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Effective December 1, 2015, the US Bankruptcy Code requires all debtors who file bankruptcy to read and understand the attached 4-page Notice. The Trustee will ask you under oath if you read it and understood it. Your testimony will not be taken unless you have read and understand the Notice.

Below are some of my comments on the contents of the Notice based on my experience with debtors filing bankruptcy. It is meant to help you avoid pitfalls, and get the most practical use from the Notice.

Bankruptcy includes all assets and all debts. It is a misunderstanding to think that anything is not included in bankruptcy. **Everything is included.** **The discharge releases you from personal liability for all dischargeable debts, including mortgages. The liens on the property remain.** Non-dischargeable debts are debts such as child support, student loans, and taxes. Every account must be disclosed with the balance on the date of filing (even joint accounts or accounts not in your name with your money in them). The FBI investigates bankruptcy crimes, as does the US Trustee and the IRS. The US Attorney prosecutes bankruptcy crimes. If you lie about your assets or income in bankruptcy, you could be prosecuted, sent to jail, and owe all of your debts when you get out. **MORTGAGE PAYMENTS AFTER DISCHARGE ARE NOT REPORTED TO CREDIT BUREAUS.**

Some assets are exempt, meaning debtors get to keep them; some assets are non-exempt, meaning the value that isn't exempt is available to creditors. In Washington, about 99% of Chapter 7 cases filed are "no asset cases" in which debtors keep everything they have listed on their petitions and claimed as exempt. If you don't list an asset, you can't claim it as exempt, and it technically never leaves your bankruptcy estate. So, for example, if you don't disclose a personal injury claim and settle the claim four years after your case closes, you will lose the amount of the settlement because it is not exempt.

No credit cards may be kept in bankruptcy. All access to credit, online account access, automatic payments and statements will be terminated upon filing. Paper checks must be sent to pay a mortgage or car payment that had been automatically paid, for example. You will need to reapply to reestablish credit after discharge. Credit Unions typically terminate your membership if you file bankruptcy.

Discharge, the permanent injunction against debt collection — is the purpose of filing bankruptcy. It only applies to debts that existed on the date of filing (pre-petition debts). Debts which accrue post-petition, such as HOA dues or utility bills, are not discharged and must be paid.

I have selected the least expensive means I could find of obtaining the required Credit Counseling Course (before filing) (\$15) and Financial Management Course (after filing, but before the 341 meeting) (\$10) certificates. I will provide you with codes to charge the cost to my firm credit card, which is then reimbursed by you. **PLEASE IGNORE ALL SOLICITATIONS FOR COURSES AND CREDIT. PLEASE SIGN ANY AUTHORIZATION FOR THE CH13 TRUSTEE TO GET DEBT INFORMATION.**

Debt limits in Chapter 13 change every 3 years. As of April 1, 2019, the limits are \$419,275 in unsecured debt, and \$1,257,850 in secured debt. Wage orders are mandatory in Chapter 13 and start immediately after filing.

You agree to send any amount of your tax refund above \$1,500 to the Chapter 13 Trustee as long as you are in Chapter 13. Failure to pay will result in dismissal of your case.

WARNING: DEBTORS CAN BE SURPRISED BY 5 COMMONLY EXERCISED CREDITOR RIGHTS.

Garnishment. Creditors who have obtained a Judgment against you can serve a Writ of Garnishment on your employer requiring that 25% of your net pay be deducted.

Attachment. Creditors who have obtained a Judgment against you can serve a Writ of Attachment on your bank requiring the bank to freeze the amount in your account up to the amount of the Judgment.

Set-Off often occurs when you have a checking or savings account at the same bank that holds your car or home loan. If you don't make the payment, then bank can take the money out of your account without notice, causing your checks to bounce and creating fees.

Cross-Collateralization occurs when you have more than one loan at the same bank, and you stop paying one loan but not another. For example, if you don't pay your credit card bill but still make your car payment, the bank can repossess your car because a default on one loan is considered a default on all loans.

Mortgage Statements and Automatic Payments Will Be Terminated. Access to all credit is frozen even if you did not have a balance at the time you filed. Changing banks prior to filing is advised if any of the above may be an issue. If you want to autopay a mortgage set it up with your bank after Discharge.

Mortgage Creditors Will Not Report Payments to Credit Bureaus After Discharge. * Mortgage creditors may ask you to reaffirm your 1st or 2nd mortgage and exclude it from the discharge leaving you with personal liability for the debt and defeating the purpose of filing bankruptcy. If you cannot pay your mortgage after it is discharged, then the lender forecloses on the property, but cannot sue you. Due to the risk of you having to pay tens of thousands of dollars, I cannot represent clients who wish to reaffirm a mortgage debt. The court is not likely to approve such a risk to you anyway. Reaffirmation puts a huge burden on the debtor for the negligible benefit of reporting payments post discharge. You will never receive mortgage statements again because sending them to you is prohibited by the Discharge Injunction. Please contact me if you have a HELOC or 2nd mortgage because the analysis of whether to pay or not pay is much more complicate and has much more potentially serious consequences.

LIEN BALANCES CONTINUE TO GROW AFTER DISCHARGE.

THERE ARE 5 COMMON PITFALLS IN THE MONTHS LEADING UP TO A BANKRUPTCY FILING.

Do not Borrow from a Retirement Account. The funds are only exempt when they are in the retirement account. As soon as you borrow against them or withdraw them, they are non-exempt to the extent they exceed your available wild card exemption limit. The funds can be seized by the Trustee and distributed to creditors.

Do Not Fail to Disclose an Account or Asset. If an asset is not disclosed, then it cannot be exempt and you could lose it to the bankruptcy Trustee.

Do Not Charge Within 90 Days of Filing because such charges are presumed to have been made without the intention to repay. Use of credit should stop once contemplation of bankruptcy begins. You will have to pay these charges because they will likely be excluded from your discharge. Other charges may be excluded as well, even if made a year or more before filing, if you did not have the income to repay the charges.

Do Not Make Payments to Some Creditors and Not Others, Especially Family Members (or other insiders) within one year of filing are considered preferential transfers if other unsecured creditors were not paid as well. Generally, paying all or none of your unsecured creditors is best, rather than picking and choosing. The total of these preferential payments must be paid into a Chapter 13 to receive a discharge. Payment can include anything of value, including the granting of a security interest. Payments made to some unsecured creditors and not others within 6 months of filing may be a preference which can require repayment of the amount paid.

Do Not Settle Debt without understanding Imputed Income. Doing so potentially creates taxable income of the amount forgiven by the creditor. Taxes owed to the IRS are not generally dischargeable in bankruptcy. Also, settlements may be preferential transfers as well, which would require more payments in a Chapter 13 than what otherwise might be the case.

* The only way I know to attempt to address this issue is to ask for a mortgage history from your lender every year, as is your right, then send it to all three credit bureaus on their websites disputing the fact that you made 12 payments, but they were not reported. The lender can't dispute that you paid. Many lenders don't respond.

Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

This notice is for you if:

- **You are an individual filing for bankruptcy, and**
- **Your debts are primarily consumer debts.** *Consumer debts* are defined in 11 U.S.C. § 101(8) as “incurred by an individual primarily for a personal, family, or household purpose.”

The types of bankruptcy that are available to individuals

Individuals who meet the qualifications may file under one of four different chapters of the Bankruptcy Code:

- Chapter 7 — Liquidation
- Chapter 11 — Reorganization
- Chapter 12 — Voluntary repayment plan for family farmers or fishermen
- Chapter 13 — Voluntary repayment plan for individuals with regular income

You should have an attorney review your decision to file for bankruptcy and the choice of chapter.

Chapter 7: Liquidation

	\$245	filing fee
	\$75	administrative fee
+	\$15	trustee surcharge
	\$335	total fee

Chapter 7 is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

However, if the court finds that you have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge.

You should know that even if you file chapter 7 and you receive a discharge, some debts are not discharged under the law. Therefore, you may still be responsible to pay:

- most taxes;
- most student loans;
- domestic support and property settlement obligations;

- most fines, penalties, forfeitures, and criminal restitution obligations; and
- certain debts that are not listed in your bankruptcy papers.

You may also be required to pay debts arising from:

- fraud or theft;
- fraud or defalcation while acting in breach of fiduciary capacity;
- intentional injuries that you inflicted; and
- death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to complete the other chapter 7 form, the *Chapter 7 Means Test Calculation* (Official Form 122A-2).

If your income is above the median for your state, you must file a second form—the *Chapter 7 Means Test Calculation* (Official Form 122A-2). The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If

your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called *exempt property*. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold.

Exemptions are not automatic. To exempt property, you must list it on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 11: Reorganization

	\$1,167	filing fee
+	\$550	administrative fee
	\$1,717	total fee

Chapter 11 is often used for reorganizing a business, but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Chapter 12: Repayment plan for family farmers or fishermen

	\$200	filing fee
+	\$75	administrative fee
	\$275	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

Chapter 13: Repayment plan for individuals with regular income

	\$235	filing fee
+	\$75	administrative fee
	\$310	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors.

After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include:

- domestic support obligations,
- most student loans,
- certain taxes,
- debts for fraud or theft,
- debts for fraud or defalcation while acting in a fiduciary capacity,
- most criminal fines and restitution obligations,
- certain debts that are not listed in your bankruptcy papers,
- certain debts for acts that caused death or personal injury, and
- certain long-term secured debts.

Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:

http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Bankruptcy crimes have serious consequences

- If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.
- All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). If you are filing a joint case, both spouses must receive the briefing. With limited exceptions, you must receive it within the 180 days **before** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. If you are filing a joint case, both spouses must complete the course.

You can obtain the list of agencies approved to provide both the briefing and the instructional course from:

http://justice.gov/ust/eo/hapcpa/ccde/cc_approved.html.

In Alabama and North Carolina, go to:

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx>.

If you do not have access to a computer, the clerk of the bankruptcy court may be able to help you obtain the list.