

## BANKRUPTCY INFORMATION

**THE PURPOSE OF THIS DOCUMENT IS TO GIVE YOU SOME GENERAL INFORMATION ABOUT BANKRUPTCY. IT IS NOT INTENDED TO CREATE AN ATTORNEY CLIENT RELATIONSHIP OR TO PROVIDE LEGAL ADVICE TO ANY PARTICULAR INDIVIDUAL. PLEASE CALL MY OFFICE TO MAKE AN APPOINTMENT TO DISCUSS YOUR INDIVIDUAL CASE, AS WHILE MANY CASES HAVE SIMILARITIES, ALL CASES ARE DIFFERENT.**

**THERE IS NO FEE FOR A BANKRUPTCY CONSULTATION**

### **LEARN ABOUT BANKRUPTCY ON THE INTERNET--**

The internet is a great tool to learn about bankruptcy. Here are a few links that will give you some general information, in addition to the information provided below:

<http://www.flmb.uscourts.gov/default.htm> --This is the main page for the US Bankruptcy Court in Tampa, including links to the official forms, credit counseling, means testing information, etc.

<http://www.flmb.uscourts.gov/videos/bkbasicsvideo.htm> --This is a video prepared here in Tampa which gives general information regarding filing for bankruptcy.

<http://www.uscourts.gov/bankruptcycourts/bankbasics0908.pdf> --Here is a 77 page PDF document which gives information about bankruptcy.

<http://www.uscourts.gov/video/bankruptcybasics/bankruptcyBasics.cfm> --Here is a link to a series of 8 short videos prepared by the US Bankruptcy Court.

### **TYPES OF BANKRUPTCY**

There are several different types of bankruptcies. Two types of bankruptcies which usually do not apply to most of my potential clients are:

- 1). The chapter 11, which is usually used for persons engaged in business,
- 2). The chapter 12, which is a special type of a bankruptcy for a farmer.

If you feel that you might be interested in either of these types of bankruptcy, I would probably have to refer you to someone else.

The two types of bankruptcies which I would like to discuss in further detail are the chapter 13 and the chapter 7.

A chapter 13 is known as an adjustment of debts of an individual with a regular income. It is used in several special circumstances, which include, for example, the following: 1) Under the 'means test' you are unable to file a chapter 7 because you have too much income; 2) You do not wish to just discharge your debt and feel that you have the ability to repay your debt and wish to do so over time; 3) You have more assets than you will be able to keep in a regular chapter 7 case, so you may wish to file a chapter

13 case so that you may keep your assets; 4) You are in arrears on your mortgage or your car note and are being threatened with foreclosure or repossession and wish to have time to make up the arrears on your mortgage or car payment over time; 5) You have certain types of debts which would not be dischargeable in a regular chapter 7 case, for instance, a tax obligation or an obligation for a student loan. Therefore, you may wish to file a chapter 13 so that you may make payments to discharge those obligations. If you believe that you may be interested in filing a chapter 13 bankruptcy, please ask me for more information about it. Hereinafter, the remainder of this note will refer to Chapter 7 bankruptcies.

## CHAPTER 7 BANKRUPTCY

MOST PEOPLE FILE A CHAPTER 7 BANKRUPTCY, SO THE REST OF THIS NOTE WILL FOCUS MAINLY ON CHAPTER 7 BANKRUPTCIES.

### **CHANGES UNDER THE 2005 BANKRUPTCY ACT**

*There were two major changes under the 2005 Bankruptcy Act.*

#### **2005 Bankruptcy Act Credit Counseling**

The 2005 Bankruptcy Act requires all individual debtors who file bankruptcy on or after October 17, 2005, to undergo credit counseling within six months before filing for bankruptcy relief and to complete a financial management instructional course after filing bankruptcy. The counseling must be by a company which is approved by the Court. The total cost

#### **2005 Bankruptcy Act Means Test**

Under the 2005 Bankruptcy Act your income and expenses will be analyzed to determine if you qualify to file a Chapter 7 or if you must file Chapter 13. To apply the means test, the courts will look at your average income for the 6 months prior to filing and compare it to the median income for that state. If the income is below the median, then you may choose Chapter 7. If your income exceeds the median, the remaining parts of the means test will be applied to determine if you can file Chapter 7 or if you must file Chapter 13.

A chapter 7 bankruptcy is what's known as a "straight discharge" in bankruptcy. For the most part, all your unsecured debts are discharged (which means that you will have no further legal obligation to pay them) and most people get to keep everything that they own, even if you own a house with significant equity.

Technically NOT included within the category of nondischargeable debts are debts for loans which are SECURED by an interest in some property. The most common examples include a house note or a car note. Your obligation with regard to these types of debts is as follows: either you must pay the debt or surrender the item to the creditor. So, with regard to a house note, including a second trust or home equity line, your obligation will be to either to continue to pay the debt according to the original terms of the note, or to give the house back to the mortgage company. If you do decide to surrender a house or a car to the creditor, you will owe nothing further with regard to that item, even if the creditor cannot sell the item for enough money to pay off the loan. If you are otherwise in good standing with your mortgage company, the mortgage company cannot call the loan because you have filed a bankruptcy.

Even if there is significant equity in your house, you PROBABLY will be able to keep your house under Florida's homestead exemption. For automobiles, unfortunately, there is only a \$1000 per person exemption for EQUITY in a motor vehicle. Equity consists of the value of the vehicle, minus the lien on it. so you may not be able to exempt all your equity in a vehicle. If so, you may have to pay money to 'buy back' your car from the U.S. Trustee. If you have other non exempt assets, you may end up having to file

## Provided by Carol L. Hill, Attorney at Law

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a chapter 13 bankruptcy instead of a chapter 7 bankruptcy. Increasingly, credit card companies are also claiming security interests in items purchased on credit cards. Many companies, such as Sears, have changed their financing agreements and credit card charge slips and are attempting to retain a security interest in items purchased on their credit cards. As of this point, this applies only to store credit cards, not to general MasterCard or Visa accounts. If you believe that this situation may apply to you, please bring it to my attention during our appointment.

### **THERE ARE CERTAIN DEBTS WHICH YOU CANNOT DISCHARGE IN BANKRUPTCY.**

**Please be advised that the following items are descriptions of general categories of non-dischargeable debts and should not be taken absolutely literally in their interpretation. If you have a debt which you believe falls in one of these categories, please discuss the debt in more detail with me. The debts which are not dischargeable in bankruptcy are as follows:**

- 1). Income taxes which first became due less than 3 years prior to the filing of the petition; unless the return was not filed on time or fraudulently filed
- 2). Property taxes which first became due less than 1 year prior to the filing of the petition;
- 3). Student loans, regardless of when they were incurred ;
- 4). Child or spousal support or alimony;
- 5). An obligation to a spouse or former spouse in connection with a property settlement agreement or divorce decree;
- 6). An obligation for a willful and malicious injury (as, for example, an assault & battery);
- 7). An obligation arising out of a DWI automobile accident;
- 8). A debt in which the creditor alleges there are false pretenses, false representations, or actual fraud;
- 9). A debt based on a false financial statement (as for example, if you lied on an application for a loan or credit card and misrepresented your debts or your assets or your income to the creditor);
- 10). An obligation for a cash advances of \$750.00 within 70 days of the day you filed for bankruptcy;
- 11). Debts not listed on your bankruptcy petition;
- 12). Debts involving fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny (as for example, if you steal money from someone after being placed in a position of trust);
- 13). Fines or penalties owed to a governmental unit;
- 14). Condominium dues which became due AFTER the bankruptcy is filed, IF the debtor remains in the property.

Again, please be advised that these are only general categories of non-dischargeable debts and you should ask my advice regarding any debt which you are unsure about.

**IF YOU DECIDE TO FILE FOR BANKRUPTCY, WHAT ARE YOU ENTITLED TO KEEP IN A CHAPTER 7 CASE?**

If you own a house and you are domiciled in Florida, if you wish to keep the property, in MOST cases you may keep the property free of claims of your creditors, regardless of the amount of your equity, because of Florida's homestead exemption. That is so long as you continue to pay for it and are up to date on the payments.

In addition, there are several exemptions which are available to every householder in Florida. In the event that a husband and wife both file a bankruptcy, BOTH are entitled to claim the following exemptions, so that the total amount that a husband and wife could exempt would normally be double the amount listed. The following is a general list of the exemptions which are available in bankruptcy to persons living in Florida, but is not intended to be all inclusive.

- 1). Annuity contract proceeds;
- 2). Alimony, child support needed for support;
- 3). Certain pension and profit sharing plans;
- 4). Certain life insurance proceeds;
- 5). Any personal property to \$1,000.00;
- 6). Motor vehicle to \$1,000.00 (equity—which means, the value, less any liens)
- 7) ONLY IN THE EVENT THE DEBTOR HAS NO HOMESTEAD PROPERTY, there is an additional 'wild card' exemption of \$4,000.00 per person in personal property.

**SO--WHAT IS THE PROCEDURE IF YOU DECIDE TO FILE A BANKRUPTCY?**

First, you need to come into my office for a consultation. The consultation is free. The consultation generally takes around one hour. Should you decide you wish to file, I give you a questionnaire, which gives me all the information which I need to prepare the Petition and Schedules on your behalf. You may question the necessity for some of the information, but I can assure you that all of the information requested is in response to a question which you will see on the bankruptcy petition. You must fill out the questionnaire completely. Otherwise, either I or my paralegal will have to contact you to ask you for more information in order to complete your case, which will end up delaying your case unnecessarily. If you do not understand any particular question, please call my office and either my paralegal or I will try to explain the question to you over the telephone. In particular, please pay close attention to the listing of your creditors. I have no idea of the names and addresses of your creditors or your account numbers. Therefore, in order for your schedules to be complete and for you to receive the benefit of a full discharge in bankruptcy, you must give me the list of all of your creditors. Your creditors, for the most part, keep your records by your account number, not your name. Therefore, if you do not provide me with the account numbers for each and every one of your creditors, one or more of them may not connect up the creditor's notice from the Bankruptcy Court to your file. This could cause them to attempt to collect the debt years after you have received your discharge. It will be much easier for you to provide me with the account number now than to deal with that problem years from now.

One question which I am often asked has to do with whether you need to list ALL your creditors or not. The answer is most emphatically, YES. When you file a bankruptcy petition, you certify under penalty of perjury that you are listing all of your debts. This includes house notes, car notes, etc. I understand that

most people wish to keep their house and car. In almost all instances, that should be no problem. However, you must list that you owe them money on the petition. Under some circumstances, you may wish to voluntarily re-pay a creditor. This might happen if someone, such as a relative, has co-signed on the debt with you. You can voluntarily re-pay any debt which is listed on your petition. However, you MUST list that you owe the creditor money on your petition.

If you have a credit card on which you owe no money, you need not list that creditor, as you do not currently owe them money. However, please be advised that, even though you don't list that company as a creditor, the creditor still has a right to cancel that credit card for your having filed a bankruptcy. This is because a credit card is an extension of credit by the creditor, which can be withdrawn at any time. Often, people have a credit card on which they owe only a small amount of money and they wish to repay that creditor, in hopes of keeping that card. I do not advise any client to repay a debt for a credit card voluntarily, as it seems counterproductive to pay several hundred dollars just to have a credit card, when there are secured credit cards available everywhere. Also, unless you have an agreement to that effect, even if you agree to repay a creditor, they could still cancel your credit card because of your having filed a bankruptcy.

### **WHAT DOES IT COST, SHOULD I DECIDE TO FILE A BANKRUPTCY?**

I will be sending you a retainer letter regarding the filing of the bankruptcy. This document is my legal authorization to represent you and I MUST have this signed retainer letter in order to file a bankruptcy on your behalf. The retainer letter also explains to you my fee and your potential liability for any future fees.

The COURT COSTS for filing a Chapter 7 bankruptcy is \$299. This fee may not be waived but you may be able to pay it in installments. The COURT COSTS for a Chapter 13 bankruptcy are \$274.

ATTORNEY'S FEES for a bankruptcy vary. You will need to come in for an appointment in order for me to quote you a specific fee for a bankruptcy, as there are many factors which could affect the charge for a bankruptcy. The attorney's fees for a chapter 7 bankruptcy are a minimum of \$1,000.00 (in addition to the court costs).

You will not be charged any additional attorney's fees in this case unless there are motions filed in the case, which happens rarely. In the event that additional creditors need to be added to your petition after it is filed, or if motions are filed by you or by a creditor, you will be charged additional fees on a per hour basis. One example of a motion filed by a creditor is if someone were to file an objection to your discharge, based on one of the grounds set out above--for example, if you filed a false financial statement at the time that you obtained a loan or a credit card. Another, and much more common, example, is if you need to file a motion to add a creditor to your bankruptcy AFTER the case is filed with the Bankruptcy Court. Should you leave out a creditor on your list of creditors, that creditor's debt will not be discharged. Therefore, after the case is filed, it is very important that you again check your list of creditors to make sure that all your creditors are in fact listed on the petition. If you discover that you have omitted a creditor from the petition, you can amend your petition to add that creditor to your petition. However, I will charge you a fee, plus costs, to amend your petition to add creditors to the petition after it is filed.

Once you have decided that you are going to file a bankruptcy, do NOT charge anything on a credit card or take any additional cash advances or other extensions of credit. Also, once you have decided that you are going to file, provided you have the funds and the information readily available so that we can file soon after we get the information from you, do not pay anything to the creditors that you are going to discharge in bankruptcy. Of course, if you have a house or car that you are going to keep, please continue to make those payments. If you are currently receiving harassing phone calls from your creditors, ONCE YOU HAVE PAID ME AT LEAST HALF OF MY FEE, please tell the creditors that you

## Provided by Carol L. Hill, Attorney at Law

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are filing a bankruptcy, give them my name and number, and tell them to call me. I ask you to not give out my name and number to your creditors until you have paid me at least half of my fee.

After you return your questionnaire, your signed retainer letter, and the money for the fee to my office, we will prepare your actual bankruptcy Petition. It will normally take us about a week to two weeks from the time you drop off these documents before the petition is ready for your signature. In the event that any of the information on the questionnaire is not filled out, we will need to contact you to obtain that information and this will delay the filing of your petition.

After the case is filed with the Bankruptcy Court, you will need to attend one hearing. This hearing is called the Meeting of Creditors or the 341 hearing. This hearing takes place approximately 30 days after the case is filed with the Court. Generally these hearings can be held on any day of the week and we have little control over the dates when they are held. You will get about two weeks notice of when your hearing will be. **YOU HAVE TO ATTEND YOUR HEARING OR THE CASE WILL BE DISMISSED.** I will attend the hearing with you, of course.

**All 341 hearings are not heard before a Judge, they are heard before a U.S. Trustee. Bankruptcy 341 hearings are NOT held at the Bankruptcy Court. They are held at the U.S. Trustee's office, which is located in Tampa for the local area of Polk County. We have directions to the hearing place, so you may wish to call for directions.**

**The Middle District of Florida includes the following counties:** Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Glades, Hamilton, Hardee, Hendry, Hernando, Hillsborough, Lake, Lee, Manatee, Marion, Nassau, Osceola, Orange, Pasco, Pinellas, Polk, Putnam, Sarasota, Seminole, St. John's, Sumter, Suwannee, Union, Volusia. **If you do not live in one of these areas, your case probably cannot be filed in the Middle District, and you should let me know immediately, so that I can refer you to another attorney.**

**The hearings are held in a hearing room, which is basically just a room in an office building, about twice the size of my office, with two tables up front and about 30 chairs in the back. There will be a tape recorder there to record the proceedings, but no actual court reporter.**

**Who will be there at the 341 hearing? The average docket consists of about 12-15 cases, about half of which will be joint cases between husband and wife. As bankruptcy attorneys, we often file more than one case at the same time. Therefore, there will probably be about 6 attorneys there, representing these 12 Debtors. There will also be the U.S. Trustee there, along with the Trustee's secretary. In addition to these people, there will, in all likelihood, people there representing creditors. These companies have determined that they believe it is worthwhile for them to hire attorneys to come to the 341 hearings every week and sit there all day in an attempt to get people to voluntarily pay back their debts to their companies. I never advise any of my clients to do this. In addition to these representatives, there may be one additional creditor there for that total of 12 cases. It is unlikely that any of your creditors will appear, with the possible exception of private individuals. If you owe a private individual money, they may show up at the hearing, because they don't understand what's going on, or they think that they have to appear.**

**Each person's bankruptcy hearing only takes about five minutes and they run fairly well on time. Therefore, you can anticipate that, if your hearing is scheduled for 10 A.M., that you will likely be done by 11 A.M., unless something relatively unusual happens. Sometimes hearings do run late, especially if there happens to be a business bankruptcy on an earlier docket than yours. Creditors receive notice with regard to all bankruptcy cases filed, but they are much more likely to show up for business bankruptcies and to ask questions. This means that all the hearings on that date could run later than normal. Technically 341 hearings are open hearings, from the standpoint of, if anyone wanted to come in from off the street to listen to them, they could. As a practical matter,**

**this is unlikely to happen. Even if someone did come in from off the street to listen to some cases, they would not stay very long, as the hearings are exceedingly boring to a casual observer.**

In all likelihood, the only person who will be asking you questions will be the U.S. Trustee. The U.S. Trustees are attorneys in private practice, the same as I am. However, they are on a list to be appointed to hear bankruptcy cases approximately one day every month or so. The Trustee asks basically the same questions of everyone. He will ask if you own a house, if you own a car, does anyone owe you money. He will ask if you still live at the same place as when you filed the petition. He will ask if you still work at the same place as when you filed the Petition. He will ask for your daytime telephone number. He will ask whether you have filed your tax returns for last year yet. He will ask whether you have received a refund or whether you expect to receive a refund. He will ask you whether you listed all your assets and all of your debts on the Petition. Once you have answered the Trustee's questions with regard to your particular case, you are free to leave.

After the 341 hearing, there are only two things which you need to do. First, you need to let me know if you move your residence address, so that I can inform the Court of your change of address. Second, if you receive any bills or any telephone calls from creditors after the date of the hearing, you should either telephone the creditor yourself and make sure that they have received the notification from the Bankruptcy Court or call my office so that we may do so. Also, please do not assume that I have received a copy of correspondence you have received from a creditor. If you have any questions about any correspondence that you receive from a creditor, please contact me to discuss the matter with me.

**You will get your discharge in bankruptcy in the mail approximately 3 months after your hearing, or approximately 4 months after the date the case is filed. The reason that the case has to remain open for this period of time is so that creditors will have their allotted statutory period of time to object to your discharge. This is based on the exceptions to discharge which we talked about at the beginning--false financial statements and the like.**

How does the filing of a bankruptcy effect you? You cannot be fired from your job for having filed a bankruptcy. In fact, in most cases there is no reason for your employer to even know about your having filed a bankruptcy. The Court does not notify them and I will not notify them. The only exception to this is if your wages are being garnished, we will need to notify your employer to let them know to release the garnishment. A bankruptcy COULD, however, impact your job if you require a security clearance for your work. I suggest that you contact your security department if this might be a problem for you.

The fact that you have filed a bankruptcy will be on your credit history for ALL purposes for 10 years, and for some limited purposes even after that 10 years. That does NOT mean that you will be ineligible for credit for that period of time. It DOES mean that a creditor that does a credit check on you will be able to discover that you have filed a bankruptcy for that period of time. What the creditor does with that information is up to them. It is legal for someone to discriminate against you in the extension of credit for having filed a bankruptcy. This means that you may legally be declined for a car note or a house note, or you could be required to post an additional security deposit for rent or could be required to have a cosigner in order to qualify for a loan.

A bankruptcy is a snap-shot of your economic condition on a certain date. On that date, you must list everything you OWN and everything you OWE. With certain limited exceptions, anything which happens after the date the case is filed is totally irrelevant. Provided that you had originally exempted the money which you used to purchase the ticket, after your bankruptcy case is filed, you could purchase a Florida Lottery ticket and the ticket could come in as a \$50 Million winner, and the money would be totally yours to keep. You may purchase anything that you are able to purchase after the date the case is filed, either with cash or credit and you may incur any new debt that you are able to incur after the case is filed. Once you have gone through the first hearing, you should be able to dispose of any property that you wish to dispose of. However, please check with me before disposing of any property.

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What a bankruptcy will do for you is to attempt to give you a "fresh start". With certain exceptions, you will no longer owe the debts which are listed on your petition. However, if you wish to voluntarily pay any debt which has been discharged, you may do so. It is not as if you actually paid the debts which were discharged, as far as your credit report is concerned, but the debt will no longer be legally enforceable against you. You will no longer have a legal obligation to repay a debt, giving you an opportunity to start over with a clean slate. The future is then up to you.