges that attorney, Jason B. Couey, and/or the Law Office of Jason Couey, has given me a copy of the Disclosures required by Bankruptcy Code § 527(b). Disclosures included:

- *Disclosure – 11 U.S.C § 527(a)(1) & § 342(b)(1)*
- *Full Disclosure & Accuracy - 11 U.S.C. § 527(a)(2)*
- *Disclosure - 11 U.S.C. § 527(b)*

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

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