

QUESTIONS CONCERNING BANKRUPTCY

The Law Office of Paul D. Post, P.A. is a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code. The assistance provided to clients may involve bankruptcy relief under Title 11 of the United States Code (the bankruptcy code).

1. What are some of the causes of financial difficulties?

ANSWER: Most people in today's economy establish some sort of consumer debt, whether it be the purchase of a home, the purchase of an automobile, or perhaps to buy necessary furniture. The use of credit cards has expanded over the past decade, and now "plastic money" is often times used in place of cash and checks. Most financial difficulties occur over a period of time with the purchase of consumer goods or the overuse of credit cards, where the person buys more on time payments than he or she can actually afford to pay, after taking care of necessary living expenses. Likewise, periods of unemployment, lengthy illness, serious injuries, and divorce also may have caused financial difficulties. The ultimate result is that sooner or later, some creditors are not being properly paid, and eventually, legal collection remedies are threatened or pursued. While some persons are able to make satisfactory arrangements with their creditors for payment, others are ultimately faced with actual legal collection remedies such as garnishment of wages, repossession of property, and court proceedings. For these persons, the financial crisis has become very real.

2. What can be done to resolve these financial difficulties?

ANSWER: If after reading this information, should you decide to file bankruptcy, please complete the attached Bankruptcy Questionnaire (including a valid address for each creditor, and any individual or agency attempting collection of the debt), and answer all questions as completely and accurately. This information is necessary in order for us to evaluate whether a bankruptcy would help you, and if so, to then allow us to prepare the forms necessary to file your case with the Bankruptcy Court. By completing the Bankruptcy Questionnaire, you will have provided the information necessary for this determination. **Do not leave any information blank. We cannot file your case until ALL information requested is provided. THE INFORMATION YOU PROVIDE MUST BE COMPLETE, TRUE AND CORRECT TO COMPLY WITH THE BANKRUPTCY CODE. THERE ARE CRIMINAL PENALTIES FOR FILING FALSE INFORMATION WITH THE BANKRUPTCY COURT.**

3. What types of bankruptcies are available?

ANSWER: There are basically two types of bankruptcy actions available to individuals. The first is what is commonly known as a "straight bankruptcy" or a Chapter 7. In a chapter 7 bankruptcy, any "nonexempt" property or assets will be sold by the Bankruptcy Trustee, with the money derived from the sale of property to be used to pay the creditors' claims. However, from a practical standpoint, most property owned by individuals is "exempt property." This means that the property is exempt from attachment by the creditors, whether in or out of bankruptcy, and cannot be sold or utilized to pay creditor debts. Your residence, automobile, household goods and furnishings, wages, and personal effects are generally all exempt and cannot be taken by the creditors or by the Bankruptcy Trustee. You should note, however, that income tax refunds are generally not exempt in bankruptcy, which means that any refund may have to be turned over to the bankruptcy trustee, and will not be yours to keep. If you know you are to receive a tax refund, or you usually get a refund every year, you should mention this and note it on the attached questionnaire under the property section of questions. **If you receive a tax refund AFTER you have filed bankruptcy DO NOT SPEND IT until you have checked with me personally.**

In a Chapter 7 bankruptcy, most debts are discharged within approximately five months after the filing. The problem with a chapter 7 bankruptcy is two-fold. First, some debts are not dischargeable, which means these debts continue to exist after the bankruptcy is over. For example,

certain tax obligations are ordinarily not dischargeable, nor are student loans, nor are domestic support obligations. Second, if a creditor has a security interest - a lien or a mortgage on property - this security interest survives the bankruptcy. The underlying debt is discharged, but if the property is not paid for, the creditor gets the property back. As a result, many people still end up owing money after the filing of a chapter 7 bankruptcy, in the form of tax obligations, student loans and payments on secured property (such as a home mortgage or a car loan).

You may not be eligible for Chapter 7 if your income is above the Kansas median income. To determine whether you are eligible, I will need to review your pay stubs or statements from all income sources for the past six months, as well as your last two year's tax returns. Please bring ALL of this documents with you at the time of your first appointment. If you do not have those documents, your appointment will have to be rescheduled until you bring them in. This same information is also needed if you want to file Chapter 13.

Under the Chapter 13, formerly known as a "wage earner plan," the purpose is to attempt repayment of your bills, rather than simply canceling them out. A debtor must have regular income from some source, and usually must pay a minimum of \$80.00 per month for a period of three years to be eligible for this type of bankruptcy. However, since the facts of each case vary, oftentimes the payment will be considerably more than the \$80.00 per month. The reason for this is that any creditors to be paid, including secured creditors such as on car loans or other secured debts, are included in the one payment that is made to the Bankruptcy Trustee. The only exceptions to this are home mortgages on a person's residence, which continue to be paid directly to the mortgage holder, child support or alimony obligations, which are paid directly to the recipient, and car lease payments.

After we have examined your monthly budget and monthly income, a determination is made as to how much you can pay each month to the Bankruptcy Trustee under Chapter 13. Other considerations in determining the amount you must pay include in some cases the value of any secured property, and any tax obligations, and any nondischargeable debts, such as student loans. In order to complete a Chapter 13 and to keep secured property in your possession, you must pay at least the value of that property back to the secured creditor. If you have a car loan which you incurred more than 910 days before filing bankruptcy (approximately 2 ½ years, you may propose a plan that pays back only the value of the vehicle. For example, if your have a balance of \$10,000.00, with the car being worth \$8,000.00, then you may propose to pay the value or in this example \$8,000.00 to the secured creditor in order to keep that automobile in your possession. If you purchased or refinanced a vehicle within the past 2 ½ years, then you must pay back the full balance due on the loan. Generally in Chapter 13, you have three years to pay back your creditors, although you can ask for up to five years.

In addition, there are other significant differences between the Chapter 13 and Chapter 7 bankruptcy. Under the Chapter 13, some debts can be discharged or eliminated, which might not be dischargeable in a Chapter 7. The Chapter 13 may save you money in three ways, as follows:

- a) Interest on any unsecured claim, such as credit cards, stops running, and you simply pay back the principal due and owing to that creditor;
- b) Many consumer debts have a repayment cycle of one to three years, but under the Chapter 13, you may take up to five years to pay back any obligation. This type of extension would reduce the payment owed to any creditor.
- c) You can, if you choose, pay less than the total amount of the debt due and owing under certain rules established by the Bankruptcy Court, which will also reduce the amount which you must pay.

However, you should be aware of the fact that some debts are not dischargeable in either a Chapter 7 or Chapter 13 bankruptcy, and under a Chapter 13, must be paid in full or will survive the bankruptcy discharge. Some tax debts and all domestic support obligations (child support and

maintenance) cannot be discharged, nor can student loans unless you can show what is known as "undue hardship". As to student loans, you have to file a separate proceeding in your bankruptcy against the student loan creditor. This is known as an "adversary complaint." If you have any of these types of debts, please note them on your Client Questionnaire, so that we can further discuss these debts and what effect, if any, the bankruptcy will have on them. All of these factors are utilized by this office in determining the amount which you will pay on a monthly basis.

The ultimate decision as to which type of bankruptcy rests with you, after a consultation and review of the facts of your case with your attorney.

4. Can my creditors continue to harass me?

ANSWER: Under both types of bankruptcies the answer is "no." Creditors are prohibited by the Bankruptcy Court from any type of collection activity, whether it be phone calls, letters, referral to a collection agency, filing of lawsuits, garnishment of wages, or repossession of property. The effect of the filing of any type of bankruptcy will be the immediate cessation of these types of collection activities. However, in the case of a Chapter 7 "straight bankruptcy," any creditor having a nondischargeable debt (student loans, tax debts, etc.) may again start contacting you to attempt to collect the debt after the bankruptcy is over. Usually, it takes about one to two weeks after filing for phone calls from creditors to stop, and approximately thirty days for collection letters or bills to cease. If you get phone calls from any creditor or collection agency after you file, obtain the name and telephone number and the person calling, and let us know this information, so that we can stop such phone calls. If you get bills or collection letters after you file, send or bring those into the office, and we will take care of them. **PLEASE NOTE: IF YOU HAVE FILED A BANKRUPTCY WHICH WAS DISMISSED WITHIN THE LAST YEAR, THE AUTOMATIC STAY MAY EXPIRE AFTER THIRTY DAYS OR MAY NOT BE IN EFFECT, DEPENDING ON THE CIRCUMSTANCES OF YOUR PRIOR CASE OR CASES.**

5. What is the effect on my credit record?

ANSWER: The filing of either type of bankruptcy will have some adverse effect on your credit record. However, a credit record is not simply one particular entry, but rather a history of your credit over a period of several months or years. For example, if you are slow at paying your bills and are receiving collection notices from creditors, this will be reflected on your credit report. Likewise, if you have been sued or your wages garnished, these will be reflected on your credit report. In the past, the effect of a Chapter 13 on your credit is less significant than a Chapter 7, due to the reason that the person filing Chapter 13 is attempting to pay back all or some of his or her debts, and this has been reflected by the credit report. However, recent information indicates that credit reporting agencies show any type of bankruptcy in the least favorable light, and keep the filing on a person's credit record for ten years. In any event, you have the right under the Fair Debt Collection Practices Act to file with the credit reporting agency a statement on your own behalf explaining your financial difficulties and your reason for filing bankruptcy if you so desire. Please be aware that a bankruptcy filing will not "expunge" your credit record, and that adverse credit entries occurring before bankruptcy filing may continue to be shown on the credit report after filing.

6. What court proceedings will I have to attend?

ANSWER: In both types of cases, all debtors must attend the 341 Meeting, also known as the first meeting of creditors. This is a proceeding held out of court and is a meeting conducted by the

Bankruptcy Trustee with the debtor and the debtor's attorney. The creditors have an opportunity to be present at that time and ask questions, but often they do not attend. The meeting of creditors usually only takes about ten minutes in the ordinary case, and is held at the Trustee's meeting room located in the Post Office Building, 424 S. Kansas Avenue, Topeka, Kansas, on the Third Floor. After you file your bankruptcy, you will get a notice from the court telling you when your creditors' meeting will be held. All of your creditors will receive this same notice. We will send you a follow-up letter confirming this date and time, and explaining what will happen at this meeting.

In Chapter 7 cases, approximately four months after the first meeting of creditors, a discharge order is issued by the Bankruptcy Judge, which is the order discharging or canceling your debts. If you desire to reaffirm, that is, continue to pay any of your debt obligations, you must do so prior to that time, and any reaffirmation agreements must be filed with the court. If you do not sign a reaffirmation agreement, then you must return secured property.

In Chapter 13 cases, the court holds what is known as a confirmation hearing approximately one month after the first meeting of creditors, and this hearing is for the purpose of the Bankruptcy Court approving the plan of repayment submitted by you. Ordinarily, you will not need to be present at this hearing, as you will be represented by your attorney at that hearing. You will be advised by this office prior to that hearing if it is necessary for you to attend.

7. What is the role of the Trustee?

ANSWER: The Trustee is NOT the bankruptcy judge. The trustee is appointed to generally look out for the interests of the creditors, collect any "nonexempt" assets, sell those assets and pay the money to your creditors, and in Chapter 13 cases, collect your plan payments from you and pay that money to your creditors. The trustee also sends status reports of your case to the judge. The trustee does not decide any disputes with your creditors. That is the job of the judge. Please understand that you have an absolute duty to comply with reasonable requests from the trustee that you provide documents or turn over non-exempt property. If you fail to do so, your bankruptcy discharge can be denied by the judge.

8. What are the fees charged in a bankruptcy case?

ANSWER: All attorney fees must be approved by the Bankruptcy Court. We will quote you a fee after the initial consultation concerning your financial situation. Under the law, we are required to give you a written contract showing the services to be provided and the fees to be charged. Please feel free to discuss your fees with me or any one of my staff members. We want you to be informed about the cost of legal services in connection with your case. Remember --the only "stupid" question is the one that isn't asked.

The following filing fees apply: Chapter 7, \$299.00; Chapter 13, \$274.00.

9. What if I am entitled to income tax refunds?

ANSWER: On the client questionnaire, please report any income tax refunds that you expect to receive. Ordinarily, the trustee will require you to turn over to him any state and federal refunds for the year in which you file. This money is used by the trustee to pay something to your unsecured creditors. If you are receiving a tax refund, you might want to consider giving me an assignment of your refund to apply to the balance of your attorney fees. What this means is that when you get your refund, you would pay the balance of your account with this office from the refund. In many cases, this has the effect of bringing the remainder of the income tax refund below an amount which the Trustee considers feasible to require turn over of a tax refund, which allows you to keep the tax refund and also have the remainder of your attorney fees paid in full. Chapter 13 clients should also expect to turn over tax refunds to the Chapter 13 Trustee during the first three years during the Chapter 13 plan if the refund is in excess of \$500.00. It is possible in unusual circumstances to keep more than \$500.00 of a refund, but we must obtain permission from the Bankruptcy Court to do so, and show some good reason why this should be done. **In any event, if you think you will be getting a tax refund, let us know. Don't spend it until we have had a conversation with the trustee in your case about whether you can keep it. Keeping a tax refund that does not belong to you can result in dismissal of your case, denial or revocation of your bankruptcy discharge, or a criminal referral by the trustee in your case to the FBI by the trustee. By discussing this now, we can avoid problems in the future.**

10. What about insufficient fund checks ("bad checks")?

ANSWER: Sometimes clients have written checks to creditors which have "bounced." A bad check has two components: the first is breach of the promise to pay the creditor, which is really no different than any other civil debt; the second is that a bad check is a violation of the criminal laws in most states. In Kansas, writing a bad check under \$150.00 is a misdemeanor, while \$150.00 or over is a felony. The statute of limitations for prosecuting bad checks is two years. **Filing bankruptcy does not prevent prosecution of a person under the criminal laws.** Thus, it is recommended that any bad checks less than two years old be paid, even if listed on the bankruptcy. In Chapter 13, we usually provide for full payment of bad checks through the plan, although even this will not guarantee the prevention of criminal prosecution.

11. Special note to Chapter 13 clients:

Several months after filing your case, you may receive from the Clerk of the Bankruptcy Court several documents, each called an "Objection to Claim." These are filed by the Chapter 13 Trustee to make sure that the creditor has presented to the Bankruptcy Court a proper claim in your case, or asking that the Court divide the claim between the secured and unsecured portions. **An objection to claim is almost always in favor of the debtor, and does not mean that your case is being dismissed. It is an objection to the claim, not to your case.** It is not necessary to call this office concerning Objections to Claims filed in your case, as we review them to make sure that the objection is proper.

12. Credit Counseling. Before you can file your bankruptcy, you must attend a consumer credit counseling briefing. We will provide you with information as to where you can obtain this briefing. There is a separate cost for this briefing which you will have to pay to the counseling agency. Once you complete the counseling, you will receive a certificate which is good for 6 months, and which must be filed with the Bankruptcy Court to commence your case.

13. What if I have other questions concerning filing bankruptcy?

ANSWER: The purpose of this brochure is simply to provide you with some basic guidance and information concerning procedures under Bankruptcy Law. In fact, the law requires that we advise you of the two options available to you under the Bankruptcy Code. However, you will probably have many other questions which are not covered by this general outline. Feel free at any time to discuss these questions with any member of our office staff.

Thank you for reviewing this information, and **please complete the attached Client Questionnaire as completely as possible, and prior to your first appointment. Failure to complete the Questionnaire will slow down the processing of your case. This is all information that the law requires you to provide.**

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