

# Bankruptcy Information Sheet

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**BANKRUPTCY LAW IS A FEDERAL LAW. THIS SHEET PROVIDES YOU WITH GENERAL INFORMATION ABOUT WHAT HAPPENS IN A BANKRUPTCY CASE. THE INFORMATION HERE IS NOT COMPLETE. YOU MAY NEED LEGAL ADVICE.**

## **WHEN YOU FILE BANKRUPTCY**

You can choose the kind of bankruptcy that best meets your needs (provided you meet certain qualifications):

Chapter 7 - A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possibly real estate depending on the law of the State where you live and applicable federal laws.

Chapter 13 - You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12 - Like chapter 13, but it is only for family farmers and family fishermen.

Chapter 11 - This is used mostly by businesses. In chapter 11, you may continue to operate your business, but your creditors and the court must approve a plan to repay your debts. There is no trustee unless the judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

## **WHAT IS A BANKRUPTCY DISCHARGE AND HOW DOES IT OPERATE?**

One of the reasons people file bankruptcy is to get a "discharge." A discharge is a court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for-

- most taxes;
- child support;
- alimony;
- most student loans;
- court fines and criminal restitution; and
- personal injury caused by driving drunk or under the influence of drugs.

The discharge only applies to debts that arose before the date you filed. Also, if the judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. The judge can also deny your discharge if you do

something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a court order.

You can only receive a chapter 7 discharge once every eight years. Other rules may apply if you previously received a discharge in a chapter 13 case. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement (see below) or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property,

### **WHAT IS A REAFFIRMATION AGREEMENT?**

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law. Reaffirmation agreements-

- must be voluntary;
- must not place too heavy a burden on you or your family;
- must be in your best interest; and
- can be canceled anytime before the court issues your discharge or within 60 days after the agreement is filed with the court, whichever gives you the most time.

If you are an individual and you are not represented by an attorney, the court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

**IF YOU WANT MORE INFORMATION OR HAVE ANY QUESTIONS ABOUT HOW THE BANKRUPTCY, LAWS AFFECT YOU, YOU MAY NEED LEGAL ADVICE. THE TRUSTEE IN YOUR CASE IS NOT RESPONSIBLE FOR GIVING YOU LEGAL ADVICE.**

NOTICE TO UNREPRESENTED DEBTORS.  
Regarding Reaffirmation Agreements

By law, the Court must review your agreement with your creditor to determine whether it is in your best interest to approve it. This notice explains some of the legal effects of reaffirming a debt, and describes some of the information that the Court will need to have to make its decision about your agreement.

Because you are not represented by counsel, the bankruptcy law requires you to appear personally to answer questions by the Court. If you do not appear, the reaffirmation agreement will not be approved.

**IMPORTANT: YOUR REAFFIRMATION AGREEMENT WILL NOT BE VALID - and therefore' cannot properly be enforced by the creditor - UNLESS A COURT ORDER IS ENTERED APPROVING IT.**

#### Reaffirmation Agreements in General

Your discharge in bankruptcy relieves you of any personal obligation to pay debts that are discharged.

You are not required to reaffirm any debt or sign any agreement regarding a debt that has been or will be discharged in your bankruptcy.

You may decide you want to pay a debt that has been discharged and you may do so if you want to, in the same way that you are free to give your money to anyone. An approved reaffirmation, by contrast, means that you will have to make payments on the reaffirmed debt and the creditor will be entitled to sue you and even garnish your wages if you don't make the payments as promised.

Even though the discharge means you do not have to pay the debts that are discharged, sometimes a creditor has a security interest in some of your property. A creditor can have a security interest in real property or in personal property. Sometimes, a merchant who sells you something on their credit card has a security interest in the item or items purchased.

If a creditor has a security interest, it can enforce that security interest if the loan is in default - for example, if you haven't made your regular payments. Usually that means the creditor can foreclose or repossess - that is, "take back" - the property that is the subject of the security interest. Your bankruptcy discharge, however, would bar the creditor from obtaining any money payment from you. If the loan is not in default, the creditor cannot foreclose even if you do not sign a reaffirmation agreement. Just going into bankruptcy is not in default that a creditor can enforce. Defaults usually arise out of missed payments or lack of insurance or something of that nature.

These considerations are important because when the Court approves a reaffirmation agreement, it means allowing the creditor to enforce your new payment obligation. Your bankruptcy discharge would not protect you because it would not cover the payments required in a reaffirmation agreement. You will be stuck with the payments, no matter what hardship they may cause you. For this reason, the bankruptcy law requires the Court to conduct an inquiry with you as to the reasons why you want to reaffirm a debt whether you understand what you are agreeing to, whether you are likely to be able to keep up with the agreement, whether making the payments is likely to be a hardship for you, whether you need to reaffirm this debt for some reason, etc.

Therefore, you will need to be prepared to answer the following questions under oath when your case is called

### The Terms of Your Reaffirmation Agreement

- 1 Does the creditor with whom you have made this reaffirmation agreement hold some " of security interest in your property? If the answer is yes then:
  - a On what property does the creditor hold a security?
  - b interest? Do you still have that property?
  - c If so, do you want to keep it?
  - d How much would it be worth if you tried to sell it within the next few weeks?
  - e Did you discuss with the creditor the possibility of redeeming the property for its current fair market value?
  
- 2 If this creditor does not have a security interest in any of your property, then why do you want to reaffirm this debt?
  
- 3 Has the creditor filed a nondischargeability suit against you or threatened to file one?
  - a. Has the deadline for filing such suits run as to this creditor?
  - b. Have you received your discharge? If so, when was it entered?
  
- 4 Has the creditor made any promises to you? If so, are they in writing?
  
5. Do you know what the terms of your reaffirmation agreement are?
  - a What is the amount of the debt that you are reaffirming?
  - b What is the amount of the monthly payment?
  - c What is the total amount that you will have to pay on this debt?
  - d Are you paying any interest on the unpaid balance? If so, what is the interest rate? How many payments will be required to pay the full amount with any interest?
  - e How long will it take to complete the payments?
  
- 6 Will the agreement cause a hardship to you or your family?
  - a Are you currently employed? If so, what is your "take home" pay each month? Has this changed since the filing of your bankruptcy schedules?
  - b Do you have any other source of income? If so, how much and from what source?
  - c What are your typical household expenses each month?

Rent/mortgage	utilities
Food	Clothing
Car	Other
  - d Will you be able to afford to make: the payments due on the reaffirmation if you happen to suffer a loss of income for a month or more; or have unexpected car repairs, or sudden medical expenses?

Approximate or estimated answers will be fine; don't worry if you do not know the exact answer to some of these questions. However, if you don't know the answers to most of these questions, you should think about whether reaffirming the debt is a good idea. You have the right to change your mind. If you do change your mind, just tell the Court when your case is called that you don't want to reaffirm after all.