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COMMON QUESTIONS ABOUT BANKRUPTCY

A decision to file for bankruptcy should be made only after determining that bankruptcy is the best way to deal with your financial problems. This handout cannot explain every aspect of the bankruptcy process. If you still have questions after reading it, you should speak with an attorney familiar with bankruptcy.

WHAT IS BANKRUPTCY? - Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy protection is provided by federal law, and all bankruptcy cases are handled in federal court. Filing for bankruptcy protection immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to law.

WHAT CAN BANKRUPTCY DO FOR ME? - Bankruptcy may make it possible for you to:

- a) Eliminate the legal obligation to pay most or all of your debts. This is called a "discharge" of debts. It is designed to give you a fresh financial start.
- b) Stop foreclosure on your house or mobile home and allow you an opportunity to catch up on missed payments. (Bankruptcy does not, however, automatically eliminate mortgages and other liens on your property without payment.)
- c) Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
- d) Stop wage garnishment, debt collection harassment, and similar creditor actions to collect a debt.
- e) Restore or prevent termination of utility service.
- f) Allow you to challenge the claims of creditors who have committed fraud or who are otherwise trying to collect more than you really owe.

WHAT BANKRUPTCY CANNOT DO? - Bankruptcy cannot, however, cure every financial problem. Nor is it the right step for every individual. In bankruptcy, it is usually NOT possible to:

- a) Eliminate certain rights of “secured” creditors. A “secured” creditor has taken a mortgage or other lien on property as collateral for the loan. Common examples are car loans and home mortgages. You can force secured creditors to take payments over time in the bankruptcy process and bankruptcy can eliminate your obligation to pay any additional money if your property is taken. Nevertheless, you generally cannot keep the collateral unless you continue to pay the debt.
- b) Discharge types of debts singled out by the bankruptcy law for special treatment, such as child support, alimony, certain other debts related to divorce, some student loans, court restitution orders, criminal fines and some taxes.
- c) Protect cosigners on your debts. When a relative, friend or ex-spouse has co-signed a loan, and the consumer discharges the loan in bankruptcy, the co-signer may still have to pay all or part of the loan.
- d) Discharge debts that arise after bankruptcy has been filed.

WHAT DIFFERENT TYPES OF BANKRUPTCY CASES ARE THERE AND WHICH IS BEST FOR ME?

- a) Chapter 7 - is known as “straight” bankruptcy or “liquidation.” It requires a debtor to give up property that exceeds certain limits called “exemptions”, so the property can be sold to pay creditors.
- b) Chapter 11 - is known as “reorganization”, and is used by a few businesses and a few individual debtors whose debts are very large.
- c) Chapter 12 - is reserved for family farmers.
- d) Chapter 13 - is called “debt adjustment.” It requires a debtor to file a plan to pay debts (or parts of debts) from current income.

Most people filing for bankruptcy protection will want to file under chapters 7 or 13. Either type of case may be filed individually or by a married couple filing jointly.

WHAT IS A CHAPTER 7 BANKRUPTCY? - In a bankruptcy case under chapter 7, you file a petition asking the court to discharge your debts. The basic idea in a chapter 7 bankruptcy is to wipe out (discharge) your debts in exchange for giving up property, except for “exempt” property that the law allows you to keep. In most cases, all of your property will be exempt. But property that is not exempt is sold and the money is then distributed to creditors.

If you wish to keep property like a home or a car and are behind on the payments on a mortgage or car loan, a chapter 7 case is probably not the right choice for you. The reason being that chapter 7 does not eliminate the right of the mortgage holder or car loan creditor to take your property to cover your debt. In this type of case you should consider bankruptcy under chapter 13.

WHAT IS A CHAPTER 13 BANKRUPTCY? - in a chapter 13 bankruptcy you file a “plan” showing how you will pay off some of your past-due and current debts over three to five years. The most important thing about a chapter 13 case is that it will allow you to keep valuable property, especially your home and car, that might otherwise be lost, if you can make the payments that the bankruptcy law requires to be made to your creditors. In most cases, these payments will be at least as much as your regular monthly payments on your mortgage or car loan, with an extra payment under the plan to get caught up on the amount you have fallen behind.

You should consider filing a chapter 13 plan if you :

- a) Own your home and are in danger of losing it because of money problems;
- b) Are behind on debt payments, but can catch up if given some time;
- c) Have valuable property that is not exempt, but you can afford to pay creditors from your income over time.

You will need to have enough income in chapter 13 to pay for your necessities and to keep up with all payments under the plan as they come due.

WHAT DOES IT COST TO FILE FOR BANKRUPTCY? - It now costs \$200 to file for bankruptcy under chapter 7 and \$185 to file for bankruptcy under chapter 13, whether for one person or as a married couple. The court may allow you to pay this filing fee in installments if you cannot pay all at once. If you hire an attorney you will also have to pay all attorney's fees.

WHAT PROPERTY CAN I KEEP? - In a chapter 7 case, you can keep all property that the law says is “exempt” from the claims of creditors. You can choose between your exemptions under state law or under federal law. In many cases the federal exemptions are better. Attached to the end of this handout is a breakdown of the federal exemptions and the maximum dollar amount that you may claim as exempt. Also, keep in mind that the amounts of the exemptions are doubled when a married couple files together.

In determining whether property is exempt, you must keep a few things in mind. The value of the property is not the amount you paid for it, but what it is worth now. For furniture, household items and automobiles the value of the property will be a lot less than what you paid or what it would cost to buy a replacement.

You also only need to look at your equity in property. This means that you count your exemptions against the full value minus any money that you owe on mortgages and liens. For example, if you own a \$50,000 house with a \$40,000 mortgage, you count your exemptions against the \$10,000 that is your equity if you were to sell the house.

While your exemptions allow you to keep property in a chapter 7 case, your exemptions do not make any difference to the right of mortgage holder or car loan creditor to take the property to cover the debt if you are behind. In a chapter 13 case, you can keep all of your property if your plan meets the requirements of the bankruptcy law. In most cases you will have

to pay the mortgages or liens as you would if you did not file for bankruptcy.

WHAT WILL HAPPEN TO MY HOME AND CAR IF I FILE BANKRUPTCY? - In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt. Even if your property is not fully exempt, you will be able to keep it, if you pay its non-exempt value to creditors in chapter 13.

Some of your creditors, however, may have a “security interest” in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you do not make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after you file for bankruptcy protection. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property that you wish to keep is worth. In some cases involving fraud or other improper conduct by the creditor, you may be able to challenge the debt. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep your property without making any more payments on that debt.

CAN I OWN ANYTHING AFTER BANKRUPTCY? - Yes!!! Many people believe they cannot own anything for a period of time after filing for bankruptcy. This is not true. You can keep your exempt property and anything obtained after the bankruptcy is filed. If, however, you receive an inheritance, a property settlement, or life insurance benefits within 180 days after filing for bankruptcy, that money or property may have to be paid to your creditors if the property is not exempt.

WILL BANKRUPTCY WIPE OUT ALL MY DEBTS? - Yes, with some exceptions. Bankruptcy will not normally wipe out:

- a) Money owed for child support or alimony, fines, and some taxes;
- b) Debts not listed on your bankruptcy petition;
- c) Loans you got by knowingly giving false information to a creditor, who reasonably relied on it in making you the loan;
- d) Debts resulting from “willful and malicious” harm;
- e) Student loans owed to a school or government body, except if the court decides that payment would be an undue hardship;
- f) Mortgages and other liens that are not paid in the bankruptcy case (but bankruptcy will wipe out your obligation to pay any additional money if the property is sold by the creditor).

WILL I HAVE TO GO TO COURT? - In most bankruptcy cases, you only have to go to a proceeding called the “meeting of creditors” to meet with the bankruptcy trustee and any

creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy filings and your financial situation.

Occasionally, if complications arise, or if you choose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

WILL BANKRUPTCY AFFECT MY CREDIT? - There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad. Bankruptcy will probably not make things any worse. The fact that you have filed for bankruptcy protection can appear on your credit record for ten years. But since bankruptcy wipes out your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

WHAT ELSE DO I NEED TO KNOW?

- a) UTILITY SERVICES - Public utilities, such as the electric company, cannot refuse or cut off service because you have filed for bankruptcy. The utility company, however, can require a deposit for future service and you do have to pay bills that arise after bankruptcy is filed.
- f) DISCRIMINATION - An employer or government agency cannot discriminate against you because you have filed for bankruptcy.
- g) DRIVER'S LICENCE - If you lost your license solely because you could not pay court-ordered damages caused in an accident, bankruptcy will allow you to get your license back.
- h) CO-SIGNERS - If someone has co-signed a loan with you and you file for bankruptcy, the co-signer may have to pay your debt.

HOW DO I FIND A BANKRUPTCY ATTORNEY? - As with any area of the law, it is important to carefully select an attorney who will respond to your personal situation. The attorney should not be too busy to meet you individually and to answer questions as necessary.

The best way to find a trustworthy bankruptcy attorney is to seek recommendations from family, friends, or other members of the community, especially any attorney you know and respect. You should carefully read retainers and other documents the attorney asks you to sign. You should not hire an attorney unless he or she agrees to represent you throughout the case.

In bankruptcy, as in all areas of life, remember that the person advertising the cheapest rate is not necessarily the best. Our firm's pricing is extremely competitive because we have invested in the latest technology and have a great deal of experience in these matters.

Paying for debt counseling is almost never a good idea. There is almost nothing that a paid debt counselor can offer other than a recommendation about whether bankruptcy is appropriate and a list of highly priced debt consolidation lenders. There is no good reason to

pay someone for this service. A reputable attorney will generally provide counseling on whether bankruptcy is the best option. This avoids the double charge of having to pay a counselor and then an attorney. If bankruptcy is not the right answer for you, a good attorney will offer a range of other suggestions.

CAN I FILE BANKRUPTCY WITHOUT AN ATTORNEY? - Although it is possible for some people to file a bankruptcy case without an attorney, it is not a step to be taken lightly. The process is difficult and you may lose property or other rights if you do not know the law. It takes patience and careful preparation. Chapter 7 cases are easier, but very few people have been able to successfully file chapter 13 cases on their own.

Please keep in mind that the law often changes. **Each case is different and as a result this handout is meant only to give you general information and not to give you specific legal advice.** If you are contemplating bankruptcy or are having financial difficulty please feel free to contact our offices and we will be happy to schedule a free half (½) hour consultation to see what options are best for you.

WHAT SHOULD I BRING TO AN INITIAL INTERVIEW WITH AN ATTORNEY?

You should bring, if possible, and be prepared to discuss the following:

- a) Copies of deeds, land contracts, sales agreements, leases or other documents concerning an interest in or to occupy real estate. If these documents exist, but you do not have them, call the attorney's office to find out where duplicates may be obtained.
- b) Documents or title relating to ownership of motor vehicles, mobile homes, trailers, or boats. If you do not have these documents (e.g. they are lost or missing), call the attorney's office to find out where duplicates may be obtained.
- c) Bank statements and canceled checks for the current month and the preceding two months; deposit books showing savings, Christmas clubs or credit union accounts.
- d) Copies of disclosure statements, notes, installment sales contracts, security agreements and similar documents relating to money borrowed or items purchased on time.
- e) State and federal income tax returns for the past two years.
- f) Certificates of stock, bonds and other insurance and investment information (including 401(k) plans, pension plans, IRA's, etc.)
- g) All life and burial insurance policies.
- h) Contacts or title papers belonging to any other property of the debtor.
- i) Pay stubs from your most recent pay checks received by you and your

spouse (if any) showing payroll deductions and take home pay.

- j) Most recent statement and/or bills from **all creditors** (including credit card statements, monthly mortgage payments, car payments, utilities, etc.)