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## INFORMATION FOR CLIENTS CONSIDERING BANKRUPTCY

Bankruptcy is a process of using the law to modify the rights of your creditors. There are different types of bankruptcy. These different types of bankruptcy are known as “Chapters.” Most individuals either file Chapter 7 or 13. The following information is designed to assist you in determining whether you should file bankruptcy.

**I. TYPES OF BANKRUPTCY.** There are five bankruptcy Chapters. The types of bankruptcy are: 1) Chapter 7, “Liquidation”; 2) Chapter 9, “Municipal Bankruptcy”; 3) Chapter 11, “Reorganization”; 4) Chapter 12 “Farmer Bankruptcy”; and 5) Chapter 13, “Adjustment of Debts of Individuals with Regular Income”. Chapters 9, 11, and 12 apply to very few debtors and are not discussed further.

**A. Chapter 7.** Individuals who have not received a bankruptcy discharge within the last 8 years and corporations may file under this Chapter. All non-exempt assets are sold by the trustee and the proceeds are distributed to creditors. However, it is rare for a debtor to have any non-exempt assets that are sold.

**Means Test.** A debtor may not qualify for Chapter 7 if they have the ability to repay a significant portion of their debt. I will have you provide me the necessary information to advise you as to whether you pass the means test. This will include all you’re your paystubs for the 6 months preceding the bankruptcy.

**Substantial abuse.** Your case could be dismissed if the court determines that granting you a discharge would be a “substantial abuse” of the bankruptcy laws.

**Secured debts.** Generally you must reaffirm, redeem or surrender the personal property if there is a lien (security interest). You must file a statement of your intention with the court. Within 30 days of the meeting of creditors, you must perform the stated intention of surrender, redemption or reaffirmation. The law is unclear as to what happens if you do not comply with your stated intent. Some creditors have interpreted the law as giving them the right to repossess the property.

**Reaffirmation Agreement.** A reaffirmation agreement is a legally enforceable agreement to repay all or a portion of a debt. In order for the agreement to be valid the creditor must sign the agreement as well as either your attorney or the Judge. Once all parties have signed the agreement it must be filed with the court prior to the deadline issued by the Court.

A creditor that has a debt secured by an interest in real property (e.g., a house) cannot foreclose on the property simply because you chose not to reaffirm the debt. However, the creditor may elect not to send you statements and may chose not to report payments

to credit reporting agencies.

A creditor that has a debt secured by an interest in personal property (e.g., a car) may repossess the property if you have not entered into a reaffirmation agreement or redeemed the property within 30 days of your creditors meeting.

In order for the reaffirmation agreement to be valid either your attorney or the judge has to approve it. If I, as your attorney, am approving the reaffirmation agreement I must sign a declaration that I believe that the agreement does not impose an undue hardship on you or your dependents. I will not sign the reaffirmation agreement if your budget does not support the position that you can afford the payments. I also will not sign the reaffirmation agreement if the interest rate is unreasonable or if the value of the property is significantly less than the amount owed on the debt.

If I will not approve the reaffirmation agreement then it can be noted for approval by the judge. I can assist in getting the agreement noted for a hearing. However, you will represent yourself during the hearing. The judge will schedule a telephone conference at which time he or she will explain to you the consequences of reaffirming. The judge will most likely not approve the reaffirmation agreement either.

Once you have gone through this process the creditor cannot repossess the property unless you are in default on your contract (e.g., behind on the payments or don't have insurance). Debtors who timely enter into reaffirmation agreements and stay current with their loan payments may keep their cars even if the bankruptcy court does not approve the reaffirmation agreement.

**Redemption.** Pay the creditor the fair market value of the property in a lump sum during the bankruptcy. There are lenders who may offer to loan you the money to pay off the fair market value of the vehicle. This may make sense if you owe more than the vehicle is worth and already have a high interest rate.

**Surrender.** Return the security to the lender.

**Keep the property and continue to make payments.** I generally will not sign a reaffirmation agreement for a debt secured by real property. I recommend you just continue to make the payments if you want to keep the property. Your lender may choose to not send you statements or coupon books and may not provide the information to credit reporting agencies.

**B. Chapter 13.** Individuals who have less than \$307,675 in unsecured debt and less than \$922,975 in secured debt may file under this Chapter. A plan is proposed to repay some or all of the debt. A trustee oversees administration of the plan.

**The Plan.** Generally the plan must provide for payment of secured creditors in full or according to the terms of the contract if the security is retained (e.g., home loans and vehicles). However, some secured creditors may have their claims modified. The plan must also pay all administrative and priority creditors in full. Unsecured creditors are entitled to receive as much as they would receive under Chapter 7, or how much you can afford to pay them over the life of

the plan, whichever is greater. Payments are usually made over a period of 5 years, but sometimes are made over a period of 3 years. Payments usually start immediately via payroll deduction if the debtor is employed or directly from the debtor if self-employed. No new debts can be incurred while in Chapter 13 unless approved by the court. **The court considers bonuses part of your disposable income, your employer may be directed to pay bonuses over to the Trustee.**

**Tax Returns.** All tax returns (local, state and federal) must be filed prior to the meeting of creditors. All post petition tax returns must be timely filed.

**II. TAX RETURNS.** I will need a copy of your most recent year's tax return. The Trustee and any creditor requesting it are entitled to a copy. A transcript from the IRS may be used instead of the actual return.

**III. BUDGET AND CREDIT COUNSELING.** Before you file bankruptcy you must complete a credit counseling class. After the bankruptcy is filed, but before you receive your discharge, you must complete a money management class.

**Pre-filing counseling.** Prior to filing bankruptcy you will have to complete a Credit Counseling class. The class must have been completed within 180 days of filing. I have made arrangements with a company to provide counseling for my clients online or over the phone. You will be given the website, phone number and a password upon payment of the initial fee. You will need a complete list of creditors, your income information and your monthly expenses in order to complete the class.

**Post-filing counseling.** Prior to receiving your discharge you must complete a personal financial management course. I will provide information on this counseling. If you do not complete the class you will not receive your discharge. This class takes about 3 to 4 hours to complete and does not need to be completed all in one session. You will setup login information that will allow you to pick up where you left off. You will be required to pass a test at the end of the class in order to receive your certificate. If you are a married couple you each have to take the class individually.

**IV. AUTOMATIC STAY.** Filing bankruptcy provides immediate relief from most actions that can be taken by creditors to collect debts.

**Prohibited actions.** Collection notices must stop, lawsuits cannot be commenced, and garnishments cannot be pursued.

**Allowed actions under Automatic Stay.**

Criminal and support actions. Criminal prosecutions may continue and actions to collect child support or alimony may be taken. Even against exempt property.

Setoff. An exception to the Stay is if you have deposits with a creditor the creditor can "setoff" what it owes you (i.e., the amount of your deposits) against what you owe it. Therefore, if you owe your bank or credit union money it is best to have as little as possible in the account on the date you file.

Loans against retirement. Withholding from the debtor's wages and collection of loan amounts

due as a result of the debtor's borrowing from employer sponsored pension, profit sharing, stock bonus, or other plans recognized by the IRS as tax exempt.

### **Expiration of Automatic Stay.**

Previous bankruptcy in last year. The automatic stay may not apply.

Debt secured by personal property. The stay terminates 30 days after the meeting of creditors if the debtor has not reaffirmed or redeemed, unless the debtor has proposed a reaffirmation to the creditor and the creditor has refused to file.

**V. CREDITOR'S MEETING.** You will be required to attend a creditor's meeting. The meeting will be held about 6 weeks after your bankruptcy is filed. Generally, no creditors will show up at the meeting, however a Trustee will conduct an examination of your bankruptcy filing and ask you a few questions. You will receive notice of this meeting from the bankruptcy court (if you do not receive a notice within 14 days of filing call my office). You are required to bring to your 341 Creditor's Meeting the original or certified copy of your proof of identity and verification of social security number. The following are acceptable:

Picture ID:  
State driver's license  
Government ID  
State ID  
Student ID  
U.S. Passport  
Military ID  
Resident alien card

Proof of SSN:  
Social Security Card  
Medical Ins. Card (with SSN)  
Pay Stub (with SSN on it)  
W-2 Form  
IRS form 1099

At least 7 days before the hearing the trustee must receive a signed declaration with copies of the following attached:

- 1) Paystubs from the 60 days prior to bankruptcy filing;
- 2) Most recent pay stub after filing;
- 3) Most recent filed federal tax return;
- 4) A statement of all your bank accounts, investment accounts, mutual funds and brokerage accounts showing the balance or value of the account on the date of filing.

Some of this information will have to be provided after the bankruptcy is filed. If you fail provide the information required in a timely manner or don't bring the proper identification and proof of social security number to the 341 Creditor's Meeting you will be required to attend another meeting to present your information. The court sets the time and date of this meeting.

**VI. DISCHARGE.** Upon completion of the bankruptcy a discharge is granted. Usually 60 days after the creditors meeting in Chapter 7 and after completion of the plan in Chapter 13. Most debts are then discharged, meaning that the creditor has no right to collect the debt, it no longer exists. The following debts are generally not discharged: Charge card purchases within 90 days of filing bankruptcy; cash advances on charge cards within 70 days of bankruptcy; loans against retirement plans; student loans;

judgments based on a DWI; taxes (income taxes can be discharged in some circumstances); debts incurred through fraud or false financial statements; debts not listed on your bankruptcy schedules; maintenance, alimony, child support, and property settlements; debts resulting from willful or malicious injury of a person or property; and Government Fines/Penalties.

**VII. SECURED CREDITORS.** A deed of trust, legal ownership of vehicle, or interest under the Uniform Commercial Code are examples of security interest (leases are not secured debts). Some property may secure more than one loan, this is called cross collateralization. For example your car may secure the loan on the car plus a personal loan or charge card through the bank or credit union. Generally, you will have to pay off both loans in order to clear title to the property.

**Avoiding Liens.** Generally secured creditors maintain their security interest after the bankruptcy is filed. However, in some cases that security interest (i.e. lien) can be avoided by bringing a separate action during the bankruptcy to avoid the lien. There are three types of liens that are commonly avoided:

1. **Judgment lien.** If you have real property (i.e. real estate) and a creditor gets a judgment against you prior to you filing bankruptcy that judgment can become a lien against your property. In certain cases, after the bankruptcy is filed, this lien can be avoided. It is your responsibility to discuss any liens against your property with us. My office does not do searches for liens. A local title company can do a search if you would like. If you have a judgment lien that can be avoided in the bankruptcy a retainer is required to prepare the paperwork to avoid the lien. If a judgment lien exists and it is not avoided in the bankruptcy when you go to sell or re-finance your property you would be responsible for either paying the debt or trying to re-open your bankruptcy to avoid it, which could become costly or the judgment creditor could foreclose on the property.
2. **Non-purchase money security interest.** When you obtain a personal loan the lender may ask for a security interest in household goods. This type of security interest is called a non-purchase money security interest and is avoidable in some circumstances. A retainer is required to prepare the paperwork to avoid the lien. If a non-purchase money security interest exists and it is not avoided in the bankruptcy the creditor can take action during the bankruptcy or after the bankruptcy is over to repossess the property.
3. **Subordinate mortgage.** If there is no equity in your home for a deed of trust to attach to, the debt is technically unsecured and the lien can be avoided in a Chapter 13 bankruptcy. For example if you have a home worth \$300,000.00, with a first mortgage of \$320,000.00 and a second mortgage of \$50,000.00. Then, the second is unsecured because there is no equity for the lien to attach to. In a Chapter 13 bankruptcy the second mortgage can be treated as an unsecured debt and the lien removed.

**VIII. LEASES/EXECUTORY CONTRACTS.** If you have leased property or an executory contract (executory contracts are contracts in which performance is still due by the debtor, non-debtor, or both parties to the contract) the agreement must be assumed or it is deemed rejected. Generally, the lessee will allow you to reaffirm or continue to make the payments under the contract. However, you do not necessarily have the right to merely continue making the payments. If the lessee wants the property they may be able to get it back.

**IX. CREDIT REPORT.** A bankruptcy filing may be retained on your credit report for 10 years. In addition most loan applications require that you disclose that you have filed bankruptcy. Businesses, including banks and apartment owners, may refuse to do business with someone who has filed bankruptcy. I do not guarantee that creditors will accurately report information on your credit report. An additional fee will be required if there are issues you want me to address.

**X. BANKRUPTCY ESTATE.** When you file bankruptcy a “bankruptcy estate” is created. It is an entity similar to a Trust or Corporation. The estate is comprised of all property you own or have rights to. Under some circumstances property that you have transferred, or property that you become entitled to after the bankruptcy is filed, may also be property of the estate. You do not have the right the sell, transfer, or encumber that property until it is no longer property of the estate. The property is usually no longer property of the estate when the case is closed. Generally, the case is closed shortly after you receive your discharge. However, under some circumstances the case can be kept open for administration of assets even though you have received your discharge. In most cases the property will probably never leave your possession and you’ll be allowed to keep it, this is because of the “exemptions”.

**Property that you currently own.** Upon filing bankruptcy essentially everything you own or have rights to will become property of the “bankruptcy estate”.

**Property that you have transferred.** Some payments made to creditors within 90 days of filing may be pulled back into the estate, or 1 year if the payment was made to an “insider” (e.g., relative). Transfers made within the last four years that violate the Uniform Fraudulent Transfers Act may be undone (generally a transfer made for less than economic value while you were insolvent).

**Property that you become entitled to in the future.** Included in the estate is property you become entitled to via inheritance, life insurance, or a property settlement with a spouse within 180 days of the bankruptcy or while making payments in a Chapter 13.

**XI. EXEMPTIONS.** Before the “estate” is used to pay creditors you can exempt certain property. That is you get to keep the exempt value of the property. Generally you may elect Federal or Washington State exemptions. If you have not lived in Washington continuously for the past two years you may have to use the exemptions of the state you lived in previously. If you are married and filing jointly you are entitled to double the federal exemptions. Property claimed as exempt must be sufficiently described so that the trustee and parties in interest can reasonably be expected to know what property the debtor claims as exempt, therefore when preparing your worksheet provide detail descriptions of your property where requested. If you omit property from your schedules the court may deny your exemptions in that property even if you would otherwise be entitled to exempt the property. Commonly used Federal and State exemptions are as follows:

PROPERTY	FEDERAL EXEMPTION (double for married couple filing jointly)	STATE EXEMPTION (double for married couple filing jointly, unless otherwise indicated)
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House (homestead)	\$20,200 in real property, including coop or mobile home	\$125,000.00 real property or mobile home (married or single)
Any property (wild card)	\$11,200 less any amount claimed as a homestead exemption.	\$2000 total married or single, Only \$200 in cash or deposits.
Household goods	\$450 per item, \$10,775 total.	\$2,700
Cars, trucks and boats	One motor vehicle to \$3,225.	One motor vehicle to \$2,500
Jewelry	\$1,350	\$1000
Current payments for alimony child support	Unlimited, if needed for support.	Unlimited
Tools of trade	\$2,025.00	\$5,000 (married or single)
ERISA-qualified benefits (retirement or pension)	Unlimited to extent needed for support.	Unlimited
IRAs	\$1,000,000	Unlimited
Disability, illness or unemployment benefits.	Unlimited	Unlimited
Life insurance payments	From person you depended on needed for support	Exempt
Life insurance policy	Loan value, accrued dividends or interest to \$10,775.	Unlimited with some restrictions
Personal injury Claims	\$20,200 with some restrictions	\$16,150 or payment of loss future earnings to extent reasonable necessary.
Annuity contract benefits	No exemption	\$250.00 per month
Prepaid Tuition		Purchased at least 2 years prior to filing

**XII. COOPERATION WITH TRUSTEE.** The trustee's job is to make sure the bankruptcy rules are followed. The trustee may request information in order to complete this task. You are required to cooperate with the trustee in his or her efforts.

**XIII. VOLUNTARY RETIREMENT PLANS.** The automatic stay does not stop repayment of these loans. A chapter 13 cannot be used to modify the terms of these loans.

**XIV. AUDITS.** The Department of Justice oversees the bankruptcy system. They will periodically audit bankruptcy cases. If this happens you will be required to provide a substantial amount of additional information to the US Trustee.

I have received a copy of this statement and/or reviewed it with my attorney.

DATED: \_\_\_/\_\_\_/\_\_\_

\_\_\_\_\_  
Signature

DATED: \_\_\_/\_\_\_/\_\_\_

\_\_\_\_\_  
Signature