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BANKRUPTCY QUESTIONS AND ANSWERS

Thank you for asking about our bankruptcy legal services. This brochure should answer most of your questions. If you wish to learn more, please call us for a free bankruptcy consultation.

1. What is Bankruptcy?

Bankruptcy is a legal proceeding in which a person who owes money (the debtor) can be permanently released, or discharged, from most debts. Bankruptcy proceedings can also allow a debtor to make debt payments over time according to an approved plan. Bankruptcy is a civil, not a criminal, court proceeding. As a debtor, you do not forfeit your civil and constitutional rights by filing a bankruptcy petition. Also, neither the government nor any utility company may discriminate against you after you file a bankruptcy petition.

2. What are the Most Common Forms of Bankruptcy?

Chapter 7--Liquidation, also known as a straight or consumer bankruptcy. This is the most common bankruptcy. Most debts are discharged, but you must turn over all your non-essential, luxury assets, if any, to the bankruptcy trustee, (the person appointed by the bankruptcy court to oversee your bankruptcy case). The trustee will sell the non-essential property to pay at least some money to your creditors. A Chapter 7 bankruptcy petition may be filed every eight years.

Chapter 13--Adjustment of Debts of an Individual with Regular Income, also known as a payment plan bankruptcy. You can force creditors to accept adjusted payments for three to five years. You make payments to the trustee, who pays your creditors under the terms of the plan. Many debts that cannot be discharged under other chapters can be discharged in a Chapter 13 bankruptcy, including certain taxes, and debts arising from fraud. A Chapter 13 bankruptcy may be filed almost any time a Chapter 7 bankruptcy is not pending.

3. What is the Bankruptcy Court Procedure?

You must file a petition at the U.S. Bankruptcy Court in the district where you live. The petition lists all your income, debts, and assets, along with information about your finances in the last few years. You must also pay a filing fee. The day you file your bankruptcy petition, your creditors are immediately stopped, or stayed, from trying to collect.

Within two weeks of filing your petition, the court will appoint a trustee. The trustee determines what non-essential property you own, if any, sells it to create cash for your unsecured creditors, investigates your financial affairs, examines your creditors' claims, and monitors your case.

A meeting of creditors is conducted by the trustee. The meeting is usually held four or five weeks after the petition is filed. You **must** attend. In joint bankruptcy cases, both spouses must attend. At the meeting the trustee, and any creditors who show up, will ask questions about your property and your debts. If you fail to attend the meeting, your petition will be dismissed, which means your creditors will resume trying to collect

from you. Usually your creditors will not appear at the meeting, since they know that they most likely cannot collect on the debt. The only creditors who sometimes show up are secured creditors, who will want either to retrieve their secured property, or make arrangements to have you resume paying for it (see Question #10).

4. How Long Does the Process Take?

There is no time limit in which a bankruptcy must be resolved. Usually, a Chapter 7 Liquidation bankruptcy takes about four months from the date of filing until the end of the case, or discharge. A Chapter 13 Payment Plan bankruptcy takes from three to five years for you to finish making the payments to the bankruptcy court and receive your discharge. The discharge notice declares you free from most, or all, of your debts.

5. Why Should I Use an Attorney?

Bankruptcy is a complex area of law. An experienced bankruptcy attorney can protect your property and handle your case correctly. If you are not represented by an attorney, you risk not receiving a full discharge of your debts. You also might lose property you otherwise could keep.

6. What Happens to my Property?

On the date you file your bankruptcy petition, all your personal property and real estate becomes the bankruptcy estate. Any money you earn or property you acquire after the filing date (with some exceptions) is unaffected by the bankruptcy and is protected from seizure.

You may keep certain property needed for the basic necessities of life. This property is called exempt property, which is explained in detail below. Generally you do not lose any of your personal property and real estate.

Property other than your exempt property (non-exempt property) may be sold by the bankruptcy trustee. The trustee then divides the money received from the sale among your creditors.

7. Exempt Property - What Can I Keep?

Here is a list of the common exempt-property categories, and the maximum value of the property in each category, that you are allowed to keep under Oregon law when you file a bankruptcy petition:

- (a) A home with a maximum equity of \$30,000 (\$39,600 for couples).
- (b) A mobile home and land with a maximum equity of \$23,000 (\$30,000 for couples).
- (c) Household goods: furniture, radio, TV, kitchenware, etc. (up to \$3,000).
- (d) IRA, 401(k), and pension plan contributions (no dollar maximum).
- (e) 75% of wages earned and owed to you on the date of the bankruptcy petition filing.
- (f) A vehicle with an equity not exceeding \$2,150 (one vehicle each for couples).
- (g) Clothing, jewelry, and other personal items, \$1,800 (double for couples).
- (h) Books, art, and musical instruments, \$600 (double for couples).
- (i) One rifle or shotgun, and one pistol, \$1,000 (double for couples).
- (j) Tools necessary to carry on a trade, \$3,000 (double for couples).
- (k) Settlements for personal injury claims, \$10,000.00 (double for couples).

In addition, there is a general exemption of up to \$400 (double for couples). This exemption cannot be used to increase the amount of any other exemption. It is commonly used to protect your cash, a bank account, or a tax refund to be received after the bankruptcy petition is filed.

8. How do I Determine What my Property is Worth?

You can figure the value of each piece of property by determining how much it would sell for at a yard sale (usually 10% of replacement value). If it's a car, look up the Kelley Blue Book "Private Party" value. Don't use the original purchase price or replacement value.

Equity is the portion of property that you actually own. If you don't owe any money on an item of property, then your equity is the same as the value of the property. If you do owe money on the particular property, then your equity is the value of the property minus what you owe on it. For example, if you own a car worth \$750, and you owe no money on it, then your equity is the same as its value, \$750. If your car is worth \$5,000 and you owe \$4,000, then your equity is \$1,000 (the \$5,000 value of the car minus the \$4,000 balance you owe).

9. What are the Different Kinds of Debts and Creditors?

A creditor is a person or company to whom a debtor owes money. There are two kinds of creditors. Secured creditors have loaned money (called secured debt) in exchange for an interest in, or lien on, some of your property. Such property is known as collateral. Examples of secured debts are home mortgages, car loans, and loans made by a furniture or major appliance seller. General unsecured creditors are all other creditors, with a few exceptions. After filing a bankruptcy petition, you should not pay unsecured debts such as doctors' bills, credit cards, and past-due utilities. It is these kinds of debts (dischargeable debts) that your bankruptcy filing will eliminate. Remember that you **should** continue to pay your secured creditors for the secured property that you want to keep. We will help you determine which creditors are secured and which are unsecured.

10. What Should I Do About My Secured Debts?

When a creditor has a lien or security agreement on specific property (collateral), such as your home or car, the debt is secured. You have three choices with a secured debt. You may:

(a) surrender (return) the property to the creditor and discharge the debt; or

(b) redeem the property and keep it, which requires full payment to the creditor within 30 days, or

(c) reaffirm the debt, and agree to continue to pay the debt, basically treating the debt as if you had never filed bankruptcy. If you reaffirm the debt, you keep the collateral and you remain legally obligated to pay the debt. You also may be sued at a later time on the debt if you fail to pay. If you intend to reaffirm a secured debt, you should keep the payments current.

11. Can Creditors Take my Personal Property if I File a Bankruptcy Petition?

Maybe. If the debt in question is a secured debt, it depends on how the property became collateral to secure the loan. For example, if you bought some property (such as a car, house, or furniture) and **at the same time** you borrowed the money to buy the property, the loan is usually considered a secured debt, and the creditor is a secured creditor. Remember that a secured creditor can take the property no matter what it is worth unless you decide to pay (redeem or reaffirm) the debt. However, if you borrowed money from a creditor and pledged as collateral personal property **you already owned** (such as your furniture), the bankruptcy filing can eliminate that pledge of collateral. The property then cannot be taken by that creditor, and the debt can be discharged. A separate motion must be filed to eliminate the pledge of collateral.

12. Can I Discharge Tax Debts?

Generally, state and federal income tax debts, which you filed accurately and which were assessed more than

three years prior to filing your bankruptcy, may be discharged.

13. Can I Discharge Student Loans?

No, unless you can show extreme, and continuing, hardship.

14. Can I Discharge Child Support and Spouse Support?

No.

15. Can I Discharge Bad Checks that I Wrote?

No, not in a Chapter 7 Liquidation bankruptcy. However, Non-Sufficient Funds checks usually can be discharged in a Chapter 13 Payment Plan bankruptcy.

16. Can I Get a Checking Account if I Owe the Bank NSF Check Charges?

Once your bank has listed you with the ChexSystems company because you did not pay the bank's overdraft-check charges, it will be almost impossible for you to get a checking account at most banks for five years. Paying off the debt after you have been listed usually will not help. Filing a bankruptcy petition usually will discharge that debt. However, it will not help you to get a new checking account, if your name already was listed with the ChexSystems company.

17. Can I Use My Checking Account?

If you do not owe your bank any money for NSF-check charges, a credit line, or a credit card, you may use your checking account normally, both before and after you file your bankruptcy.

18. Must Both Husband and Wife File Together?

No. If the debts are joint family or medical expenses, it may be a good idea for both spouses to file a joint petition. If debts were incurred by one spouse before marriage, or if the debts are from a business involving only one spouse, then a single bankruptcy filing should not affect the other spouse, unless the non-filing spouse agreed to be liable for the debts, usually by co-signing.

If you expect to get divorced, it is best to file a joint bankruptcy petition prior to the completion of the divorce, so that there will be few, if any, debts to allocate in the divorce decree.

19. What About Money I Spend Before Filing?

If you are contemplating filing a bankruptcy petition there are some things to do beforehand to protect yourself: Do not use credit cards (pay cash only for purchases); do not pay any money or transfer property to any friends or relatives; and do not make payments to unsecured creditors.

It is common for a debtor to want to pay some creditors prior to filing a bankruptcy petition. Such payments made **within 90 days** before filing the bankruptcy petition are called preference payments, because they favor one creditor over another. Payments made to friends, relatives, or business associates **within one year** prior to filing a bankruptcy are also preference payments. The bankruptcy court has the authority to retrieve preference payments and divide them among all creditors. If you want to pay a creditor regardless of the bankruptcy, pay after the bankruptcy discharge. Such payments should **never** be made just before filing a bankruptcy petition.

20. Must I List All of the People and Companies to Whom I Owe Money?

YES! It is **essential** that you list **all** of your debts. This includes debts that you want to pay (such as those debts you owe to family members and close friends). Even if somebody claims you owe money and you dispute your responsibility for the debt, you must still list that debt. After your bankruptcy is concluded, you

are not forbidden to pay any debts you want to pay (such as debts owed to relatives).

21. How Can I Get my Credit Report?

You can obtain a free credit report once a year on the internet: www.annualcreditreport.com , or you can write for a credit report from one of three main agencies. It may take up to six weeks to receive it. There is a charge of \$8.00 per report (\$16.00 for a married couple, or free if you have been denied credit in the past 60 days). Send your request and payment to one of these agencies:

(a) Experian (formerly TRW), 701 Experian Parkway, PO Box 2104, Allen, Texas 75013- 2104; (888) 397-3742, (800) 682-7654 or (800) 422-4879; www.experian.com;

(b) Equifax/CBI, PO Box 105873, Atlanta, Georgia 30348, or PO Box 740243, Atlanta, Georgia 30374; (800) 685-1111, (800) 270-3435; www.econsumer.equifax.com,

(b) Trans Union, PO Box 390, Springfield, Pennsylvania 19064, or PO Box 1000, Chester, Pennsylvania 19022; (800) 888-4213, (800) 916-8800, or (800) 556-9311; www.transunion.com.

Your written request should include each person's full name, current home address, previous addresses and zip codes for the past 5 years, social security number, date of birth, current telephone numbers, current employer, and proof of current address (such as photocopy of a driver's licenses or utility bill). Or, if you choose, we can order a combined credit report to be delivered the next day. The charge is \$45.00 per person.

Only you know all the creditors you owe. Your credit report will help you determine **some, but not all**, of your debts. It only lists those creditors who chose to report you to the credit agency.

22. When Should I File a Bankruptcy Petition?

That depends on the status of your debts and the kind of property you own. It is not wise to file a bankruptcy petition if you are likely to incur sizeable new debts in the near future, such as medical bills. Also, some non-exempt property that you receive (through an inheritance, or life insurance proceeds, for instance), within six months after the date you file a bankruptcy petition, must be turned over to the trustee. Therefore, if you anticipate incurring additional debts soon, or if you expect to receive any property by inheritance, you should wait to file a bankruptcy petition. You may also want to wait if you are expecting a large tax refund or the return of any other large sum, such as a renter's deposit. We can advise you on your specific circumstances.

23. How are Lawsuits, Wage Garnishments, and Bank Account Seizures Affected?

Filing the bankruptcy petition will automatically stop, or stay, most lawsuits, garnishments, and seizures. Filing will not stop a criminal case, nor will it stop collection of a non-dischargeable debt, such as alimony or child support. On the other hand, if the lawsuit concerns a debt that is dischargeable in bankruptcy, you may ask the court to dismiss you as a party in that litigation.

Later, if you are sued on a debt that was discharged in your bankruptcy, the important thing to do is take action. If you ignore the lawsuit, or do nothing, a default judgment will be entered against you. Thereafter your claim that you were already discharged from that debt in bankruptcy might be lost. Your bankruptcy discharge is a legal defense in such a lawsuit, but the bankruptcy discharge must be brought to the court's attention.

24. What Happens if I Change my Home Address?

The bankruptcy court mails all notices and orders directly to you. It is very important that the court has your

correct address. You must notify the court, and us, of any address change. If the court's mailings do not reach you, you might not receive your bankruptcy discharge.

25. Can I Get Credit After my Debts are Discharged in Bankruptcy?

A bankruptcy filing temporarily can worsen a good credit rating, but it will improve a bad credit rating. In fact, some lending institutions actively solicit credit card and loan business from recently-discharged debtors, because they know that such discharged debtors are relatively debt free and cannot file another Chapter 7 bankruptcy for six years. However, you should consider living without credit cards. Most people find they don't need them, and use debit cards instead.

26. Can my Discharge in Bankruptcy be Denied by the Bankruptcy Court?

Rarely is anyone denied a discharge unless fraud is involved. If you have ordinary debts, disclose all your assets, and did not obtain credit by fraud, your debts should be discharged.

27. How Long Will it Take to File the Petition and be Protected From my Creditors?

You are protected from any collection efforts by creditors as soon as your bankruptcy petition is filed. In emergency situations, the appropriate documents can be prepared and filed in one day.

28. How Does my Attorney Get Paid?

There is no charge for the initial consultation with our office. Thereafter, upon receipt of your retainer fee, we usually can delay your creditors from taking action to collect against you. This will allow you time to make payments toward your fees in our office.

In a Chapter 7 case the attorney fees must be paid in full before your case is filed. In a Chapter 13 case, only part of the fees are due prior to filing. Our fees include preparing and filing your petition, and representing you in bankruptcy court. All attorney's fees are disclosed to, and must be approved by, the bankruptcy court.

Our regular fees cover the following services: office consultations, preparation and filing of the petition and related documents, handling contacts from your creditors, representation at the meeting of creditors, negotiating reaffirmation agreements, representation, if necessary, at the reaffirmation and discharge hearings, and other routine matters. Usually there are no extra fees.

Our regular fees do not include additional, non-routine work (if any), such as handling litigation and adversary proceedings, amending schedules and plans after the petition has been filed, and attending additional hearings.

29. How Do I Get the Bankruptcy Procedure Started?

We have prepared a Bankruptcy Worksheet to assist you (and our office) in organizing the information necessary to prepare your bankruptcy petition. If you would like our office to represent you, please fill in the Bankruptcy Worksheet and call us for a free appointment.

Thank you for contacting our office and best wishes for a financial fresh start.

Kelly K. Brown, Attorney At Law

