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## MANDATORY BANKRUPTCY DISCLOSURE

### IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney.

THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST.

1. Ask to see the contract before you hire anyone. “The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.
2. Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations.
3. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a ‘trustee’ and by creditors.
4. If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.
5. If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.
6. If you select another type of relief under the Bankruptcy Code other than

chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

7. Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.”

## **FULL DISCLOSURE & ACCURACY**

### **If you file bankruptcy –**

A. The information that you provide to your attorney, the bankruptcy trustee, and the court in the course of your bankruptcy, both before and after you file your bankruptcy petition, must be complete, accurate and truthful.

B. All of your assets (everything you own that has value, such as real estate, personal items, vehicles, money, etc.) and all of your liabilities (all of your debts) are required to be completely and accurately disclosed in the documents filed to start your case, and the market value of each asset must be stated in those documents where requested.

C. You must provide your attorney with a monthly budget, including your current monthly income, all of your regular expenses, and the amount of your income that is left over after deduction of expenses. In listing your income and expenses, try to avoid guessing or estimating, and do your best effort to be accurate and truthful.

For income, you are required to provide documentation about all sources of your income, including your employment, any government assistance you may receive, social security, pension or other retirement income, income from side jobs, investment income, and similar sources.

D. The information that you provide to your bankruptcy attorney, the bankruptcy trustee, or the bankruptcy judge may be audited and will be available for inspection by the office of the United States Trustee, which is a branch of the U.S. Department of Justice.

If you fail to honestly and fully provide information about your property, income, expenses, and other financial circumstances, your case could be dismissed, and you could be subject to criminal sanctions.

## **Debtor’s Duties in Bankruptcy**

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in connection with your bankruptcy will be filed with the bankruptcy court on forms or documents that you will be required to sign and declare as true under penalty of perjury.

2. A person who knowingly or fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both. 11 USC §342(b)(2)(A)
3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General. 11 USC §342(b)(2)(B)

## **Types of Bankruptcy**

The Bankruptcy Code is divided into chapters. The chapters which usually apply to consumer debtors are chapter 7, known as a Liquidation, and chapter 13, known as an Adjustment of the Debts of an Individual with Regular Income.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically “stays” or forces an abrupt halt to repossessions, foreclosures, evictions, garnishments, attachments, utility shutoffs, and debt collection harassment. It offers debtors a breathing spell by giving the debtor and the trustee assigned to the case time to review the situation and develop an appropriate plan. Creditors cannot take any further action against the debtor or the property without permission from the bankruptcy court.

### **Chapter 7**

In a chapter 7, or liquidation case, the bankruptcy court appoints a trustee to examine the debtor’s assets and divide them into exempt and nonexempt property. Exempt property is limited to a certain amount of equity in the debtor’s residence, motor vehicle, household goods, life insurance, health aids, specified future earnings such as social security benefits and alimony, and certain other personal property. The trustee may then sell the nonexempt property and distribute the proceeds among the unsecured creditors. Although a liquidation case can rarely help with secured debt (the secured creditor still has the right to repossess the collateral), the debtor will be discharged from the legal obligation to pay unsecured debts such as credit card debts, medical bills and utility arrearages. However, certain types of unsecured debt are allowed special treatment and cannot be discharged. These include some student loans, alimony, child support, criminal fines, and some taxes.

### **Chapter 13**

In a chapter 13 case, the debtor puts forward a plan, following the rules set forth in the bankruptcy laws, to repay all creditors over a period of time, usually from future income. A chapter 13 case may be advantageous in that the debtor is allowed to get caught up on mortgages or car loans without the threat of foreclosure or repossession and is allowed to keep both exempt and nonexempt property. The debtor’s plan is a simple document outlining to the bankruptcy court how the debtor proposes to pay current expenses while paying off all the old debt balances. The debtor’s property is protected from seizure from creditors, including mortgage and other lien holders, as

long as the proposed payments are made. The plan generally requires monthly payments to the bankruptcy trustee over a period of three to five years. Arrangements are normally made to have these payments withdrawn automatically through payroll deductions.

### **What Bankruptcy Can and Cannot Do**

Bankruptcy may make it possible for financially distressed individuals to:

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the debtor has no further legal obligation to pay the debt.
2. Stop foreclosure actions on a home and allow them an opportunity to catch up on missed payments.
3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
5. Restore or prevent termination of utility service.
6. Lower the monthly payments on debts, including secured debts such as car loans.
7. Allow debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

1. Eliminate certain rights of secured creditors. Although a debtor can force secured creditors to take payments over time in the bankruptcy process, a debtor generally cannot keep the collateral unless the debtor continues to pay the debt.
2. Discharge types of debts singled out by the federal bankruptcy statutes for special treatment, such as child support, alimony, some student loans, certain court ordered payments, criminal fines, and some taxes.
3. Protect all cosigners on their debts. If relative or friend co-signed a loan which the debtor discharged in bankruptcy, the cosigner may still be obligated to repay the loan.
4. Discharge debts that are incurred after bankruptcy has been filed.

## Bankruptcy's Effect on Your Credit

By federal law, a bankruptcy can remain part of a debtor's credit history for 10 years. Whether or not the debtor will be granted credit in the future is unpredictable. In some cases it may actually be easier to obtain future credit, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that the debtor cannot again file bankruptcy for at least the next eight years.

Debtors have the option after bankruptcy of voluntarily paying some creditors, such as a doctor or hospital, with whom they wish to maintain credit. The payments are voluntary and do not reaffirm the past obligation.

### ACKNOWLEDGMENT OF RECEIPT

The undersigned acknowledges that the Law Office of Erin Bradley McAleer has given me a copy of this disclosure required by Bankruptcy code §527(b).

Dated: \_\_\_\_\_

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