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What is Bankruptcy

People occasionally become so burdened with debts that it is impossible for them to repay their Creditors and pay necessary living expenses. The United States Congress has enacted the Bankruptcy Laws to provide relief to people (“*Debtors*”) in these circumstances. Bankruptcy voids or “*Discharges*” the debts of the Debtor with some exceptions; however, the Debtor must give up all of his property with some major exceptions.

There are four common types of bankruptcy categorized by the “*Chapter*” of the Bankruptcy Law that authorizes that type of case. *Chapter 7* provides for the liquidation of persons or corporations and is discussed in this publication. This is sometimes called “*straight*” or “*liquidation bankruptcy*”. This brochure is primarily about Chapter 7.

Chapter 13 provides for the reorganization of the financial affairs of individuals with relatively small amounts of debt. *Chapter 11* allows for the reorganization of the financial affairs of persons or corporations with large amounts of debt. *Chapter 12* deals with the reorganization of the finances of family farmers.

Credit Counseling

The new bankruptcy law requires that you attend approved credit counseling shortly before you file for bankruptcy. This is one of many changes designed to make it more difficult and expensive to file bankruptcy advocated by the credit card industry agreed to by President Bush and United States Congress. You must pay the cost of this.

Means Testing

Another section of the new bankruptcy law requires all debtors to undergo “**Means Testing**”. While very complicated, under Means Testing if you make too much money you cannot file for Chapter 7 and must file Chapter 13. We will perform this Means Testing but you must provide us with full, complete and accurate information about your income and expenses.

Simply if you make more money than the average family of your size, you will likely have to file for Chapter 13. Once we have performed Means Testing we will discuss your options.

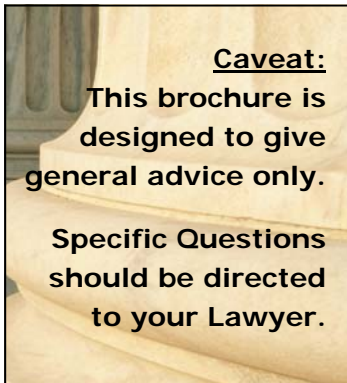
Filing the Case

The necessary forms listing all your assets and debts as well as other information – the Bankruptcy Petition and Schedules – are filed in the proper Federal District Court, normally the Western District Court located in Oklahoma City. While a Bankruptcy Petition can be filed in a day or two and later followed by the Bankruptcy Schedules, this is not desirable because it may lead to errors or omissions which will adversely affect you.

Also recent changes to the law have made it much more difficult and time consuming to file for bankruptcy. So several weeks (and occasionally even longer) should be allowed from the first appointment until the Bankruptcy case is filed. This will allow time to ensure that all necessary Creditors are notified, that all required forms are properly completed, briefings conducted and all of your circumstances are reviewed.

Remember, if You File for Chapter 7 Bankruptcy:

- You may lose all of your property with certain exceptions
- You may discharge all of your debts with certain exceptions
- It is extremely important that you understand these exceptions *before* you file bankruptcy



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First Meeting of Creditors

Once your Bankruptcy Petition is filed, the Bankruptcy Court will schedule the *First Meeting of Creditors* or simply the *First Meeting* within three to six weeks.

This First Meeting will normally be held in the morning on the first or third Thursday of the month. It is conducted at the Cherokee Strip Conference Center at 123 West Broadway in Enid. This is **not** the Garfield County Courthouse; the Cherokee Strip Conference Center is on the South side of Enid's downtown square.

People who live south of Garfield County will likely have to go to Guthrie or Oklahoma City for their First Meeting of Creditors rather than Enid. We can tell you where your First Meeting will be held during our conference.

The First Meeting is also referred to as the *341 Hearing* because it is required by Section 341 of the Bankruptcy Law.

The Bankruptcy Trustee presides over this informal First Meeting and you must be present with your lawyer. Normally 20 to 50 other Debtors or persons like you who filed Bankruptcy at about the same time will also be at this informal First Meeting. During the First Meeting you will testify for a few minutes and any of your Creditors may ask you pertinent questions about your debts and assets. *This is the only court appearance for about 98% of the Debtors.*

Notice to Creditors

The law requires that all interested parties receive notice that you have filed bankruptcy. Failure to give notice to Creditors is the most common problem encountered in bankruptcies. Your lawyer will see that proper notice is given; however, you must provide an accurate name, address and account number of every person or company to whom you owe money. *If a Creditor does not receive notice, that debt may not be discharged.*

As soon as your Bankruptcy Petition is filed, Bankruptcy Law imposes an *Automatic Stay* against nearly all of your Creditors. This Automatic Stay prohibits creditors from taking any action of any kind to collect their debt. Creditors should not attempt to call or contact you in any way **after** you file bankruptcy without the Bankruptcy Judge's permission.

All listed Creditors with accurate addresses will receive the *Notice of First Meeting* from the Bankruptcy Court within a few days of the filing of your Bankruptcy Petition.

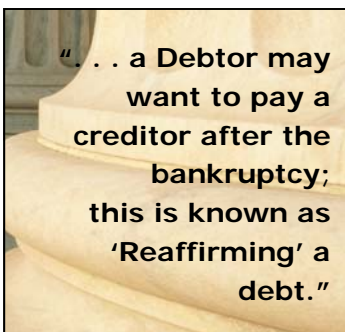
Occasionally, in large companies the "right hand may not know what the left hand is doing" and you may still be called by creditors. If that occurs, tell the caller that you have filed bankruptcy, give them the case number that my office will provide after you file and tell them to not call you again. *But notice to a Creditors must contain your identifying account number with them for the Stay to apply so ensure that we have that number.*

If they call again, let us know and we will stop the calls. This may also occur if your debt has been assigned to a collection agency so it is important that you *Bankruptcy Questionnaire* lists debts that have been assigned to someone else to collect.

Reaffirming Debts

Your Bankruptcy Petition must list all of your assets and all of your Creditors even if you intend to pay a Creditor after you have been Discharged in bankruptcy.

Occasionally a Debtor may want to pay a Creditor after the bankruptcy; this is known as *Reaffirming* a debt.



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There are many reasons to Reaffirm: A person in a small town with only one doctor may want to Reaffirm their bill with that doctor to ensure continued medical care. Or, someone wanting to keep an asset like an automobile subject to a lien may be required to Reaffirm to be able to keep the asset.

If a Creditor has collateral subject to a mortgage or lien that you want to keep, you must negotiate the **Reaffirmation Agreement** on terms acceptable to the Creditor because a Creditor is not obligated to permit you to Reaffirm. Nevertheless, this is normally not a problem if the collateral is insured and the Debtor has not done something to anger the Creditor.

The Trustee

The Bankruptcy Court will appoint a **Trustee** who will assemble your non-exempt property (see below), sell it and attempt to pay a portion of your Creditors and take certain other actions.

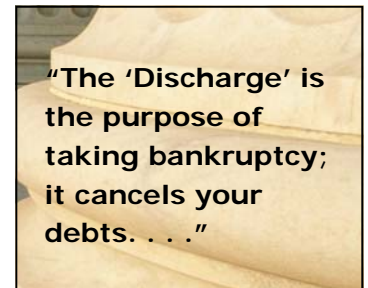
You must fully cooperate with the Trustee. The Bankruptcy Trustees who handle cases in this area are normally middle-aged lawyers from Oklahoma City.

Debts You Still Owe

While most of your debts will be Discharged, certain obligations will not be affected by Bankruptcy. Such debts include:

- ❑ Most but Not All Taxes;
- ❑ Student Loans with very limited exceptions;
- ❑ Fines and Penalties Ordered by a Court;
- ❑ Child Support Ordered by a Court;
- ❑ Alimony for Support Ordered by a Court;
- ❑ Non Dischargeable Debts as Discussed Below; and
- ❑ Debts You Agree to Reaffirm.

If you have any debt like this, make sure to bring them to our attention so that we can specifically advise you.



Objections to Discharge

The **Discharge** is the reason to take bankruptcy; it cancels your debts. There are several reasons why you may not be Discharged in Bankruptcy. The most common reasons are:

- ❑ **Prior Bankruptcy.** You cannot be Discharged in Bankruptcy more often than every eight years except in very unusual circumstances. This is a change to the law.
- ❑ **Inaccurate Information.** Failure to answer all questions on your Bankruptcy Petition with reasonable accuracy. Failure to list all of your assets is a common reason.
- ❑ **Failure to Cooperate.** Failure to fully cooperate with your Bankruptcy Trustee.
- ❑ **Crimes In Bankruptcy.** Certain acts, which may be called **Crimes in Bankruptcy** such as hiding property, false statements, or similar acts, may be grounds for a denial of your Discharge in Bankruptcy.

Exceptions to Discharge

Even though you may be granted a Discharge, under certain unique conditions a Creditor may object to having their specific debt Discharged. This is in addition to those Obligations discussed above under the heading "Debts You Still Owe." If the objecting Creditor is successful, you would still owe that Creditor even though you were granted a Discharge – their specific debt would be excepted from Discharge.

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The Author

Larry D. Lahman, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School. He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and numerous other organizations.

He was a parachute officer with the U.S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the U.S. Army Reserves.

Our Law Firm

P.C. Simons, who served as Attorney General of Oklahoma Territory, organized the predecessor to **Mitchell & DeClerck** in the early 1900's. The Firm has been in continuous existence for more than 90 years and is the oldest law firm in Enid, Oklahoma, while also one of the oldest law firms in the state of Oklahoma.

For decades the Firm has held the highest possible "A" rating by the Martindale-Hubbell Legal Directory. The Firm has long been listed in the "Bar Register" of preeminent law firms in the United States and "Best's Directory of Recommended Insurance Attorneys."

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Reasons for this include:

- ❑ **Major Purchases.** Making major purchases or taking cash advances with unsecured credit shortly before filing Bankruptcy;
- ❑ **Destruction of Collateral.** Intentionally damaging collateral for a loan;
- ❑ **False Financial Statement.** Giving a materially false financial statement to a Creditor that relied on the false statement to loan you money; and
- ❑ **Others.** And several other less common reasons.

Importantly, the Creditor must file a written request called a **Complaint** by the date specified in the Notice of First Meeting of Creditors – generally about three months from the date you file your Bankruptcy Petition.

Property You May Keep

Even though you file Bankruptcy, you may still keep certain property. You may keep what Oklahoma Law calls **Exempt Assets** subject to payment of any specific liens and mortgages on that property. Exempt Assets include:

- ✓ Your personal effects and clothing of reasonable value;
- ✓ Your Homestead or a Manufactured or Mobile Home;
- ✓ Furniture and Appliances in Your Home of reasonable value;
- ✓ One Automobile for each Debtor with an equity of no more than \$7,500;
- ✓ Guns worth no more than \$2,000;
- ✓ Implements of Husbandry necessary to farm your Homestead or Tools of your Trade or Profession not to exceed \$10,000;
- ✓ Certain Tax Qualified Pension Plans and IRAs;
- ✓ Child Support;
- ✓ Proceeds from a Workers Compensation claim or lawsuit for personal injury not to exceed \$50,000;
- ✓ And several other unique items such as health aids.

If you have any assets **not** listed above, you may lose them to the Trustee and your Creditors unless you tell your lawyer about it so he can develop a legal method to protect them for you. **Remember, you will likely have to pay creditors that hold a mortgage or lien on property you keep – even Exempt Assets.**

The Cost

Legal fees will vary with the services you require and are normally discussed and agreed to during the initial conference with you. The fee for a simple uncontested bankruptcy with no extraordinary services will usually be a minimum of \$1,500 plus postage, copying, counseling and court costs – nearly \$2,000.

Additional fees are charged for extensive negotiations, frequent conferences, complicated planning and advice, and Court appearances other than those outlined above.

Beware of attorneys who charge substantially less but who fail to adequately review your situation to ensure that you do not unnecessarily lose property that could be protected.