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**Debt Relief**

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**DON'T LET YOUR DEBTS CRUSH YOU!**

Congress requires I say the following:

**I am a debt relief agency. My services are with respect to bankruptcy relief under the Bankruptcy Code. I help people file for bankruptcy relief under the Bankruptcy Code.**

The above is Congressional nonsense. I am not any kind of any "agency." I am a human being whose profession is being a lawyer. As a lawyer, I work hard to help honest but financially unfortunate folks put their financial worries behind them and obtain a fresh financial start in life as allowed by law.

***I Owe More Than I Can Pay - What Can Creditors Do To Me?***

"Debtors' Prisons" went out in the U.S. at least with ratification of the Constitution in 1778. So: no jail. What creditors can do if you don't pay voluntarily as agreed is repossess/foreclose and sell any "secured" property (home, vehicle for which they hold the title, etc.), and **sue you** for the unpaid balance. You are only being sued when you receive a **Summons and Complaint**. Letters and phone calls are not "being sued;" they are only "being nagged."

The Summons is an invitation to come to court and explain **any dispute as to the amount claimed**. The Judge does not consider whether you are a "good person," an "honest person" or a "broke person;" the only issue is "do you admit or deny owing the exact amount claimed in this lawsuit." If your response is or would be "admit," you need not go to court. If you deny the exact amount claimed, you may **file an answer** explaining your side of the dispute. If an answer is filed, a trial will be set for "later" at which time the creditor must prove its case.

If the creditor wins, either because you admit owing the money or don't show up to court (which is your admission, so why bother with the time and parking hassles of going to court) or because you denied owing the money but lost at trial, the creditor gets a **judgment**. Without a judgment, the creditor has to "whistle" for its money. With a judgment, the creditor is allowed to **garnish** wages, bank accounts and **lien and then seize** assets to sell with the money being applied on the judgment. But: unless you are employed and earn before taxes at least \$1,070 gross in the applicable month (for 2015), all your earnings are **exempt** and cannot be garnished. If you earn more, 75% are exempt and are unaffected by a garnishment.

Other **income exemptions** include 100% of Social Security and V.A. payments (unless the United States is the creditor). If you put what would be exempt income into a bank account, it is still exempt, but your bank account might get frozen until you rush to court and **file a claim of exemption** form and prove 100% of the bank deposits were from Social Security or other exempt income. Thus, if sued or likely to be sued, have a "special" bank account into which you **never** deposit anything other than money from exempt sources. Most **property is exempt**; this is discussed in more detail below and **the exemptions protect your assets whether or not you file bankruptcy**.

If all your income and assets are exempt, you are what lawyers refer to as **judgment proof**, i.e., you can be "sued till the cows come home" but the creditor is wasting its time and will not get a penny from you.

**Bankruptcy is an option discussed below**. If you are judgment proof, the **first question is "why bother" to file bankruptcy?** After all, creditors cannot hurt you financially. And, if your goal is to stop annoying collection calls, you can accomplish that by screening calls with caller ID or an answering machine, or by telling callers "**you are instructed to never call or try to call me at this or any other number for any reason.**" Feel free to put this on a 3x5 card or the like taped to wall by your telephone, so you get it "right." If you just say "please" or anything other than give an order, legally you are "wasting your breath." Keep a log noting each time you give this instruction. If you can satisfy a Judge or Jury that you gave the instruction and later got another call, the misbehaving creditor owes you at least \$1,000 and maybe more. If you can't "stand" the calls, don't want to give the instruction, and just want some "peace of mind" and knowledge "it is taken care of once and for all," maybe bankruptcy is a good option for you. A mid-ground between just giving the instruction and filing bankruptcy is to have a lawyer contact each of your creditors to explain you are judgment proof, that suing you is a waste of time, and that the creditor will be paying you \$1,000 plus paying your attorney's fees each and every time it calls after

it gets the letter.

### ***Please: Give Yourself A Break!***

A lot of my clients who find themselves in tough financial straights are down-right mean to themselves. Yes, perhaps you are more or less “broke.” Yes, hopes, dreams, expectations you had the past did not work out as hoped, dreamed or expected. That is “**water under the bridge.**” The “sun will come out tomorrow.”<sup>1</sup> Let bygones by bygones, give yourself a break, and look toward tomorrow with hopes, dreams and expectations of a fresh financial start.

### ***Bankruptcy or other Debt Relief: You’re In Good Company***

Lots of folks have had to look to bankruptcy to turn their financial lives around: Thomas Jefferson, Abraham Lincoln (twice), Ulysses S. Grant, Donald Trump (twice, via corporations he controlled), P.T. Barnum, Mark Twain, Henry Ford, J.C. Penney, Milton “Hershey Bar” Hershey, John “Heinz Ketchup/Heinz 57” Heinz, Walt Disney, Mickey Rooney, Debbie Reynolds, Dorothy Hamill, Burt Reynolds, and Jerry Lee Lewis are but a few examples.

### ***Bankruptcy: A Hallowed American Right and A Hallowed Religious Tradition***

The Founding Fathers were more concerned about including bankruptcy in the U.S. Constitution than including in the Constitution freedom of speech, religion or the other basic freedoms contained in the Bill of Rights. The Bill of Rights is a mere amendment to the Constitution. The body of Constitution itself provides for bankruptcy relief in Article I, Section 8, Clause 4. A substantial reason is because in Europe in the 1700’s folks who couldn’t or didn’t “pay their bills” went to Debtors’ Prison. In effect, they were slaves living in jail, working until they did pay off their debts. “No way here are we going to have Debtors’ Prisons” was the reason for including bankruptcy in the body of the Constitution.

The idea of “bankruptcy relief” is well-grounded in Judaism, Christianity and other religions. For example, Deuteronomy (15:1-3) requires creditors to forgive debts owed to them every seven years. This is somewhat codified in the Bankruptcy Code via Chapter 7, which allowed one to seek Chapter 7 bankruptcy relief once every 7 years (now, once every 8 years). Think, too, about “forgive us our debts, as we forgive our debtors” in the Lord’s Prayer as taught by Matthew(6:12). The Koran provides that “and if someone is in hardship, then let there be postponement until a time of ease.” The Middle Way of Buddhism preaches moderation between self-indulgence and self-mortification.

### ***What Is Bankruptcy?***

Bankruptcy is a legal proceeding in which a person who cannot pay his or her bills can get a fresh financial start. The right to file for bankruptcy is provided by federal law, and all bankruptcy cases are handled in federal court. Filing bankruptcy immediately stops all of your creditors from seeking to collect debts from you, at least until your debts are sorted out according to the law.

### ***What Is A “Discharge?”***

Obtaining a “**discharge**” is the typical goal in a bankruptcy. A discharge is a court order telling creditors whose debts were discharged that they may never attempt to collect any money from the person who filed bankruptcy. A discharge does not **pay** debts; it prevents **collection** of debts. A discharge does **not** prevent foreclosure, repossession or other action to obtain “secured” property if you are behind with your payments and fail to catch up or if, after bankruptcy, you fall behind in your payments and fail to catch up as required by the creditor.

Thus, with a bankruptcy discharge, you typically **will not have to pay** any credit cards, pre or post- bankruptcy repossessions or foreclosure deficiencies, income taxes more than 3 years past due, Social Security overpayments, payday loans, bank overdrafts; past due rent and/or damages; or most other debts.

However, not all debts are discharged. After bankruptcy, creditors still have the right to try to collect student loans (but often they, too, can be discharged in or without bankruptcy); recent income taxes; trust fund monies; damages to persons and/or property due to recklessness (such as being intoxicated); fines, including parking tickets; and criminal restitution orders.

### ***What Are The Different Types of Bankruptcy?***

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<sup>1</sup> From the song “Tomorrow” in *Annie*, music by Charles Strouse and lyrics by Martin Charim.

There are four different types of bankruptcy cases from which people (i.e., human beings but not corporations or municipalities) can select. Most people filing bankruptcy will want to file under either *Chapter 7* or *Chapter 13*. Each is discussed below. Either type of case may be filed individually, whether married or not, or by a married couple filing jointly.

The other kinds of bankruptcy for people are *Chapter 11*, known as "reorganization," is used mostly by businesses but can be used by people, especially those whose debts are very large, and *Chapter 12*, which is reserved for people who are family farmers. I do not handle Chapter 11 or Chapter 12 bankruptcy.

### *Chapter 7*

The **Debtor** (persons/persons/business) who filed Chapter 7 bankruptcy says, in effect, to the Court: *"I/we owe debts I cannot or don't want to pay. Let me/us get a fresh financial start without having to pay any of them in full or in part."*

Chapter 7 bankruptcy is about a 120 day process. You get to "**discharge**" [explained above in this information] any dischargeable debts and keep any property that is "**exempt**" [explained later in this information]. **In most cases, all of your property will be exempt**, i.e., you get to keep all your property if it is not subject to a lien (such as a mortgage or vehicle title loan). You also get to keep property subject to a lien if you keep making the payments or you can give up that property and never worry about it being worth less than the loan balance.

You must give up property to your **Trustee** that is not "**exempt**." Property which is not exempt is sold, with the money distributed to creditors.

Chapter 7 is only for persons who are "bankruptcy poor." This is known as the "**means test**." It looks, subject to some exceptions, at average monthly gross income the preceding six months. However, "income" from Social Security and certain Veteran's Benefits is **not "income" for this test**; instead, it is ignored. This makes it easier for folks who get such benefits to qualify for Chapter 7 relief. If your gross income is at or below the Colorado state medium income for a family your size, which in 2015 is about \$4,366 per month for one person or \$5,685 for a married couple living together (more, if there are dependents, such as children and/or grandchildren you legally claim as your tax deductions), you **automatically qualify** for Chapter 7 under the means test. If your income is "over," you still **might** be allowed to obtain Chapter 7 bankruptcy relief.

You may **not** select Chapter 7 and get a discharge if you received a Chapter 7 discharge in a case filed within the last eight years; received a Chapter 13 discharge in a case filed within the last six years unless your Plan paid at least 70% of your unsecured debt; or if under certain circumstances you filed any kind of bankruptcy in the past which was dismissed six or less months ago.

You **might** want to consider Chapter 7 if you are "drowning in debt," want to get a fresh financial start, and some or all of the following apply to you:

1. You meet the means test and otherwise are legally able to get a Chapter 7 discharge;
2. None of the situations below make a Chapter 13 appealing to you;
3. You don't want to and/or cannot make Chapter 13 payments for 3-5 years;
4. You don't want to be in bankruptcy for 3 to 5 years, but instead want it over within months.

### *Chapter 13*

The Debtor who files Chapter 13 bankruptcy says, in effect, to the Court: *"I/we owe debts I cannot or don't want to pay in full as required by the debts. I/we can and will, however, pay part of some of the debts by making a fixed payment every month, to be shared by my creditors. Some creditors likely will not be paid in full and as to those let me/us get a fresh financial start without having to pay more than my fixed monthly bankruptcy payment."*

Chapter 13 requires Court approval of a **Plan**. The Plan is your written promise to pay a certain amount of money every month, plus 100% of any tax refunds that arrive during the Plan period, for a certain number of months as stated in the Plan. Think of the Plan as an offer to the Court: "I/we will do X and if I/we do it, reward us with a discharge." The Court must **confirm** the Plan; think of it as the Court saying "Okay, it's a deal."

The Chapter 13 Plan must provide in most instances to **make payments for at least three but no more than five years**. Certain debts must be paid 100% during the Plan, such as back taxes due within the prior three years.

In order for the Court to confirm the Plan, the Court must make a decision that it is **feasible**, i.e., the Debtor has enough income to meet reasonable living expenses and make the monthly payments; is the Debtor's **best efforts**; is proposed in **good faith**; and **meets certain other legal requirements**.

During the Plan, the Debtor makes the monthly payments to a bankruptcy Trustee. The payment amount usually must be at least \$167 monthly, often is much higher, and occasionally is lower. The payment amount is fixed in the Plan and must be approved by the Court. Basically, the Debtor must prove a budget that spends 100% of his/her/their average gross monthly income for the six months immediately prior to filing on living expenses allowed by the Court, which expenses could be less than you need to live at your current living standard, and the Plan payment.

Most Chapter 13's pay very little to unsecured creditors, perhaps five to twenty cents on the dollar. The rest of the unsecured debt is discharged.

Chapter 13 can help you keep non-exempt property by buying it over several years from your bankruptcy trustee; pay recent taxes over 3-5 years; or catch up on past due mortgage or vehicle payments over 1-5 years. In most cases, these payments for a car or a mortgage will be at least as much as your regular monthly payments on your mortgage or car loan, with some extra payments to get caught up on the amount you have fallen behind.

Chapter 13 offers the **possibility of never having to pay a 2<sup>nd</sup> or other junior mortgage on your home**, such as a HELOC. To get this benefit, the value of the property must be equal to or less than the balance due on the 1<sup>st</sup> mortgage.

You may **not** select Chapter 13 if you obtained a Chapter 7 discharge based on a petition filed in the past 4 years; if you obtained a Chapter 13 discharge based on a petition filed in the past 2 years; your unsecured debts exceed \$360,475 or your secured debts exceed about \$1 million; if you do not have regular and steady income, and enough of it to meet your allowed regular living expenses and have at least \$167 or more left over each month to pay for old bills; or if under certain circumstances you filed any kind of bankruptcy in the past which was dismissed six or less months ago.

You should **consider** filing a Chapter 13 plan if you are "drowning in debt," want to get a fresh financial start, and some or all of the following apply to you:

1. own your home and are in danger of losing it because of being behind on your mortgage;
2. own your home which is worth no more than the payoff on your 1<sup>st</sup> mortgage and have a 2<sup>nd</sup> or other junior mortgage, such as a HELOC;
3. have valuable property which is not exempt, but you can afford to pay buy it back from your future income over time;
4. are behind on debts secured by property you want to keep, such as your home or car, and can catch up if given some time;
5. owe on a car or similar property that is worth at retail a lot less than the loan payoff amount;
6. owe taxes not dischargeable in Chapter 7 and need several years to pay them off;
7. filed a Chapter 7 less than eight years ago, and received a discharge in that case;
8. cannot or do not want to file a Chapter 7.

**You will need to have enough income in Chapter 13 to pay for your necessities and to keep up with the required payments as they come due.** Filing a Chapter 13 just to see it dismissed because you could not or did not make the Plan payments is just silly.

### ***What Property Can I Keep?***

In a Chapter 7 case, you can keep all property which the law says is "exempt" from the claims of creditors. In Chapter 13, usually you can keep all property you'd keep in a Chapter 7 and sometimes more.

Whether something is exempt depends on what it is and your equity in it. "Equity" is the liquidation value minus all mortgages and liens. For example, if you own a \$250,000 house (after selling expenses) with \$240,000 mortgages, your equity is \$10,000, the amount of cash you'd get after selling and paying off the mortgages. Liquidation value of property is not what you paid for it, but what the property would sell for today at a quick sale. Especially for furniture and cars, this is usually lots less than what you paid and lots less than what it would cost to buy a replacement.

Exemptions do not make any difference to the right of a mortgage holder or car loan creditor to take the property

to cover the debt if you are behind.

You can keep non-exempt property so long as you buy it back from your bankruptcy trustee.

The major exemptions in Colorado are 100% of retirement plans/IRA's (unless "loaded up") and :

<b>Property</b>	<b>Sole or Joint Filing</b>	<b>Exemption-Standard</b>	<b>Exemption- Disabled or Elderly (age 60 or more)</b>
Homestead	Either	\$90,000	\$105,000
Car or Truck- 2 max.	Sole	\$ 7,500	\$ 12,500
Car or Truck- 2 max.	Joint	\$15,000	\$ 30,000
Furniture/Household goods	Sole	\$ 3,000	same
Furniture/Household Goods	Joint	\$ 6,000	same
Jewelry/Watches	Sole	\$ 2,500	same
Jewelry/Watches	Joint	\$ 5,000 (probably)	same

However, **no property is exempt against claims for back Colorado taxes or for back child support.**

#### ***What Will Happen to My Home and Car If I File Bankruptcy?***

In most cases you will not lose your home or car during your bankruptcy case as long as your equity in the property is fully exempt as per the above chart. If your equity exceeds the exemption amount or if the property is not exempt, you will be able to keep it if you buy the non-exempt value from your bankruptcy trustee.

However, some of your creditors may have a "security interest" in your home, automobile or other personal property. This means that you gave that creditor a mortgage on the home or put your other property up as collateral for the debt. Bankruptcy does not make these security interests go away. If you don't make your payments on that debt, the creditor may be able to take and sell the home or the property, during or after the bankruptcy case.

There are several ways that you can keep collateral or mortgaged property after you file bankruptcy. You can agree to keep making your payments on the debt until it is paid in full. Or you can pay the creditor the amount that the property you want to keep is worth. If you put up your household goods as collateral for a loan (other than a loan to purchase the goods), you can usually keep those item without making any more payments.

#### ***Will I Have to Go to Court?***

In most bankruptcy cases, no. Usually, you only have to go to a proceeding called the "meeting of creditors" to meet with the bankruptcy trustee and any creditor who chooses to come. Most of the time, this meeting will be a short and simple procedure where you are asked a few questions about your bankruptcy forms and your financial situation. However, it "looks, smells, and tastes" like court.

Occasionally, if complications arise, or if you chose to dispute a debt, you may have to appear before a judge at a hearing. If you need to go to court, you will receive notice of the court date and time from the court and/or from your attorney.

#### ***What Classes Are Required?***

Two. You may take either/both in person, by telephone or on-line. You must take a pre-bankruptcy counseling class before your case may be filed (except in an emergency) and you must take a course in budgeting and money management before you may be granted a discharge. These must be from an agency approved by the Department of Justice.

#### ***How Will Bankruptcy Affect My Credit?***

There is no clear answer to this question. Unfortunately, if you are behind on your bills, your credit may already be bad.

The fact that you've filed a bankruptcy can appear on your credit record for ten years. But since bankruptcy wipes out the right of creditors to try to collect your old debts, you are likely to be in a better position to pay your current bills, and you may be able to get new credit.

As bankruptcy records are open to the public, marketing companies review those records and sell information to car dealers, credit card companies, etc. who are interested in getting business from folks who have filed bankruptcy. Typically, a person with a reasonable income who files Chapter 7 bankruptcy is swamped, for years, with offers of credit cards, vehicle loans, etc. Generally, all offer terrible terms. Be careful not to end up after bankruptcy in worse financial shape than when going bankrupt.

### ***What Assets or Debts May I Hide?***

None. To obtain bankruptcy relief, you must fully and honestly disclose all assets, regardless of value and regardless of whether they are or might be exempt, and all liabilities and potential liabilities, regardless of whether they are disputed, or are due to or claimed to be due to relatives or friends, and regardless of whether you intend to pay them or not pay them after bankruptcy. Simply put, there is no such thing as too much disclosure.

Persons filing for bankruptcy are strictly prohibited from providing any information or making any statement that is false or misleading, including by omitting any required information.

You must determine the value of your assets for bankruptcy purposes. This might require you to hire someone for this purpose and/or spending quite a bit of time learning the value of your assets. Guessing as to value is strictly prohibited and severe penalties could apply to those who make guesses. I give my clients detailed instructions how to determine the value of their assets for bankruptcy purposes.

Folks who fail to provide full, complete and honest disclosure could be denied a discharge, be charged with one or more crimes, and have to pay lots of money which would not have been required had full disclosure been made. If you are not an honest person and/or are not willing to put in the time necessary to obtain bankruptcy relief (about 20 hours for many folks; more for others), do not hire us and do not file for bankruptcy.

### ***How Can I Cause Myself Extra Problems?***

Trying to “wing it” on your own is Trouble with a capital “T.”

Bankruptcy lawyers have 19 years of formal schooling just to become a lawyer, which should be followed with many years of learning their trade by working with or under the direction of a skilled bankruptcy lawyer.

*Examples* of *some* of the kind of problems you might cause yourself (or your family, relatives and/or friends) include: paying back in whole or in part debts owed family members or ex-spouses within a year prior to filing bankruptcy; making significant payments to any “commercial” creditor within 90 days prior to filing bankruptcy; paying off or down loans secured by property (houses, vehicles, etc.); giving away money or property; “selling” property for less than fair value in money (i.e., a \$8,000 car is “sold” to a friend for \$1,000); changing titles on real estate, vehicles or other property; and dealing with property owned by a business of which you are sole or a controlling owner as if you rather than the business owned assets of the business.

Using a “bankruptcy preparer” to “do” your bankruptcy is the same as winging it on your own. “Bankruptcy preparers” are limited by law to doing nothing more than typing for you forms you find on your own and hand-write for the preparer to type up. Such persons are merely typists. They are *not* lawyers. They have *no* licenses. *Anyone* can call him or herself a bankruptcy preparer, even if they have not finished high school. They *cannot* provide you with *any* forms. They *can not* tell you whether the forms you give them to type are “correct,” current, needed, or all that are needed. They *cannot* change, correct, or revise whatever you tell them to type. They are *not* responsible for any errors, problems, etc. with your papers.

***Remember: Nothing above or in any oral presentation is/are legal advice. All are just general information to give you ideas as to what action you might wish to take next, if any. The law often changes. Bankruptcy in Colorado is different in many ways from bankruptcy in another state. Bankruptcy now is totally different than prior to the 2005 law changes. Each person's situation and goals are unique. This information sheet and any oral presentation is/are meant to give you general information and not to give you specific legal advice. Use this as general information; not as a final guide to take or not take action.***

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