

## FREQUENTLY ASKED QUESTIONS

### 1. The Cost.

We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code. The attorney fees for filing a Chapter 7 bankruptcy vary from case to case, but generally the fee is \$1196, with a \$200 discount for those who elect to conduct meetings by telephone during “non prime-time hours” with the attorney, as opposed to in-office meetings, or meetings that occur during “prime time” hours, reducing the attorney fees to **\$996** for those clients that elect the non prime time telephone option. “Non prime time” appointments occur between the hours of 9:00 a.m. through 3:00 p.m., Monday through Thursday. All appointments starting after 3:00 p.m. on any day, or any appointment that occurs between Friday and Sunday are “prime time” appointments, and are not eligible for the \$200 discount. Only telephone appointments are offered during “prime time” hours (after 3:00, or between Friday and Sunday at any time). The cost of an in-person appointment is higher to cover the cost of travel and overhead for these appointments. Telephone appointments offer more flexibility for the attorney who may need to reschedule due to hearings or other appointments, and they provide convenience to you in that they occur in the privacy of your own home, and allows you to wait at home for the appointment to start in the event of a scheduling delay, as opposed to waiting in a waiting room at our law office. Fees are more if a business is involved. If your income is greater than the median income for a family of your size in Iowa, your filing may trigger an audit by the U.S. Trustee, causing an increase in attorney fees which are billed at the end of your case in the amount of \$695. Most Chapter 7 candidates do **not** incur this additional fee. If you do fall into this category, I will explain that to you at our initial meeting, and why it is you fall into this category. There is also a \$299 filing fee paid to the bankruptcy court. **The total up front pre-filing cost to you for a Chapter 7 bankruptcy is \$1,495, or \$1,295 if you elect the non prime time telephone discount. The up front cost for filing a Chapter 13 bankruptcy is \$1,950 (which includes \$274 filing fees).** If you have more than 20 creditors there is an additional charge of \$10 per creditor for each creditor that exceeds 20 in number. There is an additional charge of \$40 per secured creditor that you have, and \$50 per amendment (done only if you forget a creditor). You will be billed \$0.20 per photocopy and downloaded copy, and for the actual cost of postage. All additional charge categories, if they apply to you, will be billed at the end of your bankruptcy proceedings. If you want us to recover lost assets or money that rightfully belong to you pursuant to applicable law, we may be willing to do that for you, upon your request, on a contingent fee, subject to our approval. The initial meeting is free of charge (scheduled after you return your bankruptcy questionnaire, six-months pay stubs, and tax return). The only exception to that is if you schedule an appointment with me in person (as opposed to by telephone), and you elect not to file bankruptcy with our office and ask for your file to be transferred to another office, or elect not to file due to your income being too high (above Iowa’s average income for a household of your size, approximately \$53,000 per year for a household of two, or \$72,000 per year for a household of four as of January 2009). Clients with high income can still file a Chapter 13 bankruptcy with a five-year repayment plan, but they may not be eligible for a Chapter 7 bankruptcy, which is often preferable. If you elect not to file because you fall into this category, we do reserve the right to charge you an hourly rate for the initial meeting (if the meeting occurs in person). This charge is typically approximately \$150. These instances are rare, and this fee will not apply to these situations if the initial meeting occurs by telephone.

### 2. I’m broke. How do I afford the bankruptcy fees and costs?

This is a typical dilemma. Potential bankruptcy candidates do not have sufficient funds to pay their bills, so how can they afford to file for bankruptcy? If you cannot borrow the money from friends, employers, colleagues or family members, start saving your money instead of paying your unsecured creditors (i.e. credit cards, medical bills, etc.). Any creditor you intend to discharge through bankruptcy, stop paying them and use that money toward your bankruptcy fees. You also may have assets that you will lose to your creditors if you file bankruptcy. You may be able to sell these assets before you file and use the proceeds for bankruptcy fees. Your attorney can help advise you on which assets to sell and which you can protect through a bankruptcy proceeding. However, if you sell an asset for less than its fair market value, or if you sell it to a family member, business associate or friend, the Bankruptcy Court may set it aside and “undo” the sale, potentially creating additional financial problems for you and the purchaser of the asset. Any transfer of assets within two years of filing bankruptcy are subject to extreme scrutiny, so consult an attorney and be sure to disclose all such transfers to your attorney.

### 3. What Happens After the Petition is Filed?

Approximately one month after filing your Petition, you will need to attend the "first meeting of creditors" (the 341 Meeting). You will receive notice of this meeting from the bankruptcy court, and I encourage you to appear 15 minutes early in order to watch other proceedings. This will give you a glimpse at how the meeting is held, and should alleviate your anxiety. I may meet with you a few minutes before your meeting is scheduled to begin. **All individual debtors must provide picture identification the trustee at the meeting of creditors. Do not miss this meeting.** Besides the Section 341 hearing with your creditors you may be required, in some cases, to appear in court again. Sometimes this happens if your creditors object to your property exemptions or the debts you're asking to have discharged. If they do, the bankruptcy court will decide which side will win. You also will be required to bring bank and brokerage statements to the 341 meeting and sign and return all Reaffirmation Agreements before this meeting. Prior to closing your case, you must complete a course in Personal Financial Management. I will send you more information on agency locations where this can be completed after you file. If you want to reaffirm certain secured debts and retain those accounts, the court may require you to attend a hearing regarding your Reaffirmation Agreements to determine whether these are in your best interest. This hearing will be held approximately 4 months after your Petition is filed.

### 4. Do I have to list all debts?

You must list all of your debts. If you want to pay a creditor back, you may call the creditor, explain to them that you are filing bankruptcy and are listing their debt, but that you intend to pay it back after the bankruptcy is completed. **Failing to list a debt, concealing assets, or attempting to secretly transfer assets to others within one year of filing bankruptcy without disclosing it on your schedules is fatal to your case. You will be kicked out of bankruptcy and forced to pay back the debts you attempted to discharge in bankruptcy.** Any creditor receiving more than a total of \$599 within 90 days of your bankruptcy may have to pay that money to the Bankruptcy Trustee.

### 5. What about Judgments and Garnishments?

It is doubtful that any judgment or garnishment will attach between the time that you pay the retainer and the time you file. In the event a judgment is obtained, we can discharge it in bankruptcy, and we can stop any garnishment action with the filing of your case in bankruptcy.

### 6. Will I lose everything if I file bankruptcy? Can I keep my car? My home?

Most people who file bankruptcy are aware of some of the exemptions or protections available to debtors and their assets. You may protect your home, a car (up to \$7,000 of equity), household goods and furnishings, musical instruments and clothing (up to \$7,000), jewelry (up to \$2,000), tools of the trade (up to \$10,000), retirement plans and cash value life insurance (if you name a spouse or child as a beneficiary), and a small amount in checking or savings (up to \$1,000 in addition to the accrued wages and tax refund). There are a few other minor miscellaneous exemptions as well. These exemptions are doubled for joint debtors. **If your car or home is secured by a loan against it, you may keep the asset only if you agree to pay that debt through entering a "Reaffirmation Agreement". If you do not want to repay these secured loans, you must "surrender" the home or car. If your budget does not justify reaffirming a car or other personal property secured by a loan, the bankruptcy court may reject your Reaffirmation Agreement which could allow the creditor to repossess the item, though this is not likely if you remain current on your monthly payments.** Surrendered secured assets, such as cars and homes, can be kept for a few weeks to a few months depending on how vigilant the creditor is. (If you are significantly behind in your house payments and you want to keep your house, we will discuss the benefits of a Chapter 13 bankruptcy to your situation, as that may be the best alternative for you).

One exception to protecting household goods and furnishings is the situation where you purchased the goods on a charge or credit card. For example, if you purchased furniture and appliances on a Sears card and have not paid off the debt on the card, Sears will assert a security interest in those assets, and repossess them after the 341 Meeting, or make

you an offer to purchase the assets from them in exchange for release of their security interest. These offers are usually fairly reasonable, and are usually less than the amount of the payoff on the card.

7. What do I do with my credit cards? Can I get one after Bankruptcy? How long will it stay on my credit report?

It may be possible to keep a credit card by having a credit card with a zero balance at the time you file bankruptcy. Keep in mind that anything you charge on a credit card within 90 days of filing bankruptcy may have to be repaid. Bankruptcy will remain on your credit report for ten years, and certain lenders will always be able to determine that you have filed bankruptcy in the past. However, it is possible to obtain credit from certain lenders after filing bankruptcy. Many credit card companies and car dealers do not view bankruptcy as an impediment to obtaining future credit. Your interest rates may be higher, but credit may become available to you in the near future, depending on your income, assets, and debt ratio.

Filing bankruptcy will most likely negatively affect your credit score. If you are attempting to improve your credit score by filing bankruptcy, or if you are using bankruptcy as a technique to improve your credit score, you are doing so at your own risk. Factors that affect your credit score are numerous and complex, and the undersigned has no specialized knowledge or training for determining which techniques will improve that score, other than remaining current on all monthly obligations. The undersigned attorney is not taking any steps, or making any recommendations with an eye toward improving your credit score. All legal advice and decisions are made with an eye toward maximizing the potency of your bankruptcy proceedings in the form of discharging the most possible debt, and protecting as many exempt assets as possible. This includes advice on whether to sign and file reaffirmation agreements, the legal advice of which is based on issues other than improvement of credit score. (It is presumed that reaffirmation agreements are not in your best interest, and if your creditors do not prepare and send you a reaffirmation agreement after receiving notice of your bankruptcy, then it is presumed that they are not requiring one of you). The undersigned presumes, and represents to all clients, that such action will impair your credit score now, and in the future. The undersigned makes no representations as to how long it will be until your credit score begins to improve. If client's primary goal is to improve his or her credit score, the undersigned advises client to avoid filing bankruptcy, as this process will most assuredly negatively impact your credit score. It has been the experience of many clients that their credit score improves faster by filing bankruptcy as opposed to not filing bankruptcy, but this is not a guarantee. The undersigned will never advise a client to sign a reaffirmation agreement for the purpose of improving one's credit score, even though it may be possible that such action could improve your score. The decision whether to, or whether not to sign a reaffirmation agreement will be made based on issues unrelated to your credit score, and the legal advice given will be done so with complete disregard for whether your credit score will improve or not, simply because the undersigned attorney has no specialized knowledge or proof that a credit score is positively or negatively affected by the signing, or not signing of a reaffirmation agreement.

8. Tax Refunds

You may be able to protect some of your tax refund (less than \$1,000.00 of your combined State and Federal refund less accrued wages at the time of filing, and \$2,000 for joint debtors), but failing to turn over your refund to the Trustee may result in your case being dismissed. SEND ALL REFUNDS (even exempt funds) to my attention, and I will disburse it back to you. If you usually receive more than \$1,000.00 in tax refunds, you may want to consider changing your W-4 before filing, or waiting to file until after you have received and spent your refund.

9. Will my Bankruptcy be reported in the newspaper?

Whether your bankruptcy filing will be reported in a newspaper is up to the newspaper. Bankruptcy is a public filing, and your Petition will be a public record. Anyone can access it for a fee, but hardly anyone ever does (other than creditors and the bankruptcy Trustee). Some newspapers make a practice of obtaining this information and publishing the names of people who have filed bankruptcy. Some do this on a monthly basis, others on a quarterly basis, and often

times the news agencies do not catch all of the names of people who have filed. It is very likely that your name will be published by a newspaper, but it is not a guarantee.

10. How should I handle telephone calls from creditors until I file bankruptcy?

Use caller ID and turn off your answering machine. Answer calls only from those phone numbers you recognize. Turn off your ringer if you must and check caller ID periodically to determine who to call back. You pay a lot of money for your phone service. It is your tool, not your creditors' tool. Use it that way. You have no duty to talk to your creditors or to answer their calls or letters, so don't.

### **Bankruptcy: an Important Decision**

Whether or not to file for bankruptcy is an important decision. Bankruptcy can offer you a fresh start if you find yourself overwhelmed by debt. This can happen for legitimate, and sometimes foreseeable, reasons. For example, people can become financially overextended because of losing a job or having a medical problem.

But bankruptcy has many possible consequences for your property assets, for your future ability to get credit, and for the people to whom you owe money. You should discuss all your options with your lawyer before deciding on a course of action.

### **The Bankruptcy Laws**

In the United States, the main laws covering bankruptcy are federal laws, so they apply in all 50 states. A special federal bankruptcy court system has been set up to administer these laws.

However, each state has its own bankruptcy laws, too. In some cases, there are even local bankruptcy rules. And judges may have some differences from district to district. The result is that bankruptcy can be a complex legal matter.

All together, the law provides five different forms of bankruptcy. Most likely, though, only two of these will apply to your situation: **Chapter 7** and **Chapter 13**. "Chapter" refers to where in the Federal Bankruptcy Code the law can be found.

Before considering the differences between Chapter 7 and Chapter 13, let's look at what they have in common.

## **THE BASICS OF BANKRUPTCY**

### **Procedures**

Like most legal matters, bankruptcy involves a variety of forms, procedures, requirements and paperwork. This is all standard and must be followed. It assures that the laws are obeyed, and that the rights of your creditors, that is, all the people you owe money to, are protected.

You need to know that failure to follow the rules or to give complete and honest information throughout the process may cause your case to be dismissed. This could endanger your right to file bankruptcy, could cause delays, and could end up costing you more money.

### **Discharge of Debts**

Getting relief from the burden of your debts by having them canceled is one of the most important benefits of bankruptcy. When a debt is canceled so you don't owe it anymore, this is called a **discharge**. Will ALL of your debts be discharged? This depends on several factors.

There are certain debts that are generally NOT discharged. These include taxes, school loans, child support, maintenance, and traffic fines. But there are some rare exceptions in these cases. Also, there are certain debts that are dischargeable in Chapter 13 but not in Chapter 7.

The discharge of debts is a complex issue, so you need to be careful here. Your attorney will be able to advise you about your own particular situation.

### **Secured v. Unsecured**

Your debts fall into two major categories, which are treated differently in bankruptcy.

One type of debt is called **secured debt**. It's called "secured" because it's backed up by some property. If you took out a loan from a bank or other financial institution to buy a house, motorcycle, trailer, boat, truck or car, etc., it's probably a secured debt. Before the lender gave you the loan, you had to sign documents that gave the lender a "security interest" in your property, that is, you gave the lender some rights to the house, motorcycle, etc. that you were buying with the loan. These documents guarantee that you'll repay the full loan amount plus interest. They also prohibit you from selling the property without repaying the debt.

In general, after bankruptcy the lender's security interest (lien/mortgage) in your property still remains.

The second type of debt is called **unsecured debt**. Such debts are usually for consumer goods and services, such as what you owe to local stores, credit cards, medical bills and utilities. These debts are often discharged in bankruptcy.

## **CHAPTER 7 BANKRUPTCY**

A Chapter 7 bankruptcy is commonly known as a **straight** or **liquidation** bankruptcy. Its goal is to relieve you of indebtedness.

### **Trustee**

An individual known as a **trustee** is appointed to oversee your bankruptcy. The trustee is usually either a local attorney or a federal employee.

The trustee in a Chapter 7 bankruptcy must make sure all the procedures are being followed according to the law. He or she also reviews the information in all the documents you filed with the court.

### **Will Property Be Liquidated?**

In a sense, the trustee takes possession of any of your non-exempt property or assets, and may liquidate it to raise money. This money is then used to pay certain creditors who are eligible under the law.

Does that mean you'll lose everything in this process? Not at all. In most cases, you'll lose little, if any, of your property or assets. That's because most of your property is either secured or exempt, so little, or sometimes nothing, may be left to pay your creditors.

### **How Long Does It Take?**

The entire Chapter 7 bankruptcy procedure generally takes about four months. In the end, it results in the cancellation of many of the debts you owe. Free from harassment by your creditors, you get a fresh start.

You can only file a Chapter 7 bankruptcy once every eight years.

## **CHAPTER 13 BANKRUPTCY**

A Chapter 13 bankruptcy is also known as a **wage earner's** or **repayment** bankruptcy. Just as its name implies, it provides a way to repay all, or at least some, of the money you owe to your creditors from the income or wages you earn. Some think of it as sort of a debt consolidation.

### **Developing a Repayment Plan**

In a Chapter 13, you develop a repayment plan with the help of your attorney, and submit it to the court within 15 days after you file for bankruptcy. Your plan lets you pay back the money you owe at a rate that you can afford. This repayment plan usually takes three to five years.

You prepare a budget showing all your necessary living expenses, including your house payments. These types of expenses are paid before any payments are made to the plan for your creditors.

### **How Much of Your Debt Do You Pay?**

It's common in a repayment plan to pay less than the full amount you owe, and still receive a discharge of the full amount at the end of the plan. But that's only if you've met all of the requirements of your plan.

The money that you pay to your plan goes to a court appointed bankruptcy trustee, who distributes the money to your creditors according to the terms of the plan.

### **Property Exemptions**

Similar to a Chapter 7 bankruptcy, in a Chapter 13 you're allowed to claim or declare **exemptions**. That is, certain property of yours is exempt from your creditors, although the effect of the exemptions on your property may be different in a Chapter 13 than in a Chapter 7. Your attorney can advise you based on your specific situation.

### **Your Section 341 Hearing**

Also like a Chapter 7, you'll have to prepare a lot of the necessary paperwork and attend a Section 341 hearing. At this meeting, the bankruptcy trustee will review your proposed plan. You may be asked questions so the trustee can determine if your plan is really your best good faith effort. This is, are you paying your creditors as much as you can afford?

If the trustee believes that your plan meets all the necessary requirements, he or she will recommend that the bankruptcy court accept or confirm your plan.

### **Automatic Stay**

Again, as in a Chapter 7, a Chapter 13 gives you an automatic stay that stops any of your creditors from suing you, garnishing your wages and harassing you in any manner. In both Chapters 7 and 13, the automatic stay is not unlimited.

You can file a Chapter 13 more often than once every eight years.

## **CHAPTER 7 OR CHAPTER 13?**

How do you decide whether a Chapter 7 or a Chapter 13 is best for you? The answer to this can only come through the consultation and advice of someone like an attorney, who has studied and understands the bankruptcy laws, knows the rules, and also fully understands your situation.

## **Provide All Necessary Information**

Before your attorney can give you advice, you'll have to provide complete information, such as employment information, including the wages you and your spouse earn; a list of all creditors with their addresses, the amount you owe, your schedule of payments, and any collateral or papers you signed for the debt. **(You also need to list money you owe and intend to pay back, even if it's to a relative.)** Also, a list and description of all your property and assets, including boats, automobiles, furniture, jewelry, checking and savings accounts; a legal description of all real estate; and a list of your monthly expenses including mortgage or rent, food, transportation, utilities, child support, income tax returns, real estate tax, and other regular expenses.

Be forthright and open with your attorney. Complete information is essential, so don't hold back information because you think it may not be important. Let your attorney decide if the information is important. Otherwise he or she won't be able to do an effective job of representing your interest. Only by reviewing all the information you provide will your attorney be able to fully understand your particular situation and your determination or ability to repay debts. Only then can he or she advise whether you should declare bankruptcy, and if so, which kind to file?

## **Paperwork**

If the decision is made to file for bankruptcy, the bankruptcy court requires a lot of necessary forms and paperwork to be filled out and submitted; these include a petition that requests that the court accept your case, a statement of affairs that answers pertinent questions about you, a list of all of your assets, debts, income and expenses, plus certain other forms required by the local rules of your bankruptcy court. Your attorney prepares these from the information you provided.

## **Does Your Spouse File?**

If you're married, you and your spouse may be filing a joint petition, or in some cases your spouse may not file. Again, your attorney can help advise you whether you should file together or separately.

## **ADDITIONAL INFORMATION**

### **Can You Ever Borrow Again?**

Naturally, many people wonder if they'll ever be able to get credit again after filing for bankruptcy. That depends on a lot of factors. The bankruptcy may be on your credit record for up to 10 years. Many lenders still appear to be willing to grant credit, although they may look at why you went bankrupt to make sure you've corrected the situation that led to your bankruptcy. Getting credit cards depends on the company's policy. It might be difficult or expensive to be issued credit cards.

### **Co-Signers**

Co-signers of any of your debts are treated differently in Chapter 7s and 13s. To some, this is a very important issue. Generally, in a Chapter 7 liquidation bankruptcy creditors can pursue co-signers of your loans if you default, but in a Chapter 13, your co-signers have more protection if you follow your plan.

## **GLOSSARY**

**Attachment**--Process of seizing a debtor's property in order to secure the debt or claim of a creditor in the event that a judgment is taken against a debtor.

**Bankruptcy**--A condition where a debtor cannot pay debts now or as they come due and uses the protection of the law to either liquidate property or reorganize his or her financial affairs.

**Bankruptcy Code**--Federal law which governs bankruptcy proceedings.

**Bankruptcy court**--Special courts under federal law which deal exclusively with administering bankruptcy proceedings, presided over by a bankruptcy judge.

**Bankruptcy estate**--The property of a debtor which comes under the jurisdiction of the bankruptcy court and trustee when a person files for protection under the Bankruptcy Code.

**Bankruptcy trustee**--A person appointed by the Bankruptcy Court to take charge of the bankruptcy estate and handle any actions on behalf of the estate.

**Creditor**--One who is owed money or some other thing by obligation or promise.

**Debtor**--One who owes a debt.

**Default**--A failure to perform an obligation imposed by law or contract.

**Deficiency**--The unpaid balance of a debt on which there is a security agreement, where the sale of the secured property has failed to pay the full amount of the debt owed.

**Discharge**--The cancellation of an obligation.

**Eviction**--The action of depriving a person of the possession of land or rental property which the person has held or leased.

**Execution**--The legal process of enforcing a judgment. A money judgment is usually executed by seizing and selling property of the debtor.

**Exemption**--A privilege allowed by law to a judgment debtor that he or she may hold certain property from all liability to being seized or sold on execution or by any other court order.

**Foreclosure**--A process by which a creditor with a mortgage can force a debtor to give up his or her interest in the property because of default. The creditor can then have the property sold to satisfy the debt. Also may be referred to as foreclosure by sale, or performance foreclosure.

**Garnishment**--A process under law where a debtor's property, money or credits under another party's control are applied as payment of a debt to a creditor.

**Homestead**--A building which can be used for a home and an amount of land at least one-quarter acre, if available, and not exceeding 40 acres (outside city limits) and ½ acre inside city limits.

**Judgment**--A determination of law as the result of an action in court as to whether a legal duty or liability does or does not exist.

**Judgment creditor**--A person who has obtained a money judgment in court and can now enforce the judgment by execution.

**Judgment debtor**--A person who has a money judgment taken against him or her which has not been satisfied.

**Judgment lien**--A lien which can be filed by a judgment creditor against real property of a judgment debtor in order to satisfy the judgment.

**Lien**--An interest in collateral which provides that the collateral may be taken and sold in order to pay a debt if a debtor defaults. See also security interest.

**Mortgage**--A lien on real property.

**Personal property**--Movable property.

**Purchase money security interest**--A lien which is created when a debtor uses money loaned by a creditor to make a purchase and gives the creditor a lien on the property purchased with the creditor's money.

**Real property**--Land, real estate.

**Redemption**--The right of a debtor to regain title to property under a foreclosure judgment by paying the judgment or fulfilling other conditions.

**Replevin**--An action to recover personal property by a party with a lien or security interest on the property.

**Secured debt**--A debt subject to a security interest.

**Secured party**--A creditor, seller or other person who holds a security interest in the property of a debtor.

**Security agreement**--A written document which creates or provides for a security interest.

**Security interest**--An interest in collateral which provides that the collateral may be taken and sold in order to satisfy a debt if a debtor defaults. See also lien.

**Unsecured debt**--Debt not subject to a security interest

**Unsecured party**--A creditor, seller or other person who is owed a debt without having obtained a security interest through a security agreement on property of the debtor.