

BANKRUPTCY - QUESTIONS & ANSWERS

People don't call bankruptcy attorneys unless they're under extreme pressure. They usually don't know anything about bankruptcy, but they do know they have serious problems, and they hope to receive some quick response over the phone that will tell them all's well, and, perhaps, let them sleep. Unfortunately, it's not that simple. Whether or not bankruptcy will help depends on a number of factors, including who the creditors are, what kinds of debts you have (secured or unsecured, dischargeable or non-dischargeable), how much you owe, and what assets you own. To get an answer that is meaningful requires you **to list your creditors**, and meet with an attorney (with the list in hand), so that he can review it, ask you questions, and then give you an opinion. How much bankruptcy costs also depends on the creditors and assets.

Following are some commonly asked questions about bankruptcy, with general answers, which will give you an overview, and maybe some temporary peace of mind.

HOW MUCH DOES BANKRUPTCY COST?

Fees vary depending on the extent of debt, the type of debt, the assets of the debtor to be protected, and any extra problems (such as foreclosure proceedings, non-dischargeable debts, tax problems). The fee I most often charge for a typical "consumer" Chapter 7 bankruptcy is \$800.00, plus a Court filing fee of \$299.00. I usually require 1/2 of the fee to be paid in advance of filing (\$400.00), plus the filing fee (\$299.00), with the balance of the fee (\$400.00) to be paid in four monthly installments of \$100.00 after the bankruptcy is filed. But this fee can be less, as low as \$600.00, and it can be more, \$1,000.00 or more, depending on the facts. A "business" Chapter 7 case may cost from \$1,500.00 to \$2,500.00, again, depending on the facts.

Chapter 13 fees are somewhat regulated by the Bankruptcy Court. The maximum "consumer" fee permitted by the court is \$3,500.00, without having to keep time records. The filing fee to the court is \$274.00. But this fee is usually paid with a retainer in advance of filing the Chapter 13 petition of \$674.00 or \$774.00, and the balance of the attorney fee included in the monthly Chapter 13 payments. So you just pay your retainer, file the petition, and start your monthly Chapter 13 payment a month later (and that payment includes all remaining fees and costs). Retainers to stop foreclosure proceedings are higher, often \$1,274.00, and up, depending on how much of an emergency it is.

Chapter 11 fees (usually for businesses) are dramatically higher. Attorney fees usually range from \$10,000.00 to \$15,000.00, with a retainer of \$10,000.00 usually required. This office does not do Chapter 11 cases any longer because most debtors cannot afford the retainer payment. However, although you may think your case needs Chapter 11, often Chapter 13 or Chapter 7 will do, at much lower fees. You need an office conference to determine if Chapter 11 is warranted, and in the event it is, we will give you the names of some attorneys who do Chapter 11 cases.

I HEARD THERE'S A NEW BANKRUPTCY LAW AND IT'S REALLY HARD TO FILE BANKRUPTCY NOW, CAN I STILL FILE?

A new bankruptcy law took effect October 17, 2005. The credit industry fought hard and paid Congress enormous sums of money to pass a law that would make it hard for people to file bankruptcy. They were not as successful as they hoped and most of the people who qualified for bankruptcy before the law changed still qualify and can file bankruptcy.

The new law does provide some new hurdles that people must jump through in order to qualify for bankruptcy. A person must have their budget evaluated by an approved credit counseling agency and receive certification of this in order to proceed with bankruptcy. Attorneys must perform a detailed evaluation of your past 6 months income to determine whether you qualify for chapter 7. More documentation will need to be provided to your attorney when you file a bankruptcy.

The bottom line on the new law is that in some ways it is harder than it was to file bankruptcy because more things need to be done before a case gets filed and it's slightly more expensive, but most people will still qualify for bankruptcy. There are lots of new twists in the law that make it more important than ever that a person have a competent attorney representing him throughout the process.

DO I REALLY NEED AN ATTORNEY, OR CAN A PARALEGAL, OR A BANKRUPTCY TYPING SERVICE, HANDLE MY FINANCIAL PROBLEM?

You have to decide what's best for you. If you hire an attorney, his name goes on the bankruptcy petition, your creditors are restrained from contacting you during the bankruptcy proceeding, and may **only contact you**

through your attorney. If you act as your own attorney, which is the case when you use a paralegal or a typing service, the creditors may continue to contact you to discuss reaffirmation, return of collateral, or any of the other problems that arise when bankruptcy is filed. If you don't mind this contact with creditors, a bankruptcy typing service may serve your purpose.

When you act as your own attorney, you must deal with the Chapter 7 trustee, who is interested in taking assets from you. The trustee gets paid from any assets he collects, and debtors representing themselves make inviting targets. What assets are exempt from the trustee's claims are subject to interpretation, and one of the reasons you employ an attorney is to investigate what your assets are (for example, accrued wages, personal injury claims, income tax refunds, interests in real estate, or trusts, or estates of deceased persons), and inform you whether or not they will likely be exempt, so that you can make an informed decision before you commit yourself to bankruptcy.

You must prepare a budget of income and expenses in your bankruptcy schedules, and if this is done incorrectly, it is subject to attack by the U.S. Trustee office to dismiss your case as an "abusive" filing. It is important to get this part of the petition right the first time, and an experienced attorney may be necessary to help you for obvious reasons.

The "bankruptcy typing services" and "paralegals" make it clear that they are not attorneys, and do not offer legal advice. But they impliedly represent they know enough to file a bankruptcy petition for you. They are asking you to pay them to prepare a bankruptcy petition without taking any of the responsibility for the preparation, because, after all, they are not lawyers. A top quality legal secretary makes under \$25.00 per hour. It usually takes less than an hour to type your bankruptcy petition, and the cost should be \$25.00, or less.. The local bankruptcy rules allow petition preparers a maximum of \$125.00 to prepare a bankruptcy petition. You must weigh the risk of losing an asset to the bankruptcy trustee or having your case attacked as an "abusive" filing without representation by an attorney, in addition to having to deal with whichever creditors decide to contact you after bankruptcy, against the difference in cost between having an attorney and representing yourself.

If you hire an attorney, he goes to your hearing with you, and any subsequent hearings that might occur. He advises you throughout the case. He deals with any demands of the bankruptcy trustee, and advises you on how to respond to any such demands. He files motions with the bankruptcy court concerning your exempt property. He advises you what to do when creditors make demands for collateral or for repayment because of alleged fraud. You are paying him for his bankruptcy knowledge and experience - how to process your case in

the simplest, quickest way at the least risk to you - and to explain to you what risks you are in fact taking before the petition is filed.

HOW CAN I BE EXPECTED TO PAY AN ATTORNEY FEE FOR BANKRUPTCY IF I AM BROKE AND CAN'T PAY MY CREDITORS?

If you are truly broke, and without income or assets, you don't need bankruptcy. We don't have debtors' prisons any longer, and you can't be put in jail for not being able to pay your bills. The reason people file bankruptcy is that they do own assets, such as wages, homes, furniture, income tax refunds, bank accounts, automobiles, etc., and while they don't have the ability to meet their creditors' demands, if they do nothing, the creditors will use legal means to seize their assets, thereby impairing their ability to meet their living expenses, or causing them to lose their jobs (i.e., wage garnishments). Usually the filing of bankruptcy relieves the strain on their income, and with what's left, they are able to pay an attorney fee out of that income.

I FEEL TERRIBLE ABOUT EVEN THINKING OF FILING BANKRUPTCY - AM I A FAILURE, AND WILL I BE RUINED FOR LIFE?

Bankruptcy is only a tool for the specific purpose of stopping creditors from collection activity. People who can pay their debts shouldn't even consider bankruptcy. People who are unable to pay are going to have their credit ruined no matter what they do - the only issue is whether or not they want to stop the creditors from harassing them - and that is what bankruptcy is for. Once you have filed a bankruptcy (Chapter 7), you are free to pay your creditors afterward - as much as you are able to pay, rather than as much as they demand. You can pay some of them, or all of them, as you choose, and when you want.

Americans use credit - they are encouraged and persuaded to use it - even more now than in the past, since the interest rates charged on consumer credit are among the highest obtainable by lenders. The cost of living (particularly rent, utilities, and food) has risen faster than earnings. Ordinarily, people are given credit when they least need it - when they are employed, with good incomes, and little debt. As the cost of living increases, people begin using that credit. So long as they continue working, and their expenses stay relatively level, while spending all their income, they at least get by. But something beyond their control is bound to happen - an illness; a loss of employment; a divorce; an unexpected rent increase; a cut in salary; an accident. Is one a failure because of these occurrences? I think not. But one starts playing catch-up, taking a loan from one creditor to pay another, taking loans from relatives, and so forth. You may make it through this trying time - but you

may not.

Pretty soon the creditors start calling. They have learned that it is unprofitable to allow time to elapse when an account goes delinquent. Their purpose is to pressure their customer to do something (preferably, to pay them). And the fact your set-back may not be temporary, but more long term, makes little difference to them. When the calls have started, your credit is about as bad as it's ever going to get. Are you ruined for life? Whether or not you are has nothing to do with filing bankruptcy. The damage has already been done. Will you ever get credit again? That depends on the unknown future - if your financial picture dramatically improves, you'll get credit. Believe it or not, creditors really want to sell you their product on credit, and have you pay them 18% interest on top of their profit on the sale - and if you get rich, the fact you previously filed bankruptcy won't stop them from extending you credit.

WHAT ARE THE DIFFERENCES BETWEEN CHAPTERS 7, 11, AND 13?

The numbers refer to different chapters of the U.S. Bankruptcy Code, a federal law. Chapter 7 is traditional bankruptcy, where you get a discharge from your debts, and don't have to pay them (you can file this type of bankruptcy every 6 years; every 8 years after October 17, 2005). Chapter 11 is a bankruptcy proceeding usually for businesses that want to stop their creditors temporarily, while the business proposes a plan to keep the business going and pay the creditors something (all or part of the debts) in the future. Chapter 11 attorney fees are very expensive. Chapter 13 is a bankruptcy proceeding for consumers who, for various reasons, need time to pay their creditors, and are able to make monthly payments that will pay their debts over a 3 to 5 year span of time.

Needless to say, people usually try to fit their problems into either Chapter 7 or Chapter 13.

HOW DOES CHAPTER 7 BANKRUPTCY WORK?

We prepare a petition listing your assets and debts, and answering some personal questions. We file it with the bankruptcy court. The filing of the petition gives rise to what is called the "automatic" restraining order - this restraining order prevents your creditors from trying to collect any further on their claim. The creditors find out about the "automatic" restraining order because one week after your petition is filed, the bankruptcy court mails them a notice of your bankruptcy. The filing of your bankruptcy creates what is called a "bankruptcy estate," consisting of all of your assets. The bankruptcy court appoints a bankruptcy trustee to administer this "bankruptcy estate." He immediately reviews your bankruptcy petition, and if it is like most consumer cases, he determines that all of

your "bankruptcy estate" is "exempt" property, meaning that you can keep it, and there is little for him to do. You attend a hearing one month after the bankruptcy is filed (with your attorney), and the hearing is conducted by the bankruptcy trustee (there is no judge present). The trustee may question you about your assets at this hearing, and creditors may attend and question you as well (but usually they do not). From the date of the hearing, the trustee has 30 days to object to your claim of "exemption" as to your assets. If he does not object, your assets are exempt, are yours, and are no longer part of your "bankruptcy estate." From the date of the hearing, your creditors have 60 days to object to the dischargeability of their debt (there are few grounds to object, and objections usually do not occur), and after 60 days, if there are no objections, the bankruptcy court grants you a "discharge" from your debts, mails you a copy of it, and the "automatic" restraining order is now replaced by the bankruptcy "discharge", which means that debts scheduled in your bankruptcy petition are forever forgiven, and your creditors cannot attempt to collect them. You can, however, pay any of them you want.

HOW DOES CHAPTER 13 WORK?

We prepare a petition similar to a Chapter 7 petition, file it with the bankruptcy court, and the "automatic" restraining order is created. But we also file a "plan" in which you propose to make one monthly payment to a court-appointed Chapter 13 Trustee, who will in turn distribute the money to your creditors according to priorities set forth in the Bankruptcy Code (this monthly payment also covers the balance of your attorney fee and the trustee fee). The creditors do not have to consent to the Chapter 13 "plan." If the bankruptcy court approves it, it is binding on the creditors. Ordinarily, in Chapter 13, your secured creditors are paid the value of their collateral, plus 10% annual interest, your unsecured creditors are paid a percentage of their balance without interest (10% to 70% is the usual range). You make payments on your Chapter 13 plan until it is completed, usually 3 to 5 years. At the conclusion, you receive a "discharge" that says you no longer owe any of the creditors provided for in the Chapter 13 plan.

WHAT IS A SECURED CREDITOR?

This is a creditor who has entered into a written agreement with you that specific property is collateral for the debt. An obvious secured creditor is a bank with your automobile pink slip as collateral. A not so obvious secured creditor is any retailer who sells you merchandise under a revolving account which provides that the creditor retains title to the merchandise until it is paid for.

WHAT IS AN UNSECURED CREDITOR?

This is a creditor who has a claim against you for money only, with no collateral, such as a doctor, a utility

company, an insurance company, or a bank card company (i.e., Visa, MasterCard).

WHAT HAPPENS WITH SECURED CREDITORS IN CHAPTER 7 BANKRUPTCY?

You have three choices: a) continue paying the creditor, and keep the collateral; b) return the collateral to the creditor, and discharge the debt in the bankruptcy; c) negotiate a settlement with the creditor paying him the value of the collateral, if it is less than the amount of the debt.

WHAT HAPPENS WITH SECURED CREDITORS IN CHAPTER 13 BANKRUPTCY?

They are usually included in your Chapter 13 plan, and are paid the value of the collateral, while you keep the collateral.

A CREDITOR THREATENED TO ATTACH MY WAGES IF I DON'T COME UP WITH SOME MONEY IN 24 HOURS. WHAT CAN I DO?

First, in order to attach your wages, you must understand what the creditor can do. He must file a lawsuit against you and serve (deliver) the lawsuit to you. From the date it is served, you have 30 days to see an attorney to do something. If you let the 30 days go by, and do nothing, the creditor can write to the court where the lawsuit is pending, and request a default judgment against you. Once he has the judgment, if he knows where you work, he can instruct the Sheriff to levy on your wages. The Sheriff will deliver instructions to your employer to give you 10 days notice, then start withholding approximately 25% of your check for application to the judgment.

Second, the "automatic" restraining order of your bankruptcy petition stops the wage attachment, whether the bankruptcy is filed after the creditor's lawsuit, after judgment, or even after the attachment has begun. So, if a creditor threatens to attach your wages next week if you don't pay today, if he hasn't yet sued you, he can't do it (he is bluffing). When you file bankruptcy, if the creditor has sued you, he must halt the lawsuit. If an attachment has already started, we take a copy of the bankruptcy petition to the Sheriff, and the Sheriff sends a release of the attachment to your employer the same day. The bankruptcy law is very powerful in this regard.

I AM BEHIND ON MY CAR PAYMENTS, AND THE CREDITOR SAID HE WOULD REPOSSESS MY CAR. CAN HE DO IT?

Yes. If the creditor can find your car, he can take it,

and he will. He can't commit a "breach of peace" to do it (like taking it with you in it, or breaking into your garage to do it), but if he can take it peacefully, he can do so. If you file a Chapter 7 Bankruptcy before the creditor repossesses your car, he is temporarily restrained from taking the car. But unless you bring your payments current within a short while (usually 30 days), he can get permission from the Bankruptcy Court to repossess the car. If you file a Chapter 13 Bankruptcy, and propose to pay the creditor over time for the car, and the plan is approved by the Bankruptcy Court, the creditor cannot take your car, and when your plan is completed, you will own the car.

IT SEEMS OBVIOUS THAT IF I FILE CHAPTER 13 AND PAY MY CREDITORS 70% OF MY DEBTS, MY FUTURE CREDIT SHOULD BE BETTER THAN IF I FILE CHAPTER 7, AND PAY THEM NOTHING. IS THIS TRUE?

It should be, but it isn't. Only a fool wouldn't see the difference between paying your creditors 70% of what you owe, and paying them nothing. But the credit industry being what it is, wants you perfect, or not at all. After filing bankruptcy, you are likely to be rejected for credit in the future because you "filed bankruptcy", be it Chapter 7 or Chapter 13. This statement is nonsense. If you hadn't filed bankruptcy, you'd be rejected because you had a lot of "unpaid bills" on your credit report. If you try to point out that you paid 70% of your bills, the creditor points out that you didn't pay 30%, or any interest. You can't win. If you have a lot of money in the bank, a good job, and little debt, *the creditor can usually figure out how to give you some credit even if you filed bankruptcy last month.*

Therefore, if you have a lot of unsecured debt that is dischargeable in Chapter 7 Bankruptcy, and the question is which type of bankruptcy do you file, my answer is to go with the Chapter 7 Bankruptcy. You will get credit re-established sooner by filing Chapter 7, and using the money that would otherwise go on a Chapter 13 to create a savings account, and put yourself into a position where you have some savings, and don't need credit. If you are lucky enough to get into this situation after bankruptcy, don't be surprised to discover a number of creditors willing to extend you credit (because you have the savings account and little other debt). You can also negotiate to re-establish your credit. You say to the appliance dealer: "I once filed bankruptcy, and now I'm trying to re-establish my credit. I have \$2,000.00 in savings. I want to buy a \$1,000.00 refrigerator from you. I am willing to pay you \$500.00 down, if you will open an account for me for the remaining \$500.00, to give me a chance to show my credit-worthiness. If you can't do it, then I guess I'll try your competitor." This approach should be irresistible.

WHEN SHOULD CHAPTER 13 BE CONSIDERED?

When there are problems that only Chapter 13 can solve. For example, if your home is being foreclosed, and the problem is that you can make current house payments, **but not the delinquent payments**, you can use Chapter 13 to stop the foreclosure, while **you repay the delinquent payments in a Chapter 13 Plan** and make the current payments as they fall due.

Maybe you have a car, or cars, with delinquent payments, and you just can't make up the delinquencies. If you file Chapter 7, you would still have to make up the back payments if you want to keep the cars. But in Chapter 13, you might be able to put the cars in the Chapter 13 plan, and just start making Chapter 13 payments without regard to any delinquent payments.

Maybe you have debts that can't be discharged in bankruptcy, like income taxes. You can file Chapter 13, and pay the income taxes in your plan, without interest or penalties other than those that have accrued prior to filing Chapter 13. The Chapter 13 case restrains IRS from collecting from you directly if you get a Chapter 13 plan confirmed. And Chapter 13 payments on taxes are likely to be a lot less than what the IRS demands.

Maybe you have **assets in excess of what the law allows you to keep when you file bankruptcy**, and you would lose them if you file Chapter 7. You may be able to use Chapter 13 to keep the assets, and pay your creditors over 3 or 4 years an amount of money that is greater than the value of the assets, but less than what you actually owe them.

Perhaps you filed Chapter 7 within the past 6 years, and you are not eligible to file another petition. You are eligible to file Chapter 13, because there is no time limitation on the frequency of Chapter 13's, as there is on Chapter 7's.

Maybe you just want to pay the creditors something, regardless of your future credit - Chapter 13 lets you do it, with monthly payments that you dictate, rather than what the creditors demand.

WHAT KINDS OF DEBTS CAN'T BE DISCHARGED IN CHAPTER 7 BANKRUPTCY?

Some debts are automatically not dischargeable; most taxes (some income taxes are dischargeable); child and spousal support; government insured student loans on which repayment began less than 7 years before the bankruptcy; fines (criminal and traffic); some damages arising from drunken driving. Other debts are non-dischargeable only if a creditor files an objection within 60 days after your Court hearing. If he doesn't object, the

debt is discharged. If he does object, then a Bankruptcy Judge hears evidence and decides whether or not the debt is discharged. These latter debts are usually concerned with fraudulent activity; i.e., giving a creditor a false financial statement intending to mislead him into giving you credit; charging things without any intent of paying for them; embezzlement.

WHAT ABOUT STUDENT LOANS? I OWE SOME. WHAT SHOULD I DO?

Student loans are generally non-dischargeable. Previously, if more than 7 years elapsed from the date on which contractual repayment was to begin, and no extensions of time had been granted for repayment, the debt was dischargeable. Recently, October, 1998, the U.S. Government changed the law to make student loans non-dischargeable in Chapter 7 and Chapter 13 bankruptcy cases. Even though a student loan may be non-dischargeable, it can be paid through a Chapter 13 bankruptcy. When paying a student loan through Chapter 13, while you might only pay 20% of it through the Chapter 13 case, at the end of the Chapter 13 case you still owe the other 80% of the student loan, and the accumulated interest on the student loan, because it is non-dischargeable. Obviously student loan problems present a unique situation, each of which is different, and requires consideration before a clear answer on what to do is possible.

WHAT PROPERTY AM I ALLOWED TO KEEP WHEN I FILE CHAPTER 7 BANKRUPTCY?

There are two separate laws involved; one is for people who own homes; the other is for those who don't.

For people who don't own homes, they are entitled to keep furniture and clothing (no specific value); jewelry up to \$1,150.00 in value; one vehicle with up to \$2,775.00 in equity or value; tools worth up to \$1,750.00; retirement benefits; life insurance policies up to \$9,300.00 in cash surrender value; in addition to these items, these persons can claim exempt and **keep anything they want up to \$18,350.00** in value (for example, income tax refunds, funds in bank accounts, a car worth more than \$2,775.00). Most consumer bankruptcies fall into this category. The consumer keeps all his property.

For those who own homes, they are entitled to one home in which they live with an equity of less than \$75,000.00 if they are married or head of a household (\$50,000.00 if single) (\$125,000.00 if disabled or elderly); furniture and clothing (no specific value); jewelry up to \$5,000.00; tools up to \$5,000.00; retirement benefits; life insurance benefits up to \$8,000.00 in cash surrender value; automobiles up to a combined value or equity of \$1,900.00. In these bankruptcies, income tax refunds, funds in the bank, and other items are not exempt, and

might be lost in the bankruptcy filing unless specific action is taken before bankruptcy is filed to protect these items.

IF MY CAR OR FURNITURE IS "EXEMPT" PROPERTY, DOES THAT MEAN I GET TO KEEP IT WITHOUT PAYING FOR IT?

No. If you are buying your car or furniture, or anything for that matter, under a contract where the creditor keeps title to the item until it's paid for, the property is only exempt as far as other creditors are concerned. Even though it's exempt, you must still deal with the secured creditor - i.e., pay him (continue with your contract) or negotiate a settlement (if the collateral is worth far less than the debt).

WHAT HAPPENS TO ASSETS THAT THE CHAPTER 7 BANKRUPTCY TRUSTEE TAKES?

If the trustee takes non-exempt assets, he turns them into cash, files an accounting with the Bankruptcy Court, is allowed to be paid a fee for recovering the assets, and distributes the balance to your creditors according to priorities set forth in the Bankruptcy Code.

HOW DO I KNOW IF THE CHAPTER 7 BANKRUPTCY TRUSTEE IS GOING TO TAKE ASSETS?

Your attorney's job is to advise you before you file bankruptcy if the trustee is likely to take any assets. Once you understand what the trustee might be able to take, then you can make an informed decision about whether or not to file Chapter 7 Bankruptcy.

A LOAN COMPANY THREATENED TO COME TAKE MY FURNITURE IF I DIDN'T REPAY MY LOAN? CAN THEY DO IT?

Where a creditor loans you money, and takes furniture and personal property (other than cars) you already own as collateral for the loan, there is a special bankruptcy law. Your attorney *can file a written motion with the bankruptcy court*, and *obtain a court order voiding the security agreement* so that you can keep the personal property. (This rule doesn't apply where you owe the creditor for the purchase of the furniture or personal property).

WHICH OF MY CREDITORS CAN DEMAND THAT I RETURN WHAT I BOUGHT FROM THEM?

Where you have a revolving account with a creditor, it usually provides he keeps title to what he sells you until it's paid for. When you file Chapter 7 bankruptcy, the creditor reviews his account, and if he sees some items that aren't paid for yet, that have a value making recovery worthwhile (like furniture, appliances, or jewelry), he will

write to your attorney and demand either payment for, or return of the items. At this point, you have to decide what you would be willing to pay to keep the item. We make an offer to pay the creditor the current value of the item, in monthly payments, and he decides whether he wants the item or the payments. Usually he takes the payments. Not all creditors make these demands. Some that usually do are: Sears, Wards, Levitz, Breuners, jewelry stores.

For example, say you owe Levitz \$2,100.00, and you file Chapter 7. Levitz reviews its account, and sees that you owe for \$1,500.00 of furniture. Levitz may write to your attorney, and demand some money for the furniture or its return. You decide that if you sold the "used" furniture, the most you could get for it would be \$250.00. Levitz wants \$900.00. You offer \$400.00 at \$50.00 per month. We transmit your offer to Levitz, explaining that the furniture is only worth \$250.00. They either take our offer or refuse (they usually take the offer). If they refuse, you either tell us to offer more, or you decide to return the furniture. The point is, you are still discharging at least \$1,700.00 of debt, and possibly \$2,100.00 if you give back the furniture. Bankruptcy doesn't always offer complete relief. Sometimes it only eliminates part of the problem.

CAN I LEAVE SOME CREDITORS OFF MY CHAPTER 7 BANKRUPTCY PETITION IF I WANT TO KEEP MY CREDIT UP AND PAY THEM?

The short answer is "No." Bankruptcy law requires you to list all your creditors in your petition, whether you plan to pay them in the future or not. However, you are perfectly free to pay any of the creditors you listed from your future earnings. If there are certain accounts you owe, and want to pay, we list them, and we write them a letter indicating that if they are willing to continue extending you credit, you are willing to continue paying them according to the terms of your contract with them. Most will write a letter indicating approval of this arrangement, but the choice is theirs.

WILL MY EMPLOYER BE NOTIFIED OF MY FILING BANKRUPTCY?

Not by the bankruptcy court.

I STILL WANT TO LEAVE OFF SOME CREDITORS I OWE SO THAT THEY WON'T KNOW ABOUT MY FILING BANKRUPTCY. WHY SHOULDN'T I?

Aside from the fact it violates the bankruptcy law, creditors occasionally do their own credit checks on existing accounts. If they discover you filed bankruptcy, they will probably close your account. If you pay them off, and then seek another loan, they will do another credit check, discover the bankruptcy, and turn you down. It is better to list them, and let them know you are in bankruptcy, and

willing to pay them, if they are willing not to use the bankruptcy against you in the future. Then they can decide whether or not to discriminate against you before you repay them, not later.

I'VE BEEN TOLD BY FRIENDS THAT IF I'M GOING TO FILE BANKRUPTCY, I SHOULD CHARGE SOME MORE THINGS TO MY ACCOUNTS. REALLY?

Not on your life. Charging things or taking loans not intending to pay for them, **is the type of fraudulent conduct that makes a debt non-dischargeable.** How can creditors prove what your intent was? They look at the dates of the charges and at the date of your filing bankruptcy. A Bankruptcy Judge isn't likely to believe that if you charged items shortly before filing bankruptcy that you didn't have some idea you might be filing.

I DON'T HAVE ALL THE ADDRESSES FOR MY CREDITORS. CAN I STILL DISCHARGE THEM IN BANKRUPTCY?

No. Bankruptcy is a voluntary proceeding (usually). **You have a duty to obtain the addresses of your creditors, even if it means making some telephone calls to do so.** The Bankruptcy law is fairly simple on this point. If you list a creditor in your petition with a correct name and address, the debt is discharged. If you leave a creditor out, or if you list him by name but with an incomplete or inaccurate address, the debt is not discharged. **If you list an attorney for the creditor, but not the creditor, the debt may not be discharged.** If you list a collection agency, but not the creditor they are collecting for, the debt may not be discharged. If you list the company, but not the collection agency, the debt may not be discharged. Therefore, your job is to list every name and address associated with every debt you can think of. If you have heard from a doctor, then from his collection agency, then from the collection agency's attorney, list all three and all three addresses. If you bought a car from a dealer and financed it through a bank, list the car dealer and the bank. If you have the account number, list it. List the amount you owe, but this item is not critical - you can make an estimate. If you are high or low, an error won't hurt you.

WHAT IF I FORGET TO LIST A DEBT? CAN I ADD IT LATER?

Maybe. And at additional expense in court costs and attorney fees. It depends on why the debt was left off; on when you are trying to add it; and what has transpired in your particular bankruptcy case.

IF I HAVE DECIDED TO FILE BANKRUPTCY, AND HAVE TALKED TO AN ATTORNEY AND KNOW THAT I AM ACTUALLY GOING TO GO

AHEAD WITH IT, WHAT DO I TELL MY CREDITORS WHO CALL ME BEFORE I HAVE ACTUALLY FILED?

If the particular creditor has not sued you, there is no way he can attach your property in less than 45 days from when he does sue. Therefore, be honest, and tell him you are planning to file Chapter 7 Bankruptcy (or Chapter 13), give him your intended attorney's name, and tell him when you will be filing. There is absolutely nothing he can do about it as long as you actually file the bankruptcy within the 45 days. It will let you answer the phone, not avoid it, be truthful. By all means, ask the creditor not to call you anymore. **(Don't tell the creditor with your car as collateral before you file - he can repossess - don't tell a creditor you owe money to where you also have a checking or savings account before you file - the creditor can exercise a set-off and seize the money in your checking or savings account without suing you - i.e., you owe B of A on a Visa, and have a B of A checking account - B of A can take the money in the checking account if you are in default on your Visa and B of A knows you are planning to file bankruptcy - but B of A can't take the money in your Wells Fargo account without first suing you).**

WHAT DO I TELL CREDITORS WHO CALL AFTER I HAVE FILED BANKRUPTCY?

They're not supposed to call at all, but the particular individual may not know you have filed. Give him the type of bankruptcy, the date it was filed, and the number of the bankruptcy petition (all this information is on your bankruptcy petition, a copy of which will be provided you). The creditor will usually take the information, and then leave you alone. It is a good idea for you to keep a record which includes the name of all creditors who call you, the date of their call, the name of the person you talked to, the fact that you advised them of the bankruptcy.

WHAT IF ONE OF MY CREDITORS KEEPS CALLING ME AFTER HE KNOWS I HAVE FILED BANKRUPTCY?

If the creditor is trying to collect his debt in spite of your bankruptcy, we can ask the Bankruptcy Court to hold him in contempt of court and fine or jail him.

CAN I TRANSFER MY HOUSE OR MY CAR TO MY RELATIVE BEFORE I FILE BANKRUPTCY SO THAT THE COURT ISN'T AWARE OF THESE ASSETS?

No. Your bankruptcy petition is filed in federal court **under penalty of perjury**; you are asked in the petition to list all transfers of property in the past year, and to list creditors you have paid in the past year. You don't want

to transfer any property until you speak to a bankruptcy attorney. Some transfers are OK, but until you have advice, if you transfer any property, you may make things worse than they'd be if you just kept the property.

I'M MARRIED. SHOULD MY SPOUSE AND I BOTH FILE BANKRUPTCY?

Probably. Since California is a community property state, and the Bankruptcy Code makes all of the community property of a married couple part of the "bankruptcy estate," both spouses should probably be involved in the bankruptcy case. While the bankruptcy of one spouse could technically protect the non-filing spouse in a community property state, these subtle distinctions are sometimes lost on creditors, and they might continue to harass the non-filing spouse. Both spouses can be included on one bankruptcy petition, and the cost isn't usually different if one or both file. Debtors often think leaving a spouse off the bankruptcy will leave the non-filing spouse with good credit - usually that is not true - the creditors are very likely to bother the non-filing spouse, and if the non-filing spouse then has to file bankruptcy, another attorney fee is incurred.

DO MY SPOUSE AND I EACH GET TO CLAIM \$18,350.00 OF EXEMPT ASSETS IN A CHAPTER 7 CASE?

No. A married couple can use only one \$18,350.00 exemption.

MY SPOUSE AND I ARE SEPARATED, AND I WANT TO FILE CHAPTER 7 MYSELF. IS THIS A PROBLEM?

Yes. California law requires that both spouses use the same pattern of exemptions if they file bankruptcy. One spouse cannot claim the \$18,350.00 exemption, while the other claims the homestead exemption. So California law provides that if only one spouse files bankruptcy, that spouse can use only the "homestead" pattern of exemptions, and not the \$18,350.00 exemption, *unless the non-filing spouse is willing to sign a "waiver" form* which provides that if the non-filing spouse decides to file bankruptcy while the filing spouse's bankruptcy case is open, the non-filing spouse will also use the \$18,350.00 exemption (or at least the unused portion of it), and not the "homestead" exemption. This "waiver" form does not get the "non-filing" spouse involved in the bankruptcy. Unless the non-filing spouse owns real estate, signing the "waiver" form is probably to his advantage, because it means if he has to file bankruptcy in the next few months, he can use part of the \$18,350.00 overall protection, whereas if he does not sign, he cannot use the \$18,350.00 exemption in his own bankruptcy case, should bankruptcy become necessary.

HOW LONG WILL THIS BANKRUPTCY FILING BE ON MY CREDIT RECORD?

California law (Civil Code Section 1786.18(a)(1)) provides a Bankruptcy filing can be reported for no longer than 14 years from the date of filing, but the usual policy of credit bureaus is to report Chapter 7 cases for 10 years from filing, and Chapter 13 cases 7 years from filing.

DOES THIS MEAN I WILL BE DISQUALIFIED FROM HAVING CREDIT FOR 14 YEARS?

No. There is no law against your having credit after bankruptcy. If a creditor is willing to overlook the bankruptcy (based on your current financial situation, or the size of your down payment, or other facts), and give you credit, this new credit will be reported on your credit record, and may be instrumental in other creditors extending credit to you in spite of the bankruptcy.

WILL I BE DISQUALIFIED FROM BUYING A HOUSE AFTER BANKRUPTCY?

No. The qualifications and down-payment for home buying are so stringent, that if you meet the qualifications (except for having filed bankruptcy), there are lenders willing to finance the purchase, even though you filed bankruptcy (although they may charge you a higher rate of interest).

WHAT IF I GET A GOOD PAYING JOB AFTER I FILE BANKRUPTCY? DO I HAVE TO PAY MY CREDITORS?

It's up to you. Bankruptcy is only concerned with the debts you owe and the property you own on the date the petition is filed. What you get in the future, after bankruptcy, is yours to do with as you please - with the following exception; if someone dies within 6 months after you file bankruptcy, and you inherit something or are the beneficiary of life insurance, that property goes to your "bankruptcy estate."

I'VE ALWAYS HAD GOOD CREDIT, STILL HAVE GOOD CREDIT, BUT BECAUSE OF A LAWSUIT AGAINST ME, I MAY NEED TO FILE BANKRUPTCY. CAN I FILE ON JUST THE LAWSUIT?

No. You must list all your debts when you file bankruptcy. But, you can make it a selective bankruptcy, by continuing to pay the creditors you want to after the petition is filed, and you end up just discharging the lawsuit. Here the best advice is to have your attorney write to each of the creditors you plan to pay, advising them of the facts, and making sure that if you do pay them they won't hold the

bankruptcy against you.

IF I FILE CHAPTER 13, BUT CAN'T KEEP UP MY PAYMENTS, WHAT HAPPENS?

Again, it depends. If you just refuse to make the payments, the Chapter 13 Trustee can send a "payover" order to your employer, requiring him to send your entire check to the Trustee. He cashes the check, takes the Chapter 13 payment, sends you the difference. You can dismiss the Chapter 13 whenever you want (usually) - then you are back where you started. Your attorney may petition the court to modify your Chapter 13 to account for your changed circumstances.

IF I FILE CHAPTER 13, HOW WILL I BE KEPT INFORMED OF THE STATUS OF MY CASE?

The Chapter 13 Trustee issues quarterly computer reports to your attorney. He sends you a computerized statement once every six months. You can pick up a computerized statement from the Trustee's office anytime.

DOES MY FILING BANKRUPTCY APPEAR IN THE NEWSPAPERS?

Not that I know of, other than possibly in a list of bankruptcy filings in any legal newspapers.

WHAT ARE YOUR QUALIFICATIONS AND WHAT DO YOU DO TO EARN THE FEES YOU PLAN TO CHARGE ME, AND WHY SHOULD I EVEN USE AN ATTORNEY?

Bill H. Lampi is an attorney at law who has practiced in Hayward the past 37 years specializing in bankruptcy cases, mostly consumer cases, representing debtors. From 1973 to 1980, He was also a Bankruptcy Trustee, in addition to representing debtors. He thought this would be a good way to learn both sides. During the past 23 years, his practice has been restricted to only bankruptcy cases representing debtors.

Bill's daughter, Sarah Lampi Little, is an attorney, and is working with Bill as she takes over his law practice. Bill plans to retire by the end of 2005, and will represent those clients he has already taken on, while Sarah represents all new clients. Sarah has had previous experience working for Bill as a paralegal, as an intern for Martha Bronitsky, the Chapter 13 trustee, while she was attending law school, working for a large accounting firm after she became an attorney specializing in their bankruptcy related matters, and working for a firm specializing in administering the bankruptcy record keeping and claims processing for large businesses in Chapter 11 cases.

We like what we do, and think the bankruptcy law is one of the best laws on the books, because it allows the "little

person" to pay a relatively modest attorney fee to take an action that will occur quickly, be effective, and result in tremendous pressure lifted from the individual. Most other legal problems take a lot of time, cost more, and the outcome is uncertain.

Most people who file bankruptcy think they understand the pressure they are under. But they truly don't understand the depths of that pressure, until the load is lifted by the filing of the bankruptcy petition. They often regret they did not understand this law a year or two earlier. This lifting of the pressure is what I like about bankruptcy.

The office employs two administrative assistants. They schedule appointments. When you come in to prepare a bankruptcy petition, you bring your list of creditors, and a previously filled out list of information which we have requested. We review it, take your retainer, and input your information into a computer program that prints the bankruptcy petition. We then explain what is going to happen. It is at this point we will know if there is any property you are likely to lose, or if any of the debts are not dischargeable. It takes several days to prepare your petition, and when it is ready, a assistant calls you to come in and sign it. We file it with the Court within a couple days after you sign, and send you a copy of the petition, with a letter explaining what happens next. We try to send you copies of all documents we send out or receive as the case proceeds. The assistants take calls from your creditors, and send you various forms, as the need arises. One of us meets you at the Court hearing a month after the bankruptcy is filed, and after the hearing, we discuss any problems that need resolution. If any serious problems occur thereafter, you make an appointment to see us.

What you are paying for is our experience and knowledge. Although what has been explained above may sound simple, it isn't. And if your bankruptcy is done incorrectly, you lose property to the bankruptcy court. What do you need with an attorney? The bankruptcy code restrains your creditors from calling or bothering you, but not your attorney. Guess what happens if you act as your own attorney? They are allowed to call you because you are your own attorney. And they will. And they will ask questions, and make threats. Where do you go for help? More importantly, it takes experience to know what to do about the creditors after the bankruptcy is filed. People who don't understand bankruptcy law often end up paying creditors after bankruptcy more than they need to, certainly more than the attorney fee involved in having an attorney represent them in the first place.

OK. WHAT'S YOUR ADVICE? SHOULD I FILE BANKRUPTCY?

This is your decision, and yours alone. Our job is to tell you about bankruptcy. Only you know the pressure you have been under. You need to be brutally honest with

yourself. How long have you been under the gun? How has it affected your family, your ability to relax, your job? If you think you can pay the creditors, how long will it take? How much longer can you afford the pressure? What would life be like if the burden of debt was lifted from your shoulders? Planning to live on a cash basis, without credit, isn't the worst thing possible. In fact, it might be one of the best. Your friends can't tell you what to do. Rarely do they understand bankruptcy law or its effect on your future. Everyone thinks they know something about debt and bankruptcy, but only those who have been through it can be truly helpful, and then only to the extent their circumstances are similar to yours (which they usually are not). But only you know what is going on inside you, and this is one of those times you must make your own decision.

THE FOREGOING INFORMATION IS INTENDED TO BE GENERAL IN NATURE. WHAT HAPPENS IN YOUR SPECIFIC CASE MAY BE QUITE DIFFERENT.

A FINAL WORD ABOUT APPOINTMENTS TO DISCUSS OR PREPARE A BANKRUPTCY PETITION.

As you no doubt have gathered, we realize people who call about bankruptcy are troubled. They usually want instant relief. Bankruptcy is fast, but it's not instantaneous. ***We really prefer to talk to people about their case in person.*** We meet them, they meet us, and we are not interrupted or distracted. I have assistants set up appointments, and they are instructed to schedule appointments promptly. We don't care to discuss bankruptcy over the phone, because we rarely can get all the facts that way, making it difficult, if not impossible, to give accurate advice. ***We also like to see a list of creditors when I confer with a client (rather than having to waste time preparing a list myself from a batch of bills given to me by the client).*** We are willing to make that first conference "free", because we think it is important, if not essential (most of these conferences don't end up being "free" because we usually do a bankruptcy petition for which we are paid). But if the client decides not to file, there is no charge for that 1st 1/2 hour.

What we request is that ***you not make an appointment unless you know you can keep it.*** If you plan to call other bankruptcy attorneys, please do so before you make an appointment to see us. Just don't feel obliged to make an appointment to see us until you are satisfied that you will see us and will keep the appointment. Because the

fees in bankruptcy (relative to other attorney services) are relatively low, we deal in a volume of cases, and unkept appointments waste our time, and, worse yet, the time of other clients who would like to have had appointments at that time.

If you are making an appointment to prepare a bankruptcy petition, tell the assistant that fact so that she can set aside at least one hour. If you are in a real hurry, because of a wage attachment, tell the assistant. Some cases are emergencies, some are not, and we like to deal with them accordingly.

We would prefer that clients not make appointments until a day or two before they want to come in. Part of the reason is that our schedule changes daily. Part is that people who need bankruptcy have so much happening to them, that it is almost impossible for them to plan more than several days in advance. When advance appointments are made, then broken, it causes trouble.

Finally, a word about the telephone. We see the telephone as a tool for short and quick communication - not for lengthy conferences. The assistants answer the phone, and we have an answering machine when they are unavailable. The quickest way to get a phone response is to tell the secretary what you want - she can ask me, and call you back either with an answer, or to tell you to make an appointment. Also, please remember that we spend a lot of time in bankruptcy court, and interviewing clients, and preparing bankruptcy papers. That doesn't leave a lot of time for phone calls. The secretaries themselves spend substantial amounts of time on the telephone with the numerous creditors of clients, so realize their time is somewhat restricted, too. There are attorneys who like to do all their business over the telephone - if that is the way you like to do business, you should use one of those attorneys.

If you haven't been put off by these last observations, we look forward to meeting you. The office is at 1276 A Street, in Hayward, about 1/2 block east of 2nd Street (just up the street from Bank of America, which is on the corner of A & 2nd Sts.). It is a converted house with a blue sign in the front, with a parking lot in the back, where you can park, and enter the building from the rear.

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