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We are a debt relief agency. We help people file for bankruptcy relief under the bankruptcy laws.

BANKRUPTCY QUESTIONS AND ANSWERS

NOTICE: This handout contains questions that we are frequently asked about bankruptcy and generalized answers. These answers are for information purposes only and they are not intended to serve as legal advice on how to deal with your specific situation. You should consult with us about your situation before taking any action based upon the answers.

GENERAL QUESTIONS

When should I consider filing bankruptcy?

You should consider filing bankruptcy if no other alternatives will solve your financial problems. Filing bankruptcy should be considered if other alternatives such as refinancing of your debts are not feasible or if credit counseling doesn't work for you. Bankruptcy should also be considered to stop repossession of property, foreclosure on your home, garnishment of your wages, shutoff of your utilities, or other actions taken by your creditors.

You should only file Bankruptcy if it will give you a fresh financial start. Bankruptcy will not do away with the causes of the financial problems which led you to consider it. You will still have to deal with the causes of your financial problems. If a significant portion of your total debt cannot be "discharged" in bankruptcy, then you may not have a very fresh financial start. If your financial problems are caused by factors such as inadequate medical insurance, poor spending habits, chronic

unemployment in your line of work, gambling, low-income jobs, or inadequate child support you will need to address these problems so that you will not get back in the same situation.

What types of bankruptcy cases can I choose from?

Bankruptcy cases can be filed under several different chapters of the Bankruptcy Code. The most commonly used chapters are 7 (liquidation), 11 (business reorganization), 12 (farm reorganization), and 13 (reorganization for individuals with regular income). Consumer debtors generally file under either Chapter 7 or Chapter 13.

Will filing a bankruptcy case stop collection actions by creditors?

The “automatic stay” or injunction from the bankruptcy court to stop collection actions which goes into effect as soon as a bankruptcy case is filed will stop or prevent legal actions such as wage garnishment, attachment of property including bank accounts, repossession of secured property, or utility shutoffs. Under certain circumstances, creditors can get an order from the bankruptcy judge lifting the “automatic stay” and there are limitations on stay to repeat bankruptcy filers.

Is it possible to file a bankruptcy case on an emergency basis to stop collection actions?

A bankruptcy case can be filed in order to take advantage of the automatic stay by filing a skeleton set of papers followed by filing the rest of the papers within 15 days.

How does filing bankruptcy affect a person's credit rating?

A bankruptcy filing can be on a person's credit rating for up to ten years. On the other hand, bankruptcy will take other matters off one's credit rating.

Are the names of persons who file bankruptcy published?

When a bankruptcy case is filed, it becomes a public record and the name of a debtor may be reported by some credit-reporting agencies. Newspapers may report or publish the names of persons filing bankruptcy.

Are employers notified of bankruptcy cases?

Employers are not usually notified when a bankruptcy case is filed.

Does a person lose any legal or civil rights by filing a bankruptcy case?

No. Filing bankruptcy is not a criminal proceeding and a person does not lose any civil or constitutional rights by filing.

How are creditors classified for bankruptcy purposes?

The separate classes of debts for bankruptcy purposes are priority, secured, and nonpriority unsecured. Each class is listed on a separate schedule in the bankruptcy papers.

What is the difference between priority, secured, or nonpriority, unsecured creditors in bankruptcy and why are these categories significant?

priority creditors have priority in the payment of any funds available to be distributed to creditors. They are to be paid in full within an order of priority before any other creditors get paid anything. Secured creditors have a “security interest” in a debtor’s property which usually survives bankruptcy. Any creditors who do not fall into a priority category or secured fall into the other category.

What kinds of debts are priority debts?

The priority debts which generally arise in personal bankruptcy cases are either recent taxes or unpaid child support or alimony. These particular debts are also on the list of exceptions to discharge.

What is a secured creditor?

A secured creditor is a creditor who has the right to repossess or foreclose on any of your property, real or personal. The secured creditor may then sell that property and apply the proceeds from the sale of that property towards the debt you owe. Unless the secured property is in the hands of secured creditor like a pawn shop, generally a written agreement signed by you or a prior owner of the property is required for a security interest to exist.

What is a secured claim for bankruptcy purposes ?

A secured claim is the value of the property subject to the security interest of the creditor in question. If the secured claim is less than the amount owed to the creditor, the difference can become an unsecured claim. For example, a creditor with a security interest in a \$1500 automobile cannot have a secured claim for more than \$1500, regardless of how much is owed to the creditor.

What about the creditors who are unsecured?

Unsecured creditors do not have any collateral securing the debt in question. Examples of unsecured creditors are medical providers, utilities, and most credit card holders.

What should the debtor do if he or she moves before his or her bankruptcy case is closed?

The debtor should immediately notify the bankruptcy court in writing of the new address. Because most communications between a debtor and the bankruptcy court are by mail, it is important that the bankruptcy court always have the debtor's current address. Otherwise, the debtor may fail to receive important notices and the case may be dismissed.

How is a debtor notified when his or her discharge has been granted?

The court sends out a notice to the debtor and all creditors. This form is a copy of the court order discharging the debtor from his or her dischargeable debts and it serves as notice that the debtor's discharge has been granted. In a Chapter 7 case it is generally mailed after the 60 days deadline from the meeting of creditors for the filing of complaints by creditors objecting to the discharge of certain debts has passed. In a Chapter 13 case it is sent out after all payments required under the plan have been made and the bankruptcy trustee handling the case has filed a final report showing where the payments went.

What should a person do if a creditor later attempts to collect a debt that was discharged in bankruptcy?

When a bankruptcy discharge is granted, the court enters an order prohibiting the debtor's creditors from later attempting to collect any discharged debt from the debtor. Any creditor who violates this court order may be held in contempt of court and may be liable to the debtor in damages. If a creditor later attempts to collect a

discharged debt from the debtor, the debtor should give the creditor a copy of the order of discharge and inform the creditor in writing that the debt has been discharged. If the creditor persists, the debtor should contact an attorney. If a creditor files a lawsuit against a debtor on a discharged debt it is important not to ignore the matter because the bankruptcy discharge will have to be raised as a defense in the creditor's lawsuit. Even though a judgment entered against the debtor on a discharged debt may later be voided voiding the judgment may require the services of an attorney, which could be costly to the debtor.

Does a bankruptcy discharge affect the liability of cosigners and other parties who may be liable to a creditor on a discharged debt?

A bankruptcy discharge releases only the debtor (debtors in the case of husband and wife). The liability of any other party obligated to pay a debt is not affected by a discharge.

What about bills that I owe that come up after I file bankruptcy?

A bankruptcy discharge will only discharge those debts you owe on the date you file bankruptcy. You are responsible for any expenses or debts that arise after you file for bankruptcy.

If I decide to file bankruptcy what bills should I continue to pay?

If you decide to file for bankruptcy you should keep the following obligations current:

1. Your rent or house payment if you wish to continue living at the premises throughout your bankruptcy proceedings;
2. All secured obligations in which you wish to keep the collateral and repay the debt pursuant to the agreement between the creditor and yourself;
3. All debts related to recent purchases;
4. Your utilities. If your utilities are not current or not current shortly after you have filed for bankruptcy you may have to put up a security deposit to all utility companies in order to continue to receive services. These deposits are to be made to these utility companies within twenty days of filing for bankruptcy. If you fail to make these deposits the utility companies have the

right to terminate their services to you. Moreover utility companies are not required to provide you with any services after the twenty days has expired unless a reasonable security deposit is filed;

5. Non-dischargeable debts which you will not be discharged;
6. Student loans.

Do I have to list all of my creditors on my bankruptcy papers?

If you decide to file for bankruptcy you are required by the bankruptcy laws to list every creditor which you are indebted to or may be indebted to. Your failure to list a creditor on a bankruptcy petition causes that creditor's debt nondischargeable in the bankruptcy. However, you may be able to amend your bankruptcy petition to include creditors which you have omitted.

What can happen if I fail to list all of my creditors and all of my property on my bankruptcy papers?

If you do file for bankruptcy you must disclose all of your assets and liabilities. Your failure to do so may result in criminal penalties. In addition your bankruptcy proceedings may be dismissed due to such criminal acts.

What should I do about secured creditors who try to repossess property before the bankruptcy is filed?

If any of your secured creditors contact you or seeks the return of their collateral before you have filed for bankruptcy you are under no obligation to return or surrender this collateral. If a creditor seeks its collateral that is in your home or yard and you wish to retain it, you may do not have to allow the creditor on your property to attempt to repossess the collateral. If the creditor threatens to call the Sheriff or have the Sheriff repossess the collateral simply tell the creditor that the Sheriff cannot do so unless he has an order from the court. If a creditor has repossessed property before you have filed for bankruptcy we may not be able to restore this collateral to our possession unless you make up the back payments.

What are the kinds of assets that I must list on my bankruptcy papers?

All assets, real and personal must be list on your bankruptcy papers. Real property includes not only the land upon which your house is located but any other land in which you have a legal interest. This includes an inherited fractional share

in real estate whether surface rights, mineral rights or both. Property being purchased or sold under a contract for deed must be listed also with the nature of your interest described in the papers. All personal property including household goods, vehicles, etc. must be listed regardless if it is security for a debt. The possible right to sue someone for a debt or a personal injury must also be listed. An expectation of an inheritance from someone who has died but whose estate has not be distributed must also be listed.

How do I put values on my assets?

The general rule is that assets must be valued at “fair market value.” This value is measured by what the asset in question could be sold be for in an open market. On one hand, it is not the purchase price of the asset. On the other hand, it is not liquidation value. Values of motor vehicles and the like can be determined using standard references for value. The value of household goods may be determined by using the donation value for income tax purposes. An exception to this general rule is the valuation of personal property securing a debt. This property must be valued at replacement value which is defined as the price a retail seller could get for the property, considering its age and condition.

How are the creditors notified that I am filing bankruptcy?

After I have filed your bankruptcy petition the Clerk of the Bankruptcy Court will notify all of your creditors using the addresses you have supplied to us. This normally happens within a week or two after the filing of the petition. Therefore don't be alarmed if some of your creditors contact you after you have filed for bankruptcy.

What if I continue to get bills for debts listed in my bankruptcy after it has been filed?

Although collection actions must stop when a bankruptcy case is filed, regular bills may simply be disregarded. However, threats of legal action should be responded to and brought to the attention of the bankruptcy judge, if necessary.

What if I hear from a creditor I forgot to list in my bankruptcy papers or from a collection agency or attorney contacting me on behalf of a creditor I have listed?

Your bankruptcy papers can amended to include the creditor, collection agency, or attorney even after the case is closed although the case will have to be reopened if it has been closed.

Can bankruptcy take liens off my property?

We may be able to avoid or remove some of the liens or security interests in certain of your property you have given your creditors. You can remove security interests in your household goods or tools of your trade if you did not borrow the money to buy the property and the property is not in possession of the creditor (like in the case of a pawn shop). In order to take advantage of this provision of the bankruptcy law, it is necessary to file a motion with the bankruptcy court and to allow an opportunity for the creditor to respond. Judgment liens on your property related to dischargeable debts can also be removed as a result of a bankruptcy discharge. No additional action is required while the bankruptcy is pending.

What sort of steps should I take about credit cards charge accounts and after I decide to file bankruptcy?

So you don't find yourself in this position again and to also avoid any possible non-dischargeability proceedings you should destroy any credit cards or charge cards you might have in your possession and stay strictly on a cash basis after you have decided to file a bankruptcy case.

Can I sell or transfer any of my property before I file bankruptcy?

Selling for fair market value is not usually a problem but you should not transfer valuable property to friends or relatives without compensation or in payments of debts you owe them for at least a year before you file your bankruptcy case. The bankruptcy trustee may be able to back a year or more to take this property from the party you transferred it to and use it to pay your creditors.

What if my wages are garnished before I file bankruptcy?

Not only will the filing of bankruptcy stop a garnishment but the party getting the money from your paycheck will have to turn back any money taken within 90 days of the filing of your case if the total amount taken in that time period is more than \$600. If you can claim the amount taken as exempt you will get it back. Otherwise, the bankruptcy trustee gets it for distribution among the creditors.

Is consumer credit counseling required I file my bankruptcy case?

All debtors, subject to limited exceptions, must receive a credit counseling briefing within 180 days of filing a bankruptcy case. The briefing must be done by a provider approved by the U.S. Trustee's office. A list of approved providers is available at that

agency's website (www.usdoj.gov/ust). Copies of a certificate of completion of the briefing and of any debt repayment plan developed during the briefing must be filed with the bankruptcy court with the filing of the bankruptcy case.

CHAPTER 7 BANKRUPTCY

What is a Chapter 7 bankruptcy case?

In a chapter 7 case, you must turn over any of your property that you can't claim as exempt over to a bankruptcy trustee. The trustee then converts this property to cash which is payed out to the creditors less the trustee's fees and costs. In return you receive a chapter 7 discharge.

If I do go through bankruptcy under Chapter 7 can I keep my house, car, household items, and other things?

With a Chapter 7 bankruptcy filing, you are entitled to retain all or some of your property depending on the kind of property, its value, and whether it is security for a debt. What you can keep is largely governed by the applicable exemption laws.

In a bankruptcy filed in North Dakota, you are allowed to exempt the same property from disposal by a bankruptcy trustee on behalf of your creditors as a judgment debtor in this state can claim as exempt from creditor trying to collect a judgment from you. When you file bankruptcy it is like all of your creditors are put into one big judgment and the bankruptcy trustee will then try to collect this judgment from you.

Most persons filing bankruptcy are able to claim all of their property as exempt. The exemptions most important to consumer debtors in North Dakota are as follows:

1. all family clothing;
2. a mobile home used by the debtor as a residence, regardless of value;
3. the house lived in by the debtor and the land on which it is located up to an equity value of \$80,000.00 as a "homestead";
4. Personal property (property other than land) up to a value of \$5,000.00 claimed by a head of household (including a married person or anyone supporting children or parents). A single person unable to claim head of household status is limited to claiming \$2,500.00 worth of property;

5. If a homestead is not claimed, any other property up to \$7,500.00 in value can be claimed;
6. the value of a motor vehicle up to \$1,200.00 (vehicles can also be exempted under the general exemptions described above);
7. pensions, annuities, life insurance, IRAs, 401Ks, and other kinds of pension funds of up to \$100,000 each up to a \$200,000 total amount;
8. the right to collect certain personal injury settlements up to \$7,500.00, social security benefits, and veterans' benefits.

What happens in a chapter 7 case if I claim all my property as exempt?

If you claim all of your property as exempt, a notice will appear on the notice of your case sent to creditors advising them that there appears to be no assets from which to pay creditors that it is not necessary for them to file any claims, and that if assets are later discovered they will then be given an opportunity to file claims. Unless the chapter 7 trustee files a timely objection to any of your exemption and the bankruptcy judge is persuaded that the trustee's objection is correct, you will keep all of your property. In most Chapter 7 cases filed by individuals, the debtors claim all of their property as exempt and there are no assets available to pay the claims of creditors and the creditors get nothing.

What is a Chapter 7 discharge?

It is a court order releasing a debtor or debtors from having to pay all debts you owed at the time you filed your case except debts falling within a list of exceptions to discharge. If a creditor later sues you for a debt not excepted from discharge, you will have a complete legal defense to the legal action.

What kinds of debts are excepted from a Chapter 7 discharge?

The following kinds of debts are the most important exceptions to discharge in Chapter 7 cases filed by consumers:

1. Those debts that you do not list in your papers with the correct name and address of the creditor or of a collection agent attempting to collect the debt. However, such debts can be added to your case by amendment, even after the case has been closed;
2. Those debts that you agree to pay after you have filed bankruptcy

through a reaffirmation agreement filed with the court;

3. Those debts you incur after you have decided to file a bankruptcy petition provided the affected creditor proves that is the case;
4. Income taxes that are less than three years old from the date the returns was due or the actual of the filing of the return, whichever is later, along with debts incurred (usually credit cards) to pay off these taxes;
5. Real property taxes that are less than one year past due since the last possible date those taxes could have been paid without penalties or if the taxing authority has filed a tax lien on the property along with other debts incurred to pay off these taxes;
6. Debts incurred by fraud, false representations, false pretenses, or the use of a false financial statement, including debts related to the excess use of credit cards shortly before you file bankruptcy. If you purchase "luxury goods and services" within 90 days of filing the case totaling more than \$500 (the current amount subject to future adjustment for inflation) on any one credit card, or cash advances on credit cards within 70 days of filing and totaling over \$750. Charges of this sort are presumed to be fraudulent. In order to take advantage of this exception, the credit card issuer will have to file a complaint within your bankruptcy case within a time limit set by the bankruptcy court;
7. Debts for past, present, or future alimony or child support including attorneys fees ordered to be paid;
8. Any obligations like property settlements and including the obligation to pay certain debts ordered in a divorce or legal separation judgment;
9. Debts arising from a willful injury to another person and judgments resulting from the operation of a motor vehicle while legally intoxicated.
10. Fines, penalties, or forfeitures, including those related to insufficient funds checks, and;
11. Education loans unless you can prove "undue hardship" is a legal action brought by you as a part of your bankruptcy case
12. Loans made against the balance in a 401k plan and certain other types of retirement plans.

This list doesn't include all of the possible exceptions. Everybody's situation is different so you should discuss every possible exception with your attorney.

Does a creditor have to take some action during bankruptcy case to take advantage of one of the exceptions to the discharge of debts?

In the case of most of the exceptions to discharge, a creditor can wait until after the bankruptcy is over to bring some other legal action in which it can be decided whether the debt in question has been discharged. However, there are a few exceptions in which the affected creditors need to file a timely complaints while the bankruptcy case and get a determination that the debt in question is not discharged in order to take advantage of the applicable exception.

What persons are not eligible for a Chapter 7 discharge?

All persons not eligible for a Chapter 7 discharge include the following:

- (a) Persons who have been granted a discharge in a Chapter 7 or Chapter 13 case filed within the last eight years.
- (b) Persons who conceal transfer or destroy their property with the intent to defraud their creditors or the trustee in the Chapter 7 case.
- (c) Persons who conceal destroy or falsify records of their financial condition or business transactions.
- (d) Persons who make false statements or claims in their Chapter 7 case or who withhold recorded information from the trustee.
- (e) Persons who fail to satisfactorily explain any loss or deficiency of their assets.
- (f) Persons who refuse to answer questions or obey orders of the bankruptcy court either in their case or in the case of a relative business associate or corporation including not appearing for the meeting of creditors set their case.

Who may file a Chapter 7 case?

Any person, including a legal person like a corporation, who resides in who does business in or who has property in the United States may file under Chapter 7 except a person who has been involved in another bankruptcy case that was dismissed within the last 180 days on certain grounds.

Who should not file under Chapter 7?

A person who is not eligible for a Chapter 7 discharge should not file under Chapter 7. Also a person who has substantial debts that are not dischargeable under Chapter 7 should not file under Chapter 7.

Does my income affect my ability to successfully pursue a Chapter 7 bankruptcy?

Under the bankruptcy code, persons with higher incomes can be found to have abused Chapter 7 and their cases can be dismissed unless they change their case to a Chapter 13 case. Persons whose debts are primarily consumer debts and who has sufficient disposable income after paying necessary personal living expenses for their family to make a Chapter 13 case feasible, whether or not measured by the “means test” or not, are affected by this provision.

How does the “means test” work?

The “means test” determines whether there is presumption of abuse of Chapter 7 based upon debtors’ ability to repay debts. In order for the “means test” to apply, the person or married couple must have “current monthly income”, determined by looking at all income going to pay the expenses of the household in question in the six months before the bankruptcy case is filed which, if converted to an annual figure, exceeds the median income of a household of the same size in the household’s home state. If the household income is above the median income, a complex calculation is required to be done based largely upon the Internal Revenue Service’s Standards for the debtor’s location and household size for housing, transportation food, clothing, housekeeping supplies, personal care, and miscellaneous expenses. Certain other documented expenses are also allowed like child care, child support, medical expenses, taxes, and other mandatory wage deductions are also allowed. In addition, payments for priority and secured debts are deducted from the debtor’s income. If the remaining disposable income exceeds a set amount, a presumption of abuse arises. Debtors will have to show “special circumstances” in order to rebut this presumption and avoid the dismissal of their cases.

If I pass the “means test”, will I be safe from having my case dismissed for abusing Chapter 7?

Not necessarily, it may be possible that the bankruptcy judge could determine that a debtor has abused Chapter 7 based upon a review of his or her income and necessary household expenses.

How do I deal with secured creditors in a chapter 7 bankruptcy?

In a Chapter 7 bankruptcy case, you are required to pick one of three options to deal with a secured creditor's claim. Option number one is to continue making payments to the secured creditor as if a bankruptcy case were never filed. A written agreement called a reaffirmation agreement reinstating the loan signed by you, your attorney, and the creditor and filed with the bankruptcy court is required to put this option in place. The reaffirmation agreement will have the effect of reinstating the original debt as if the bankruptcy had not occurred. In order to choose this option, you generally will have to be current with the loan or work out a way to catch up the payments. Option number two is to surrender the collateral to the secured creditor and discharge in bankruptcy any remaining obligation owing to that creditor. Option number three is to redeem the secured property by paying the property's replacement value to the secured creditor. Deciding which of these options is best for you requires considering how badly you need the secured item, your ability to catch up the payments, the value of the secured property relative to the debt it secures, and your overall financial situation. You are required to file a statement of what your intentions are about your secured debts with your bankruptcy papers and you must follow through with the option that you choose within the specific time frame.

How much is the Chapter 7 filing fee and when must it be paid?

The filing fee for a Chapter 7 case is currently \$338. If the debtor is unable to pay the filing fee when the case is filed it may be paid in installments with the final installment due within 120 days. The period of payment may later be extended to 180 days by the court if there is a valid reason for doing so. The entire filing fee must ultimately be paid however or the case will be dismissed and the debtor will not receive a discharge. The fee charged by the debtor's attorney for handling the Chapter 7 case is in addition to the filing fee and it cannot be paid before the filing fee is paid.

Where is a Chapter 7 case filed?

All bankruptcy cases are filed in the office of the clerk of the bankruptcy court in the federal court district where the debtor has resided or maintained a principal place of business for the greatest portion of the last 180 days. The bankruptcy court is a federal court and there is at least one district in each state. North Dakota has one district. In North Dakota the Bankruptcy Court is headquartered in Fargo and all cases must be filed there. Cases filed by attorneys are now filed electronically from the attorney's computer over the internet as soon as they are signed at any time of the day or night. This allows for the "automatic stay" to go into effect as soon as

your sign your papers.

May a husband and wife file jointly under Chapter 7?

Yes. A husband and wife may file a joint petition under Chapter 7 but they are not required to do so. If a joint petition is filed, only one set of forms is needed and only one filing fee is charged. A joint petition may be filed even if a divorce is in the process so long as the divorce has not been granted when the case is filed. On the other hand, a married couple need not file together. However, the non-filing spouse's income and expenses may be taken into account in determining whether the case should be dismissed for "substantial abuse."

When should both spouses file under Chapter 7?

Both husband and wife should file if they share substantial dischargeable debts because if only one spouse files under Chapter 7, the creditor may later attempt to collect the debt from the non-filing spouse.

Should I file a Chapter 7 case if I am expecting an inheritance or other large sum of money in the near future?

Not if you expect to get this money within 180 days after filing your case. Unless you can exempt the money you expect to receive it may become the property of the bankruptcy estate and it will be distributed to the creditors by the trustee.

What if a debtor wishes to repay a dischargeable debt in a chapter 7 case?

A debtor may repay as many dischargeable debts as desired after filing a bankruptcy case. By repaying one creditor, a debtor does not become legally obligated to repay any other creditor. The only dischargeable debt that a debtor is obligated to repay after filing Chapter 7 is one for which the debtor and creditor have entered into what is called a reaffirmation agreement. If the debtor was not represented by an attorney in negotiating the reaffirmation agreement with the creditor, the reaffirmation agreement must be approved by the court to be valid. If the debtor was represented by an attorney in negotiating the reaffirmation agreement, the attorney must file the agreement and a statement with the court in order for the agreement to be valid. If a dischargeable debt is not covered by a reaffirmation agreement, a debtor is not legally obligated to repay the debt, even if the debtor has made a payment on the debt since filing under Chapter 7, or has agreed in writing to repay the debt, or has waived the discharge of the debt.

How long does a Chapter 7 bankruptcy case take?

A chapter 7 begins with the filing of the case and ends with the closing of the case by the court. The case will generally be closed shortly after the debtor receives his or her discharge. The discharge will be granted after certain deadlines have passed. The main deadline is a 60 day limit from the date of the Meeting of Creditors for the filing of objections by creditors to the discharge of certain debts. The Meeting of Creditors are generally set for the same day or days of each month about a month after the filing of the case.

When must a debtor appear in court in a Chapter 7 case and what happens there?

You do not have to appear before the bankruptcy judge in a Chapter 7 case unless a contested matter arises which the must decide. However, you will have to appear for a “meeting of creditors” which is held a before a Chapter 7 Trustee. This is not a court hearing. However, you will be put under oath and questioned about your debts, assets, and other matters by the trustee. Creditors or their representatives may other appear to ask questions of you. Nothing is decided at the meeting of creditors but your presence is required. The trustee must also determine if the debtor understands the effect of any reaffirmation agreements. The trustee also has the duty to inform you of certain information which will be supplied to you to read in advance. The trustee will then verify that you have read and understood this information. You will be required to file a copy of the most recent tax return you have been required to file or a statement why you did not file a tax return for the most recent tax period before the meeting. You will also be required to supply copies of your pay stubs or other “payment advices” for the 60 days before your case was filed and a copies of bank statements showing the balances in all of your accounts as of the date of the filing of your case.

Is there a chance that if I file a chapter 7 bankruptcy case that it would not go through?

Chapter 7 bankruptcies are rarely dismissed for reasons other than the “abuse of Chapter 7” provisions described earlier. However, a chapter 7 case can be dismissed for reasons such as failure to appear when required (including at the Meeting of Creditors) and for fraud, concealing assets, etc.

How much do you charge for doing a Chapter 7 bankruptcy and what does that include?

We will file a Chapter 7 bankruptcy petition for most people for \$750.00 plus the filing fee, which is now \$274.00. We will have to receive at least \$200 before we can open a case and represent to the creditors that we are filing a bankruptcy for you. Our full fee and the filing fee will have to be paid before we file a case. In order to file an emergency case or to do rush job to prevent or stop garnishments, repossessions foreclosures, utility shutoffs or other actions which can be stopped by automatic stay, we charge \$850 plus the filing fee.

Our fee for filing your Chapter 7 bankruptcy petition will pay for the services generally required in such a case including preparing and filing of your bankruptcy petition and schedule, our attendance at the meeting of creditors and dealing with creditors including working out reaffirmation agreements with secured creditors.

We charge \$25.00 for each amendment we have to make after the bankruptcy is filed to add creditors that you forgot to put down on your questionnaire.

If you want to have the case reopened after a discharge is entered to add creditors, we will charge \$100 for doing so. An additional filing fee must also be paid.

If you request a change in the date of the Meeting of Creditors, we will charge you \$25.00, plus the cost of mailing notices, because of the time and costs involved. If the Trustee or U.S. Trustee orders you to produce certain documents, such as tax returns we charge .25 per page for copying.

Our fee would not cover defending you in any proceedings brought against you in Bankruptcy Court by any of your creditors seeking to have any of your debts determined to be non-dischargeable, defending any proceedings brought by anybody contesting your eligibility to file a bankruptcy petition, nor defending any proceedings brought by anybody seeking the dismissal of your bankruptcy petition, including a motion for dismissal for "substantive abuse" brought by the U.S. Trustee's office of the Court. Our fee also would not cover litigation or negotiations with the Internal Revenue Service, creditors holding non-dischargeable debts, nor any litigation connected with any other objections to your bankruptcy case. It does not include removing state court judgments or other liens under state law that were discharged. Time spent for this other work will be billed at a rate of \$125.00 per hour. However we will not begin billing any additional time until we have notified you in writing of such additional fee.

If need copies of your papers after the case has closed and we have still have copies in our file there is a \$50 retrieval fee.

If any of my creditors have judgments against me, do I have to do anything to get them off my record after the bankruptcy goes through?

North Dakota law provides that judgments of record can be removed by the filing a certified copy of the bankruptcy discharge with the clerk of court in which the judgment is recorded. If you desire to have judgments that are of record in North Dakota removed, you need to obtain a certified copy of your discharge from the clerk of the bankruptcy court. There is a fee for each certified copy. One certified copy has to filed with each clerk of district court in every county in which a judgment was entered against you in order to take all judgments off your record. You should do this right after your case is closed. If you don't do so, the judgments will continue to appear on your credit report.

Other states have their own procedures to remove judgments from after bankruptcy. You will need to consult an attorney licensed to practice in the state in question to find out the procedure.

CHAPTER 13 BANKRUPTCY

What is a chapter 13 bankruptcy case?

A chapter 13 case is a reorganization of debts for individuals. If you file a chapter 13 case, you have to have make payments equal to your disposable income to a bankruptcy trustee under a "plan" approved by the bankruptcy judge. The trustee will then make payments to those of your creditors who have filed a timely claim according to the plan. You will have make payments for three to five years unless all of the claims filed by your creditors are paid earlier. If you fail the "means test" described above in relation to Chapter 7, you plan will have to be for five years.

Is a chapter 13 discharge different from a chapter 7 bankruptcy?

There are two types of Chapter 13 discharges: (1) a successful plan discharge that is granted to a debtor who completes all payments called for in the plan and (2) an unsuccessful plan discharge that is granted to a debtor who is unable to complete the payments called for in the plan due to circumstances for which the debtor should not be held accountable. A successful plan discharge is broader and discharges a few more debts than either an unsuccessful plan discharge or Chapter 7 discharge.

Do I get to keep my property if I file a Chapter 13 bankruptcy case?

These same exemptions allowing you to keep certain property apply in a Chapter 13 bankruptcy as in a Chapter 7 case. However, if you have filed a Chapter 13 case and the value of your property is over the exemption limits, you will be able to keep all of your property if your creditors will get at least as much money under your chapter 13 plan as they would get if your nonexempt property was liquidated and the proceeds distributed among the creditors..

What is a Chapter 13 plan?

It is a written plan presented to the bankruptcy court by a debtor that states how much money or other property the debtor will pay to the Chapter 13 trustee over the time period covered by the plan. For debtors failing the “means test”, the amount of the payment must be at least the amount of “disposable income” found by it. The plan must run for at least thirty-six months unless all claims are paid off early. The maximum length is sixty months. This length is required if the debtor’s income and a spouse’s income exceeds the state median wage for their household. The order the debts will be paid must be stated in the plan. Generally priority debts must be paid first, then secured debts, and then non-priority unsecured debts. The plan must also provide whether any debts are to be paid “outside of the plan” by payments directly from the debtor (usually secured debts). All creditors are provided with a copy of the plan and given an opportunity to object to it. All of the debtor(s) “disposable income” must be committed to the payments under the plan during its duration. Disposable income is the difference between the debtor(s) income and the necessary expenses of the debtor(s) and their dependents. After the bankruptcy judge approves the plan it is binding on both the debtor and all of the affected creditors.

What is a Chapter 13 trustee?

A Chapter 13 trustee is an officer of the court appointed to collect payments from the debtor and make payments to creditors according to the debtor's plan and to administer the debtor's Chapter 13 until it is closed. The Chapter 13 trustee is also required to perform certain other duties and the debtor is required to cooperate with the Chapter 13 trustee.

What debts may be paid under a Chapter 13 plan?

Any debts whatsoever whether they are secured or unsecured. Even debts that are nondischargeable such as debts for alimony or child support may be paid under a Chapter 13 plan.

Why should I consider going the Chapter 13 route?

A Chapter 13 reorganization case would be more appropriate than a Chapter 7 bankruptcy in the following situations:

1. You prefer to repay your creditors;
2. Your disposable income prevents you from successfully filing a Chapter 7 bankruptcy petition (see discussion on substantial abuse above);
3. You want to catch up on payments on secured debts and keep the collateral securing the debt or you want to restructure a loan as to payments or interest rate or to “cramdown” the amount paid in full on the loan to the value of the secured claim.
4. You have a tax obligation or other priority debt you want to pay off through bankruptcy;
5. You wish to discharge debts that would be non-dischargeable in a chapter 7, but would be dischargeable in a chapter 13; or
6. You have non-exempt assets that you want to keep.

The drawbacks to a chapter 13 reorganization include the following:

1. You have to make all of the payments as called for under the plan in order to get a discharge. If you fail to make your payments, your case will be dismissed. If your case is dismissed, you are treated as if you never filed bankruptcy and your creditors are free to retrieve their collateral or garnish your wages;
2. Attorneys fees will be more because of the additional work involved;
3. The chapter 13 trustee will be paid a percentage out of your payments thereby reducing what the creditors will receive.

How much do you charge for a chapter 13 bankruptcy?

Our fee for a chapter 13 bankruptcy is \$1,250. The filing fee to paid in addition to our fees is currently \$189. We require \$750 of our fee plus the filing fee before we will file a chapter 13 bankruptcy. The remainder of the fee can be paid out the first

payments you make under the chapter 13 plan as an administrative fee.

Must all unsecured creditors be treated alike under a Chapter 13 plan?

No. If there is a reasonable basis for doing so, unsecured debts can be divided into separate classes and treated differently. It may be possible, therefore, to pay certain unsecured creditors in full, while paying little or nothing to others.

When must I begin making payments to the Chapter 13 trustee under my chapter 13 plan and how often must they be made?

You must begin making payments to the Chapter 13 trustee under your proposed plan within 30 days of the date of the filing of the plan even though the bankruptcy court has not approved it yet. The payments must be made according to the schedule set by the order approving your plan. This schedule can be set up to adjust to your income situation.

Is it necessary for all creditors to approve a chapter 13 plan?

No. To become effective, a Chapter 13 plan must only be approved by the bankruptcy court. The creditors may present objections to the plan to the court before it approves the plan.

How can secured creditors be dealt with under a Chapter 13 plan?

There are four methods of dealing with secured creditors under chapter 13:

- (1) the creditor may accept the proposed plan's proposal for paying off its secured claim measured by the value of the security rather than the amount of the debt if that amount is less;
- (2) the creditor may retain its lien and be paid the full amount of its original secured claim under the plan;
- (3) the creditor may receive its collateral and any remaining amount of its claim will be treated as a nonpriority, unsecured claim under the plan or;
- (4) the creditor may be paid or dealt with outside of the plan.

How are co-signed or guaranteed debts handled under Chapter 13?

If a co-signed or guaranteed consumer debt is being paid in full under a chapter 13 plan, the creditor may not collect the debt from the cosigner or guarantor. However, if a consumer debt is not being paid in full under the plan, the creditor may collect the unpaid portion of the debt from the cosigner or guarantor. However, creditors may collect business debts from cosigners or guarantors. The stay against collection actions to collect debts in a chapter 13 case also protects cosigners.

Who is eligible to file under Chapter 13?

Any natural person (no corporations) may file a case under chapter 13 if the person: (1) resides in does business in or owns property in the United States; (2) has a regular income (3) has unsecured debts of less than a certain amount which is adjusted upward from time to time; (4) has secured debts of less than a certain amount also adjusted periodically; (5) is not a stockbroker or commodity broker and (6) has not been a debtor in another bankruptcy case that was dismissed within the previous 180 days.

May a husband and wife file jointly under Chapter 13?

A husband and wife may file jointly under Chapter 13 if each of them meets the requirements listed in the answer to the preceding question, except that only one of them need have regular income and their combined debts must be within the limitations.

May a self-employed person file under Chapter 13?

Yes. A self-employed person meeting the eligibility requirements listed above may file a chapter 13 case. A debtor engaged in business may continue to do business throughout a chapter 13 case.

May a Chapter 7 be converted to a Chapter 13?

A pending Chapter 7 case may be converted to Chapter 13 at any time at the request of the debtor, if the case has not be previously converted to Chapter 7 from Chapter 13.

What is required for court approval of a chapter 13 plan?

The court may confirm a chapter 13 plan if:

- (1) the plan complies with the legal requirements of chapter 13 including committing all of the debtor(s)'s disposable income to payments made under the plan;
- (2) all required fees charges and deposits have been paid;
- (3) the plan was proposed in good faith;
- (4) each unsecured creditor will receive under the plan at least as much as it would have received had the debtor filed a case under chapter 7;
- (5) it appears that the debtor will be able to make the required payments and comply with the plan; and
- (6) each secured creditor has been dealt with as stated previously.

When does a debtor have to appear in court in a Chapter 13 case?

Most debtors have to appear at least twice: once for the meeting of creditors and once for a hearing on the confirmation of the debtor's Chapter 13 plan. The confirmation hearing may be held on the same day as the meeting of creditors.

What if the court does not approve a debtor's Chapter 13 plan?

If the court does not approve a plan, it will usually give its reasons for refusing to do so and the plan may then be appropriately modified so as to become acceptable to the court. A debtor who does not wish to modify a proposed plan may either convert the case to Chapter 7 or dismiss the case.

How are the claims of unsecured creditors handled under Chapter 13?

Unsecured creditors must file their claims with the bankruptcy court within a deadline in order to get payments under the plan. The debtor may file a claim on behalf of a creditor if desired. This action would be advisable in the case of a nondischargeable debt so that it will be paid under the plan. After the claims have been filed the debtor may file objections to any claims. When the claims have been approved by the court the Chapter 13 trustee begins paying unsecured creditors as provided for in the Chapter 13 plan. Payments to secured creditors and to special classes of unsecured creditors may begin earlier if desired

What if the debtor is temporarily unable to pay the chapter 13 plan payments?

If a debtor is temporarily unable to make the payments required under a Chapter 13 plan the plan can usually be modified so as to enable the debtor to resume payments when he or she is able to do so. If it appears that the debtor's inability to make the required payments will continue indefinitely or for an extended period the case may be dismissed or converted to a chapter 7 case.

What if the debtor incurs new debts or needs credit during a chapter 13 case?

Only two types of credit obligations or debts incurred after the filing of the case may be included in a Chapter 13 plan. These are: (1) debts for taxes that become payable while the case is pending and (2) consumer goods arising after the filing of the case that are for property or services necessary for the debtor's performance under the plan and that are approved of in advance by the chapter 13 trustee. All other debts for credit obligations incurred after the case is filed must be paid by the debtor outside the plan.

What happens if a debtor is unable to complete the Chapter 13 payments?

A debtor who is unable to complete the Chapter 13 payments has three options: (1) dismiss the chapter 13 case; (2) convert the Chapter 13 case to Chapter 7; or (3) if the debtor is unable to complete the payments due to circumstances for which he or she should not be held accountable, close the case and obtain the following type of discharge discharging the debtor from all debts except:

- (1) secured debts (i.e. debts secured by mortgages or liens);
- (2) debts that were paid outside the plan and not covered by the plan;
- (3) installments debts whose last payment is due after the completion of the plan;
- (4) debts incurred while the plan was in effect that were not paid under the plan; and
- (5) the types of debts that are not dischargeable under chapter 7.