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### **BASIC BANKRUPTCY INFORMATION**

All bankruptcies filed in the Houston area are filed with the Bankruptcy Court at 515 Rusk, Houston, Texas 77002. These courts have nationwide jurisdiction to restrain, enjoin, or curtail any action by creditors against debtors who file for relief.

In chapter 7 cases, the court appoints a trustee who has the responsibility to examine the debtor's financial circumstances and collect the debtor's nonexempt assets so that creditors can be paid on a pro-rata basis.

In Chapter 13 cases, the court appoints a trustee to work with the debtor to reorganize and rehabilitate the debtor over a period of time, usually three to five years.

In Chapter 11 and 12 cases, the debtor may operate a business or a farm subject to court review and approval.

The Bankruptcy Code was enacted by the United States Congress to provide a mechanism for dealing with problems caused by debtor-creditor relationships. The Code provides methods for providing debtors with relief while at the same time giving creditors a way to retrieve or repossess their collateral or to legally protect their interests. Bankruptcy Courts are federal courts and are not affiliated with our State Court System.

### **CLASSIFICATION OF DEBTS**

There are, in general, three types of debts. They are: (1) priority, (2) secured, and (3) unsecured.

Priority debts include wages, property taxes, income taxes and other claims. Priority claims may be non-dischargeable in a Chapter 7 proceeding. Priority Claims are typically paid in full in Chapter 11, 12, and 13 cases.

The next form of debt is secured. There are two types of secured debts: (1) purchase money security interest and (2) non-purchase security interest.

A purchase money security interest is created normally when a creditor loans you money to purchase a specific item, known as "collateral"; good examples are cars and homes. If you are unable to entirely pay for it, the creditor may repossess the collateral. For example, if you purchase an automobile, you typically agree to in writing to borrow money from a lender to purchase the automobile and in exchange grant the lender a security interest in the vehicle. This is known as purchase money security. Should you file for bankruptcy, you will have several choices, depending on the type of bankruptcy you file. Another category of secured debt arises when you give a security interest in something other than property that the borrowed money is used to purchase. For example, you borrow money from a finance company that, in exchange, requires you to secure repayment with your household furniture. This is called a non-purchase money security interest, because you owned the furniture before borrowing the money, and you did not use the proceeds of the loan to purchase the furniture. In certain instances your pledge of security to the lender can be stricken by filing an appropriate motion in bankruptcy, and the debt will be treated as unsecured.

The final type of debt is unsecured. Here the creditor and debtor have no expectation or requirement that the debtor provide any form of security. Examples include Master Card, Visa, and similar credit card debts, medical bills and personal loans.

### **CHAPTERS**

If you are considering bankruptcy, the Bankruptcy Code provides you with four forms of relief: Chapter 7, 11, 12, and 13. Your choice of Chapters is extremely critical. Our office will be happy to provide assistance to help you in your choice.

Chapter 7. A Chapter 7 case, often known as “straight bankruptcy” or “liquidation” is the choice for most debtors who have a large amount of unsecured debt. The debtor keeps only property that is considered “exempt” and agrees to turn over to the court appointed trustee all other property. Most debtors own only exempt property. All nonexempt property is then sold, and the creditors are paid on a pro-rata basis. The debtor sees a discharge of all debts, except those that Congress has expressly made non-dischargeable.

Chapter 11. A Chapter 11 case is frequently called “a reorganization.” Corporations in financial trouble typically use it but in certain circumstances individuals may use it too. Individuals who choose to use Chapter 11 generally are large corporations, those who own and operate small business or individuals whose total indebtedness exceeds the qualification limits for Chapter 13 cases.

Chapter 12. The Family Farmer has his own Chapter that is designed for family farmers with no more than \$1.5 million in debts. Chapter 12 allows farmers to pay creditors on a reduced basis with reasonable payments.

Chapter 13. In this “wage-earner plan,” a debtor works out a plan with creditors that permits the debtor to keep most, if not all, of his property while making reduced payments to a Bankruptcy Trustee over a three-to-five year period. Chapter 13 proceeds are available only to individuals who have a regular income and owe non-contingent, liquidated, unsecured debts of less than \$250,000 and non-contingent, liquidated, secured debts of less than \$750,000.

## **CHAPTER SEVEN**

After consultation with this office, an initial questionnaire is completed; a petition is prepared and filed with the bankruptcy court that contains a request that you be declared bankrupt the day the petition is filed. A “stay” is entered by the court that prevents any creditor from continuing any lawsuit or collection while you are in bankruptcy. These are remedies available to you if creditors violate the court-ordered stay.

The stay may not cover certain debts. For example the stay does not govern criminal prosecution. Your petition must contain a schedule that describes your background and finances. You must also file schedules that list your debts, and a list of all property.

Chapter 7 is designed to give you a fresh start. You are allowed to keep certain defined possessions or assets. In Texas, your exemptions permit you to use federal law or state law to determine you exemptions.

You must disclose all information to the court when requested. If you fail to do so, you are subject to prosecution for perjury, because you are required to sign the bankruptcy petition under oath.

After the bankruptcy petition is filed, the clerk of the court will notify each of your creditors about the bankruptcy filing, and the court appoints a trustee. The trustee generally takes title to all non-exempt assets of your bankruptcy estate. If there are non-exempt assets in your case, the trustee must sell such assets and pay the proceeds to creditors on a pro-rata basis. If a party owes you money when you file for bankruptcy, the trustee is required to seek that money for the benefit of your creditors. The trustee may void certain pre-bankruptcy conveyances of property. The trustee will determine the validity of the exemptions you claim.

As soon as possible after you file for bankruptcy, an informal meeting of creditors is scheduled. You are required to appear and submit to questions under oath about your assets and liabilities filed with the court. Creditors may question you about your intent to keep secured property, and the trustee will ask a few questions. After discharging his duties, the trustee will file a final report with the court. The court will then issue a discharge of all dischargeable debts.

You must also negotiate with secured creditors to permit you to keep purchase money security interest property by reaffirming such debts or to return such property to creditors. If you desire to keep secured property, lenders will expect you to “reaffirm” your obligation to them in writing. If such a debt is reaffirmed the reaffirmation may be canceled by you within 60 days after entry. Once affirmed, the debt survives the bankruptcy and is collectible under ordinary state law procedures after the bankruptcy is over. In certain cases you may wish to “redeem” personal property. Redemption means that you pay a secured creditor a lump sum payment in exchange for release of their claim to the property.

The time frame of Chapter 7 cases from start to finish is four months to six months.

## **NONDISCHARGEABLE DEBTS**

The following debts are not dischargeable in a Chapter 7 bankruptcy:

1. Taxes;
2. Money, property, services, or credit obtained by fraud, misrepresentation, or a false statement;
3. Alimony, maintenance, or child support;

4. Debts that were not listed in your bankruptcy petition;
5. Debts for fraud or embezzlement or larceny while acting in a fiduciary capacity;
6. Debts involving embezzlement or larceny;
7. Fines, penalties, or forfeitures payable to a local, state or federal government unit;
8. Debts owed as a result of willful and malicious injury to persons or property;
9. Educational loans, unless there is a showing of undue hardship on debtor;
10. Any debt created by a judgment or consent order entered in a court of record arising by virtue of the operations of a motor vehicle while legally intoxicated;
11. Debts not listed in your bankruptcy;
12. Criminal restitution, including "hot" checks;
13. Debts incurred to pay a non-dischargeable tax;
14. Debts for fees and assessment for a condominium unit while physically occupying the unit.

### **FILING A CHAPTER 11**

Many businesses, from small firms to large corporations have sought the protection of Chapter 11 as a period during which they generally will not have to pay creditors and have time to develop a plan for reorganizing their businesses under court protection and supervision. During this period, the debtor retains possession of and control over its property and as a debtor-in-possession may continue to operate its business. The debtor acts as a trustee for the benefit of all creditors and must provide monthly operating reports to the court and to its creditors. After filing, the debtor must meet with the United States Trustee for an initial conference and also appear for a first meeting of creditors.

The Chapter 11 debtor must pay all debts incurred after the filing on a current basis. The debtor has a period of 120 days in which it has the exclusive right to file a plan of reorganization, in which the method and length of repayment to creditors is proposed. The plan is submitted to the creditors who have the right to vote for or against the plan as they see fit.

### **FILING A CHAPTER 12**

Only a family farmer with regular income may be a debtor under Chapter 12. Individuals, an individual and a spouse, a corporation, or a partnership may be considered family farmers. Debts cannot exceed \$1.5 million. A Chapter 12 debtor is given 90 days after filing for relief to file a plan of reorganization. Repayment of debt is ordinarily limited to three years although for good cause shown, the court may approve a term of not longer than five years. Like Chapter 11 cases, the family farmer acts as a trustee for all of his creditors. All creditors must approve the plan or arrangement. The court conducts a hearing, and assuming no objections are filed, will generally approve the plan. The farmer will then begin making payments to creditors pursuant to the approved plan.

### **FILING A CHAPTER 13**

Chapter 13 is often used by individuals who are gainfully employed but are behind on their home mortgage payments, or automobile payments, and have been threatened by lenders with foreclosure or repossession of the property.

After filing, the clerk of the court notifies creditors. The court appoints a trustee who reviews the schedules and the plan to determine if the debtor's income will permit repayment to creditors. The trustee is paid a fee, normally 10 percent of the total obligations owed by the debtor.

A Chapter 13 debtor must appear at a meeting of creditors for questioning under oath by the trustee and creditors. The debtor's plan of arrangement may propose over three years for good causes extend to five years. The plan must be proposed in good faith and approved by the court.

Arrearages on home mortgages or automobile payments, child support, and the like may be paid off over a period of time, under court protection and supervision. The Chapter 13 proceeding permits a debtor to keep property while at the same time making payments to creditors on the debt under court supervision. Your first payment is due 30 days from the date of filing. All payments are made to the trustee who is appointed to your case.

If you have made all payments to your creditors required by your plan, the court will issue a discharge of all such debts at the end of your case. Many Chapter 13 trustees will even send a letter to your local credit bureau about your good record.

## **YOUR CREDIT RATING**

Filing any type of bankruptcy is very harmful to your credit rating. Most credit bureaus will keep the bankruptcy filing on your credit report for ten years. The effect of your filing will differ from creditor to creditor. Rebuilding your credit is difficult but not impossible. Your income, post bankruptcy payment history as well as other credit you establish will determine your credit worthiness after filing. There are transactions you can enter into after filing to help your credit rehabilitate itself.

It may take several years, but eventually you will be able to rebuild your credit.

## **CREDITOR'S RIGHTS**

The Bankruptcy Code provides creditors with remedies to recover their property, claim rights with respect to the property, and to preserve their interest in the property.

The Code gives creditors the right to file a "proof of claim" in a bankruptcy case. A proof of claim is simply a written statement setting forth the creditor's claim and the factual and/or legal basis for that claim. A proof of claim is not normally filed in a Chapter 7 case but is required in a Chapter 11, 12, or 13.

If a creditor files a proof of claim it is deemed allowed unless you object to the claim.

The most common form of relief a creditor will seek is the lifting of the automatic stay. The filing of a bankruptcy case by the debtor results in the imposition of an automatic stay by a creditor and a violation can result in the creditor being held in contempt of court.

Generally, secured creditors will ask that the stay be removed or modified if you are not satisfying their claim or their collateral is not insured. Adequate protection payments are often ordered by the court to protect the rights of secured creditors. If the stay is removed or modified, the creditor may seek the return of the property and then attempt to sell it.

In Chapter 7, 11, 12, and 13 bankruptcy cases, if you fail to completely disclose all information about your financial affairs, or fail to cooperate with the trustee in a Chapter 7, 12, or 13 case, or in Chapter 11, 12, and 13 cases, you fail to timely file a plan of arrangement, your case can be dismissed. If it is dismissed, it leaves you in the same situation you were in before bankruptcy. You would then have no protection against your creditors.

## **YOUR BANKRUPTCY**

We will be happy to help you successfully complete the bankruptcy of your choice. Understand that no two cases are the same, and your bankruptcy will require individual attention. We encourage you to ask questions should you need additional information. Our office hours are 8:30 a.m. to 5:30 p.m. Monday-Thursday, 8:30 a.m. to 5:00 p.m. on Fridays. Saturday and evening appointments are also available.

## **RESOURCE GUIDE**

The very best web site for general and specific bankruptcy information can be found at [www.abiworld.org](http://www.abiworld.org).

## **OTHER OPTIONS**

Several non-profit organizations exist to counsel you regarding your debts and avoiding bankruptcy. Here is a list of where to go for help and education if bankruptcy is not for you.

Consumer Credit Counseling Services of the Gulf Coast Area      [www.ccsintl.org](http://www.ccsintl.org)      713/923-2227

Credit Counseling Centers of America      [www.cccamerica.org](http://www.cccamerica.org)      800/493-2222

Debt Counselors of America      [www.dca.org](http://www.dca.org)      800/680-3328

Debtors Anonymous Houston      [www.debtorsanonymous.org](http://www.debtorsanonymous.org)      713/797-8441