

***DISCLOSURES REQUIRED UNDER SECTION 527 AND 342 OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005.***

**Notice Mandated By Section 342(b)(1) and 527(a)(1) Of The Bankruptcy Code**

**PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY**

Bankruptcy is a process organized under federal law whereby people struggling with unmanageable debt can obtain a fresh financial start. Many types of debt will be eliminated by filing for bankruptcy, however, it is important to understand that not all debts will necessarily be eliminated. This discussion of bankruptcy law is a mere overview and is not intended to be comprehensive. Bankruptcy law is complex, consult an attorney to learn more about the process.

**Types of Bankruptcy**

The Bankruptcy Code is divided into chapters. The chapters which most often apply to consumer debtors are chapter 7, and chapter 13, which involves a plan of repayment.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay stops your creditors from attempting to collect debts after a bankruptcy case has been filed. The purpose of the automatic stay is twofold. First, it gives the consumer an opportunity to catch her breath by preventing collection attempts. Second, it gives the bankruptcy trustee an opportunity to evenly distribute your assets amongst your creditors. Essentially it stops any last second efforts by your creditors to try and get more money than they are allowed by law. The biggest advantage of the automatic stay is that it stops collection attempts dead in their tracks. It even stops lawsuits your creditors brought against you. If you are facing a wage garnishment, filing for bankruptcy stops that suit from proceeding until you receive your discharge. At that point, the case can resume only if your debt was not discharged. For example, if your credit card company is trying to garnish your wages, the automatic stay will stop that lawsuit. And if your credit card debt is discharged, that suit is over. But the automatic stay does not stop all lawsuits. For instance, the automatic stay will not stop criminal proceedings or lawsuits concerning property that is not a part of your bankruptcy estate.

## **Chapter 7**

In a chapter 7 case, the bankruptcy court appoints a trustee to examine the debtor's assets to determine if there are any assets not protected by available "exemptions". Exemptions are laws that allow a debtor to keep, and not part with, certain types and amounts of money and property. For many people facing difficult financial times chapter 7 bankruptcy or 'straight' bankruptcy can provide great relief. Why? Because in many cases debtors are able to wipe out the debts that are ruining their lives while at the same time protecting their assets from creditors. A debtor discloses their assets and debts to the Bankruptcy Court and trustee. The debtor's attorney uses either state or federal laws to exempt or protect the debtor's property from creditors. For example, in North Carolina a debtor filing bankruptcy individually can protect almost \$20,000 of equity in their home. It is important to consult with a knowledgeable bankruptcy attorney in your area to determine how best to protect your property through the bankruptcy process. Protecting property from creditors is important, however, the main benefit of filing for chapter 7 is the ability to get out from under burdensome unsecured debt. Credit card debt, medical bills and old tax assessments can all be discharged by filing for chapter 7 bankruptcy. Again, the Bankruptcy Code is complicated, it is important to consult with a knowledgeable bankruptcy attorney to guide you through the process once it has been determined you qualify.

Additional information about chapter 7 is available at the Site.

In addition to attorney fees, there is a filing fee that must be paid to the Bankruptcy Court.

## **Chapter 13**

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay certain creditors over a period of time, usually from future income. Chapter 13 Bankruptcy is referred to as a wage earner's Plan. It enables individuals with regular income to develop a repayment plan for all or part of their debts. Under this chapter, debtors propose a plan to make installments to creditors over three or five years. If the debtor's current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period "for cause." If the debtor's current monthly income is greater than the applicable state median, the plan generally must be for five years. The plan must be confirmed by the Bankruptcy Court.

Additional information about chapter 13 is available at the Site.

In addition to attorney fees, there is a filing fee that must be paid to the Bankruptcy Court.

## **Chapter 11**

For the most part, chapter 11 bankruptcy is reserved for large corporate reorganizations such as General Motors. Chapter 11 shares many of the qualities of a chapter 13, but tends to involve much more complexity on a much larger scale.

However, since chapter 11 does not usually pertain to individuals whose debts are primarily consumer debts, further information about chapter 11 will be provided by reference to the following resource: The

A Bankruptcy Basics @ brochure prepared by the Administrative Office of the United States Courts, dated June 2000, and which can be accessed over the internet by visiting the [U.S. Courts Web site](#).

## **Chapter 12**

Chapter 12 bankruptcy was put in place to allow family farmers and fishermen to restructure debt and keep their businesses.

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

Bankruptcy may make it possible for financially distressed individuals to:

1. Get rid of most or all of their debts and start over financially.
2. Stop foreclosure and allow time to get caught up on past due mortgage payments.
3. Act as a barrier to repossession or in some cases allow a repossessed car to be returned.
4. Stop creditor harassment such as phone calls.
5. Restore or prevent termination of certain types of utility service.
6. Lower the monthly payments and interest rates 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:

1. Eliminate rights of mortgage holders and car lenders to take back the property if normal monthly payments are not made.
2. Get rid of debts singled out for special treatment by Congress due to public policy such as child support and debts incurred as a result of driving under the influence of alcohol.
3. 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 whatever part of the loan not paid during the pendency of the bankruptcy case.
4. Discharge debts that are incurred after bankruptcy has been filed.

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

By law, a bankruptcy filing will appear on your credit report for 10 years after you have filed for bankruptcy. The ability to repair credit after bankruptcy hinges on a number of factors including savings, payment of debts, spending habits etc.

Additional information about building credit after bankruptcy is available on the Site.

### **Services Available From Credit Counseling Agencies**

With limited exceptions, Section 109(h) of the Bankruptcy Code requires that all individuals who file for bankruptcy relief on or after October 17, 2005 take a class that outlines all available opportunities for credit counseling and provides assistance in performing a budget analysis. The credit counseling class must be given within 180 days prior to the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted over the Internet or over the telephone) and must be provided by a non-profit budget and credit counseling agency approved by the United States Trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies. In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses.

You are notified as follows:

1. All information you file with the Bankruptcy Court must be truthful and accurate. When filing a bankruptcy case you will be signing the petition and schedules under oath.
2. Full disclosure of all your assets is required in connection with your bankruptcy filing. All your assets and all your liabilities must be completely and accurately disclosed in the documents filed to commence your case, and the replacement value of each asset (as defined in Section 506 of the Bankruptcy Code) must be stated in those documents where requested after reasonable inquiry to establish such value.
3. Some sections of the Bankruptcy Code require you to determine and list the replacement value of an asset such as a car or furniture. When replacement value is required, it means the replacement value, established after reasonable inquiry, as of the date of the filing of your bankruptcy case, without deduction for costs of sales or marketing. After disclosing and describing all items, it is important to remember to include the proper valuation. Items are to be listed at their current "market value" not original purchase price or replacement cost. The best gauge is what the item would be worth in a garage sale or on e-bay. Although items may be worth a lot to a debtor, the market value for most household items is low. It is important to give an honest value to each item, if in doubt have an item appraised.
4. Before your case can be filed, it is subject to what is called "Means Testing". The Means Test was implemented as part of the 2005 bankruptcy reforms with the goal of making it more difficult for those with the "means" to pay back their creditors to file for chapter 7 bankruptcy. The

means test looks at a consumer's current monthly income or "CMI." CMI is defined as average gross earnings over the last six months. If your household income is below your state's average for a household of your size, the means test does not come into play and you will be eligible to file for chapter 7. If your household income exceeds your state's average, it will be necessary to crunch the numbers to determine if you pass the means test and are therefore eligible for chapter 7 relief. The Means test deducts "allowed expenses" such as transportation costs from your income. If after expenses you have very little disposable income, you will qualify for chapter 7. Your disposable income will also be a factor in the amount you pay unsecured creditors under a chapter 13 plan.

5. Information that you provide during your case may be audited pursuant to the provisions of the Bankruptcy Code. Your failure to provide complete, accurate and truthful information may result in the dismissal of your case or other sanctions, including criminal sanctions.

Additional information about bankruptcy audits is listed on the Site.

#### **Notice Mandated By Section 527(b) Of The Bankruptcy Code**

#### **IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES**

If you decide to file for bankruptcy protection, 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. Ask to see the contract and review its terms carefully before you hire anyone.

#### **Notice Mandated By Section 342(b)(2) Of The Bankruptcy Code**

#### **FRAUD & CONCEALMENT PROHIBITED**

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in preparing to file your bankruptcy case will be kept on record with the bankruptcy court on forms or documents that you will be required to sign and declare as true under penalty of perjury. These documents will be public record.
2. A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both.
3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General.

**ACKNOWLEDGMENT OF RECEIPT**

**By accepting this Agreement, you acknowledge that you have received a copy of or been provided with access to all of the following notices:**

- 1. Notice Mandated By Section 342(b)(1) and 527(a)(1) Of The Bankruptcy Code**
- 2. Notice Mandated By Section 527(a)(2) Of The Bankruptcy Code**
- 3. Notice Mandated By Section 527(b) Of The Bankruptcy Code**