Information & Instructions: What You Need to Know About Bankruptcy and Chapter Filings

WHAT IS BANKRUPTCY?

Bankruptcy is a legal method whereby an individual or company may be relieved of debts pursuant to federal law (the United States Bankruptcy Code).

1. A bankruptcy case is commenced when the petition is filed with the clerk of the Bankruptcy Court along with schedules listing debts and assets.

2. When a bankruptcy petition is filed, the automatic stay requires all creditors to cease all collection efforts, even those by the IRS, issues as soon as the petition is filed. The automatic stay is one of the fundamental protections provided by bankruptcy law. It takes effect immediately without the necessity of a motion or filing regardless of whether notice is given to the creditors.

3. The filing of a bankruptcy case creates what is called an "estate." The person who files is referred to as the "debtor." The estate is comprised of all of the debtor's property, although exemptions of certain items may be claimed. In deciding which property to claim as exempt the debtor may choose between the federal exemptions (that is, property which is listed as exempt in section 522(d) of the Bankruptcy Code) and the state exemptions which the debtor is entitled to claim under state or local law.

4. If the debtor does not claim particular property to be exempt, that property is included in the estate and may be sold; then the proceeds may be distributed to creditors. Consequently, one of the most important evaluations and recommendations the attorney can make is whether to select the federal or state exemptions.

5. The choice of which is the better exemption system between state and federal is to be made by the debtor rather than the court or creditors, but the debtor may not claim both the federal and the state exemptions.

6. Along with the petition the debtor is required to file schedules containing a list of creditors which must contain the name and address of each creditor, a schedule of assets and liabilities, a schedule of current income and expenses, along with a statement of financial affairs. These must be filed on the official forms. Other lists and statements which the debtor may be required to file include a statement of intention regarding secured consumer debts and a list of property claimed as exemptions. The list of property claimed as exempt must appear on the debtor's schedule of assets and liabilities.

7. Schedules A, B, C, D, E and F are the schedules of assets and liabilities.

   a. Schedule A lists real property,

   b. Schedule B lists personal property;

c. Schedule C lists property claimed as exempt,

d. Schedule D lists creditors holding secured claims,

e. Schedule E lists creditors holding unsecured priority claims,

f. Schedule F lists creditors holding unsecured non priority claims,

g. Schedules G lists unperformed and outstanding contracts,

h. Schedule H lists all co signers,

i. Schedules I and J list income and expenditures,

j. Schedule I lists current income, and

k Schedule J is a list of current living expenses.

THE BANKRUPTCY PROCESS

The bankruptcy process begins by meeting with the attorney and ascertaining if you can work out an arrangement with your existing creditors that does not involve the bankruptcy court. It is sometimes possible to work out a composition with your creditors whereby your creditors will take lower monthly payments or reduce the debt so that they can be paid and you can avoid filing for bankruptcy.

If you cannot work out a satisfactory arrangement with your creditors, and you need court protection, the next step is to meet with the attorney and have the attorney review your assets and liabilities. Generally, the attorney will require you to fill out a bankruptcy questionnaire or information sheet that requires you to list a large amount of information about you and your property. After the attorney has had a chance to review the questionnaire, he or she can then recommend the most appropriate chapter for your individual situation.

As a next step, the attorney may use the information you have provided in the bankruptcy questionnaire to complete a lengthy bankruptcy petition. Once again I cannot overemphasize the importance of listing all of your debts and assets in the bankruptcy questionnaire so that they can be included in the bankruptcy petition. Once the attorney's office has prepared a bankruptcy petition, it is then your sole responsibility to review such petition to make sure of its accuracy.

The bankruptcy petition is a very large, lengthy legal document. You must read it very carefully to ascertain that all the questions are answered correctly. You will be asked many important questions regarding your finances, taxes, property, obligations owed to other people, whether or not you have transferred property to others, and many other rather detailed questions.

You must review the information contained in the bankruptcy petition with a fine tooth comb and advise your attorney if there are any errors or omissions. If you fail to list some of your

assets, you may inadvertently be in the position of having a creditor assert that you have attempted to defraud the bankruptcy court.

Bankruptcy judges expect the debtor to take the filing of a bankruptcy seriously. Most judges have very little patience with debtors who complete the bankruptcy petition in a sloppy, incomplete or careless manner.

Once the bankruptcy petition has been reviewed, it can be filed with the clerk of the bankruptcy court. A filing fee must be paid at the time the bankruptcy is filed, in its entirety or, if you qualify, in installments.

Once the bankruptcy petition is filed, you will be given a bankruptcy case number. It is at this point that you "have filed the bankruptcy." An important event now takes place in your life: your debts are divided into two categories pre bankruptcy filing and post bankruptcy filing. Any and all debts that were incurred prior to filing bankruptcy can be dischargeable if they are of the dischargeable type. However, debts that are incurred after the bankruptcy petition is filed will generally not be affected by the bankruptcy petition and you will still owe those debts whether or not you receive a discharge in bankruptcy.

RETAINING OR ABANDONING SECURED PROPERTY

It is important to determine which secured property you want to keep and which property you can no longer afford. The property you can no longer afford will be returned to secured creditors. In order to keep property that is subject to a security interest, you must work out an amicable arrangement with the secured creditor. That generally means you must either become current on the payments that are owed and then continue to maintain the payments or agree with the creditor to a new payment schedule. If a secured creditor believes that you will not be able to pay the debt, he or she may file a Motion to Lift the Automatic Stay, and if successful, will then be entitled to repossess his or her property. (The automatic stay is discussed in more detail in the next section).

Please be advised that matters involving a Motion to Lift the automatic stay may be contested in the bankruptcy court as to issues relating to the dischargeability of a debt. This contest is an adversary proceeding and is like a separate mini lawsuit inside the bankruptcy proceeding. Generally the attorneys handle these matters on an hourly basis rather than on a flat fee basis.

THE AUTOMATIC STAY

As soon as the bankruptcy petition is filed, you receive protection of the bankruptcy statute, under a provision which is termed the "automatic stay". Under the automatic stay, creditors are required to cease and desist collection activities and lawsuits against you and your property until they have obtained approval from the bankruptcy court to continue their collection efforts.

Many unsecured creditors will be effectively barred from their collection efforts as a result of the automatic stay. Certain criminal prosecutions and other activities are barred by the automatic stay provision. As an example, if you have written checks with "insufficient funds," the criminal

actions that may be taken against you are not stopped by the bankruptcy automatic stay.

Generally, secured creditors may not repossess your property once you have filed your bankruptcy until they have obtained a court order allowing them to do so. This order may be obtained by filing a Motion to Lift the Automatic Stay. The court may approve the repossession by granting the motion following either a default on your part, your agreement to having the stay lifted, or unsuccessful argument by your attorney.

Contesting a creditor's Motion to Lift the Automatic Stay is both time consuming and expensive. You will have to pay the additional attorney's and expert witness fees if you desire to contest such a motion.

8. If there are no objections by creditors or the trustee to any items on the list of exempt property, then the property is exempted. However a non-specific exemption such as "other assets of the petitioner" may be rejected since it does not comply with the obligation to specifically list all property claimed as exempt.

9. When a debtor's schedule of assets and liabilities includes secured consumer debts, then, in addition to the other required schedules and statements, the debtor must file a “statement of intention” with respect to retaining or surrendering that property.

10. This filing must state whether the property is claimed as exempt and whether the debtor intends to redeem the property and reaffirm the debt, or whether the debtor intends to surrender the property to the creditor. The debtor must do one or the other within 45 days of filing the statement of intent.

11. A "preference" occurs when a debtor makes a payment or transfers property to one creditor but not to the others. The trustee may set aside such a transfer if it was:

a. to or for the benefit of a creditor,

b. for or on account of an antecedent debt owed by the debtor before the transfer was made,

c. made while the debtor was insolvent,
d. made on or within 90 days before the date of the filing of the petition in bankruptcy, and

e. because of the payment the creditor receives more than that creditor would have received under a distribution as provided by the Code.

13. WHAT TYPES OF BANKRUPTCY APPLY TO ME?

There are several Chapters of the Bankruptcy Code under which most consumers or businesses may obtain bankruptcy relief. The typical Chapters are 7, 11, and 13.

14. CHAPTER 7 VERSUS CHAPTER 11 CASES

A Chapter 7 bankruptcy liquidates your non exempt assets to pay your debts. Chapter 7 is the most frequently filed bankruptcy and is the one most commonly used by individual debtors. A Chapter 7 bankruptcy allows the debtor to list his or her assets and debts, and then, depending on the exemptions allowed, emerge from the bankruptcy debt free while retaining his or her exempt property.

Chapter 7 is available for debtors who choose to surrender all assets to the trustee in exchange for a discharge. Chapter 7 may be appropriate where there is no non exempt property to protect (that is, a “no asset case”) or where considerations call for filing under Chapters 11 or 13 are not present, such as when the debtor lacks sufficient income to fund a repayment plan.

15. CHAPTER ELEVEN BANKRUPTCIES

A Chapter 11 bankruptcy is used where an on going enterprise can propose a plan acceptable to its creditors which will allow the enterprise to reorganize by reducing its debt so that it can stay in business pursuant to the terms of the plan. The enterprise attempts to emerge as a reorganized entity that will be successful and profitable pursuant to the terms of the plan. The key to a successful Chapter 11 bankruptcy is the ability to generate income in excess of expenses and provide more payment of debt to creditors than would otherwise be realized if the enterprise was liquidated under a Chapter 7 proceeding.

In order for the plan to be approved, certain legal requirements must be met. The plan must either be approved by the requisite number and type of creditors or approved by the court under certain strict guidelines. To successfully obtain a Chapter 11 bankruptcy, you should assume that you will be required to obtain your creditors' approval of your Chapter 11 plan. As a consequence, Chapter 11 bankruptcies are time consuming and expensive. It is not always easy to have the plan confirmed by the court or approved by the creditors.

Chapter 11 is, like Chapter 13, aimed at "Reorganization" and is intended to be available for businesses as well as individuals engaged in business, with the exceptions of stockbrokers and commodity brokers. Thus consumer debtors may file under Chapter 11 if they could have initially proceeded under Chapter 7 since there is no explicit limitation excluding persons who are not engaged in business from filing under Chapter 11 to seek reorganization of their financial affairs.

The reason for filing under Chapter 11 is that some consumer debtors could not qualify for relief under Chapter 13 because of not having regular income or because they have debts in excess of the limits for Chapter 13.

16. Chapter 12 is available only to family farmers with regular income. It was designed to give farmers a chance to reorganize debts and keep their land. A "family farmer" can be an individual, individual and spouse, corporation, or a partnership. To qualify, the debtor must be engaged in a "farming operation" and have less that $1,500,000 in aggregate debts.

17. CHAPTER THIRTEEN BANKRUPTCIES

Chapter 13, the Wage Earner Plan, allows an individual to reorganize pursuant to the terms of a Chapter 13 plan specifying terms governing the debtor's payment of his or her debts. If the plan is approved or confirmed by the court, the debtor may retain many of his or her assets but must then pay his or her debts pursuant to the terms of the plan.

FAILURE TO OBTAIN CONFIRMATION

It is important to realize that if you cannot obtain confirmation of your Chapter 11 or 13 plan, the bankruptcy may be dismissed or converted to a Chapter 7. If the case is converted to a Chapter 7, you may not be able to keep some non-exempt property that you might have retained under a successful Chapter 11 or 13 plan.

Chapter 13 is generally simpler, speedier, and less expensive than Chapter 11 and it gives the debtor more flexibility in the formulation of a plan of repayment. Chapter 13 may be used by an individual with regular income who needs to obtain a relief from the creditors and have a repayment plan administered by the court.

The ability to make payments to creditors is a prerequisite to eligibility under Chapter 13; debtors who have no excess income out of which to make payments under a Chapter 13 plan are ineligible for Chapter 13 relief. It is fatal to Chapter 13 eligibility if an individual's income is inadequate to cover family expenses and also make plan payments.

The following considerations favoring the use of Chapter 13:

a. Assets can be retained when a debtor retains property under a Chapter 13 repayment plan rather than being liquidated in a Chapter 7 case,

b. Some debts not dischargeable in Chapter 7 are dischargeable in Chapter 13 which generally permits a discharge of all debts upon completion of payments under a plan except for alimony, child support, and certain long term obligations,

c. A "hardship discharge" is available in Chapter 13 under which a discharge may be granted before completion of plan payments under certain circumstances,

d. The 6 year limitation on discharge applicable to Chapter 7 cases does not apply to Chapter 13 cases,

e. A co debtor stay is afforded by Chapter 13 but not by Chapter 7 or 11. This stay protects the debtor from indirect pressures on friends or relatives who may have cosigned for the debtor,

f. A Chapter 13 debtor generally remains in possession of all property and may continue to use secured personal property while redeeming it under the plan,

g. A creditor can be compelled to accept payment of the redemption value in installments, whereas under Chapter 7 a debtor who redeems property may be required to pay a lump

sum,

To qualify for Chapter 13 relief, an individual must show a stable and regular income which must exist at the time the court considers the debtor's eligibility, rather than at the time the Chapter 13 petition is filed.

18. LOSS OF CONTROL OF YOUR PROPERTY IN A BANKRUPTCY

Some debtors have filed bankruptcy, only to realize that they no longer control their assets or company. Instead, the court, the Trustee, and the creditors exercise that control. When you file a bankruptcy, your property, which is called the bankruptcy estate, is completely subject to the court's control. You are only allowed to control or retain your exempt property, unless you are able to successfully navigate through the bankruptcy maze. There are many traps and obstacles to avoid. I cannot fully explain the complexity of bankruptcy practice in this letter. I can only advise you to consider the risks that are inherent when you file bankruptcy.

19. CATEGORIES OF PROPERTY IN A BANKRUPTCY

There are two types of property in bankruptcy law, exempt and non-exempt property. Exempt property is the property which the debtor may keep after he or she has filed the bankruptcy, if the exemptions are allowed by the Trustee or the court. Non exempt property is property that is not subject to a federal or state exemption. This property may be taken by the Trustee or court and sold to pay for the debtor's debts. This is property, or its value, which creditors may eventually obtain.

In determining whether to file bankruptcy, one place to begin is to analyze your property to ascertain whether it is exempt or non exempt. If most of your property is non exempt, and you desire to keep this property, a Chapter 7 bankruptcy would not generally be advised. You should instead consider filing a Chapter 11 or 13 plan. Under the Chapter 11 or 13 filing, it would then be up to you to utilize your management and business skills to propose and fund a successful plan.

20. CATEGORIES OF DEBT IN A BANKRUPTCY

There are two types of debt in bankruptcy: secured and unsecured. A secured debt is an obligation under which the creditor retains a security interest in the property or goods sold to the debtor. A security interest is a contractual agreement under which the creditor may repossess the goods in the event the debtor fails to pay for the goods. Many Trustees require the security agreement to be "perfected," by complying with certain formalities to protect the security interest against the claims of other creditors, such as by delivery of possession of collateral or by filing a financing statement, prior to recognizing the security agreement.

A common example of a secured debt results when a person buys a car and finances its purchase with a loan from a local bank. The car dealer sells the car to the buyer. The buyer pays for the car with the proceeds from the loan. The bank advances the money to the car dealer and retains a security interest, creating a lien on the title to the vehicle. The purpose of this security interest is

to assure the bank that in the event the buyer does not pay for the vehicle, the bank can recoup its losses by selling the vehicle after it is repossessed pursuant to the terms of the security agreement and lien.

You should understand that filing bankruptcy generally does not discharge or remove the security interest that a creditor has in a secured debt. Consequently, if most of your debt is secured, then even though the property may be considered exempt property, you will generally have to pay the debt in order to retain the property. If you cannot pay the debt, the secured creditor may repossess the property by foreclosing on its secured interest at the appropriate time after it has obtained the court's approval.

If, on the other hand, most of your debt is considered unsecured, and the majority of your assets are in the exempt property category, then you may emerge from the bankruptcy debt free while retaining the exempt property which was not subject to a security interest.

21. DISCLOSURE OF ALL ASSETS AND DEBTS IN A BANKRUPTCY

The SINGLE most important piece of advice that I can give you at this time is that in order to receive a discharge of your debts, you must make absolutely certain that the bankruptcy filing the petition, schedules, statement of affairs, affidavits, etc. is totally true and correct and that you have listed and disclosed therein all of your assets, property, expectancies, debts, liabilities, and contingent liabilities, including but not limited to those that have been litigated and those that may be litigated. I cannot over emphasize this most important point. If you fail to list a debt or an obligation in the bankruptcy filing, you will not be discharged from that debt or obligation; you will still owe the debt or obligation notwithstanding the fact that you have filed bankruptcy. For instance, suppose that you have filed bankruptcy and forgot to list a loan. Notwithstanding the fact that the bankruptcy has been processed and completed, the discharge that you receive from the Bankruptcy Court will not wipe out the debt that you have failed to list.

It is, therefore, absolutely critical that you search any and all records including but not limited to court and county records to ascertain that all of your debts, contingencies, obligations and assets are listed in the bankruptcy schedules. I recommend that you use a credit reporting service and a title company as a check to ascertain if there are any judgments, bills, obligations or assets that you may have forgotten to list. It is also a good idea to have a title search done by a title company to see if there are any liens or assets that you may have forgotten.

For the above reasons, IT IS YOUR SOLE RESPONSIBILITY to make sure that all required information is disclosed in the bankruptcy filing. It is up to you to make sure that the bankruptcy information sheet which was given to you is complete. You are required to answer all of the questions including but not limited to the detailed information asked about each creditor (such as: the creditor's name, address, account number, amount owed, when the debt was incurred, name of any credit or collection agency or attorney, if any, or any other information listed in the information sheet).

22. Creditor's Meeting. A meeting of creditors is conveyed by way of notice sent out by the Bankruptcy Clerk shortly after the filing of the petition. The central purpose of this meeting

is the examination of the debtor under oath in order to enable the trustee and the creditors to determine if there are grounds for objections to discharge or if any assets have been improperly disposed of or concealed. The meeting of creditors, as a rule, is to be held not less than 20 nor more than 40 days after the order for relief and is to be held at a regular place for holding court or any other place convenient for the parties designated by the trustee.

The date set for the meeting of creditors determines the deadline for filing a proof of claim in Chapter 7 and Chapter 13 cases, as well as the deadline for filing dischargeability complaints.

At least 20 days notice by mail is to be given to the creditors by the clerk, but a creditor who has not received notice of the meeting may still be bound by the above time limitations if the creditor had knowledge the bankruptcy was filed.

A trustee rather than a Bankruptcy Judge presides at the creditors' meetings. A designee of the trustee may also preside and where the United States trustee system is not in effect. The presiding officer has the authority to administer oaths and examinations of debtors are recorded by sound recording equipment.

The debtor is obligated to attend and to submit to examination, in return for the automatic stay. The meetings are generally short and while the main purpose is to allow creditors is to uncover the debtor's assets; they may also inquire as to the dischargeability of debts. The scope of the examination is broad and generally any question is permissible if it seeks to ascertain facts concerning the debtor's conduct, property, and affairs.

23. DISCHARGEABILITY

Although as a general rule you will be relieved from obligations for any and all debts listed in your bankruptcy petition, there are some types of debt that bankruptcy will not discharge. Discharge means that your bankruptcy frees you from having to pay that debt. Accordingly there are two types of debts from a discharge perspective: dischargeable and non dischargeable.

Non-dischargeable debts are those that you will still owe even if you file bankruptcy. An example of a non dischargeable debt is money owed to the Internal Revenue Service for current tax years and within the statute of limitation time frame for owed income tax liability. Another example would be student and some government loans. Child support is also non dischargeable. Furthermore, any debt or obligation that is owed as a result of fraud or intentional wrongful conduct is likewise non dischargeable.

For example, assume that you were involved in a civil conspiracy to defraud someone and a court awarded damages against you for that intentional misconduct. Depending upon how the judgment is written, the holder of the judgment may be able to obtain an objection to your discharge regarding that particular debt. Consequently you would still owe the debt after your bankruptcy was completed.

POST-PETITION CHANGES AND REQUESTS FOR INFORMATION OR DEPOSITIONS

After the Creditor's Meeting, the Trustee may request that you provide additional information regarding your bankruptcy schedules, debts, or assets. The Trustee is entitled to request reasonable information and it is in your best interest to provide such information.

In the event a creditor desires more specific information about your bankruptcy or your debts or assets, the creditor can use a procedure in bankruptcy which allows the creditor to take your deposition and explore whether or not there are grounds to contest your bankruptcy. Do not be alarmed if a particularly aggressive creditor desires to examine you under this procedure. Your attorney can work with you and prepare you for the deposition.

You will, of course, be required to pay the attorney's hourly fee for the time spent defending you. If you have been honest in your business dealings and your listing of the bankruptcy schedules, you will probably have nothing to fear. On the other hand if you have failed to list all of your assets or you have grossly undervalued your assets, the creditor may discover sufficient information to contest your bankruptcy and file an objection in the bankruptcy court.

REAFFIRMATION OF PRE-PETITION DEBTS

In the event you desire to retain either credit with a merchant or property subject to a security agreement, a creditor may insist that you sign a reaffirmation agreement. A reaffirmation agreement is a contract which states that you agree to pay pre petition bankruptcy debt and become obligated to pay that debt notwithstanding the bankruptcy filing even though the debt could have been discharged in the bankruptcy proceeding. This means that you will owe the creditor the money that you owed before you filed your bankruptcy. By signing a reaffirmation agreement you continue to owe that creditor the debt even though the bankruptcy discharge could have wiped out the debt.

Debtors sometimes believe that it is in their best interests to sign a reaffirmation agreement in order to reaffirm a pre filing debt that they believe may benefit them. For instance if you have had a credit card with a merchant for a long period of time and desire to retain that credit card and the previous credit that you enjoyed with the merchant, the merchant may require you to reaffirm your existing debt as a prerequisite to allowing you to retain your credit standing and credit card.

Generally we advise clients against signing reaffirmation agreements since the purpose of filing a bankruptcy was to obtain a discharge of the debt that the debtor owed. However, there are situations where it makes good sense for the debtor to reaffirm a particular debt. You should be cautioned, however, against reaffirming too many debts since once you reaffirm a debt, that debt will not be discharged by your bankruptcy.

REFILING BANKRUPTCY

Be aware that once you file a bankruptcy, you must wait a certain length of time before you can refile for bankruptcy protection. Depending upon the type of bankruptcy filed in the past and the type of bankruptcy you desire to file in the future, there are certain time limitations and we will

be happy to discuss this with you when the need arises. For the sake of simplicity, you should not plan to file bankruptcy shortly after being discharged from a prior proceeding.

OTHER CONSIDERATIONS AND SPECIAL TYPES OF PROPERTY

In the event that you inherit property or monies that you may receive or become entitled to, you must disclose this to the Trustee if this occurs shortly after you file your bankruptcy or after the Creditor's Meeting. Many Trustees will give you a letter at the Creditor's Meeting which informs you that you must notify the Trustee if you receive an inheritance within six months after you filed bankruptcy.

You must also provide written notice to the Trustee of monies or property that you may receive as a result of a final divorce decree, with the exception of child support, which accrued either before you filed bankruptcy or within six months after you filed bankruptcy. Likewise you are required to notify the Trustee of any monies that you may receive as a beneficiary of a life insurance policy or as the result of a death benefit that you acquire or become entitled to receive if received prior to the filing of a bankruptcy or within six months after the date you filed your bankruptcy petition.

Rental income must be accounted for and turned over to the Trustee in a Chapter 7 case. In other Chapters, such as 13 and 11, the rental income may be subject to a dispute and, depending upon whether or not a creditor has a security interest in such income, those funds may also become unavailable.

You must also advise the Trustee of any transfers, conveyances, or gifts of property which have not been scheduled and which have been made within one year prior to the date of the bankruptcy.

If the debtor is a corporation, please be advised that any and all accounts receivable or bank accounts open or closed become the property of the Trustee the moment that the bankruptcy petition is filed. In a Chapter 7 case no one other than the Trustee is allowed to withdraw monies from the account after the date of filing of the bankruptcy, since the Trustee is entitled to take that property and pay off the corporation's debts.

Creditors may have a security interest in your goods, inventory, accounts receivable, and monies. In Chapters 11 and 13 the money may become subject to a cash collateral dispute. Consequently you may find that you are unable to spend money freely after filing bankruptcy.

INCOME TAXES

You are still responsible for filing income tax returns and reporting income for items not transferred to the bankruptcy estate. The Trustee will generally maintain that he or she is entitled to your income tax refund if one is due after the filing of your bankruptcy. The Internal Revenue Service is a priority creditor in a bankruptcy case. However, many Trustees will not pay funds to the Internal Revenue Service until the case has been fully administered. Consequently penalties

and interest imposed by the Internal Revenue Service may not be paid by the Trustee out of the bankruptcy estate funds since the Trustee may consider that expense as yours rather than an obligation of the bankruptcy estate.

ABSTRACT OF JUDGMENT LIENS

The filing of an abstract of judgment creates a lien on your property. Contrary to popular belief, the filing of a bankruptcy and obtaining a discharge does not remove abstracts of judgment which have been filed of record. The procedure set forth in the Texas Property Code for removing abstract of judgment liens must be used to remove an abstract of judgment which has been filed against you.

Title companies require abstract of judgment liens to be removed before they will issue "good or clear title" to a person who has abstracts filed against him or her. The above procedure must be used to remove the lien. You should therefore understand that the discharge that you receive in bankruptcy court will not remove abstracts of judgment; consequently you will have to have them removed after the bankruptcy filing. This is a separate procedure and a separate expense. We can discuss this with you in more detail if you have any questions.

PLEADINGS AND COURT CAPTIONS

1. The petition (Official Bankruptcy Form No. 1) is the means by which a bankruptcy proceeding is initiated. It may be used to commence a voluntary case under Chapter 7, 11, 12, or 13 of the Bankruptcy Code.

2. The caption of the petition must include:

   a. the name of the court,

   b. the title of the case,

   c. the docket number,

   d. the debtor's name,

   e. social security number,

   f. the debtor's employer's tax identification number, and

   g. all other names used by the debtor within the past six years.

3. All motions and orders or other bankruptcy pleadings should have the attorney's information displayed on the document. The following information should be placed on the front left hand corner of the pleading before the court caption:

   a. Attorney's information:

b. Attorney in charge

c. Address

d. Telephone and facsimile numbers

e. Federal identification number