

OUTLINE

DEBTOR CREDITOR PRO BONO CLINIC

Discussion of Pros and Cons of Filing Bankruptcy

I. Format for Lecture

General discussion about Chapter 7 bankruptcy, what it will and will not do for you, followed by individual interviews with attorneys for those of you who have appointments.

We have given everyone a written summary on bankruptcy. Please take time to read it, even if you have an appointment with an attorney.

II. Purpose of Discussion

The purpose of this discussion is to give you some pros and cons of filing bankruptcy, some considerations which are relevant to many debtors.

1. Discussion by necessity GENERAL. Only some of the considerations may apply to you.
2. Bankruptcy a POWERFUL WEAPON/TOOL for the debtor. Can remedy a lot of evils and significantly improve a debtor's financial situation and life in general.
3. You can only file and receive a Chapter 7 bankruptcy discharge once every **EIGHT (8)** years (from date of filing to date of filing). Filing at the wrong time can be disastrous for the debtor, and, in some situations, after bankruptcy the debtor may be worse off financially than before filing.
4. Bankruptcy requires full disclosure of all assets, and opens the debtor's financial life to close scrutiny by the court, the trustee and creditors.
5. Bankruptcy law imposes certain duties on debtors such as attending credit counseling before you file your case and a debtor education course before you receive your

discharge, providing your most recent tax year's tax return and 2 months' worth of pay stubs to the trustee, failing which the case may be dismissed.

III. Types of Bankruptcy

There are several types of bankruptcy:

1. Chapter 12, focused on family farms

2. Chapter 11, focused on reorganization of businesses

3. Chapter 13, focused on reorganization for individuals a payment plan lasting 3 to five years. The Debtor, an individual with a regular income, continues to make payments on secured debts, like home mortgages and car payments. If one of your significant financial problems is that you have fallen behind on your house and/or car payments, Chapter 13 may provide you with more help than Chapter 7. The individual also makes monthly payments to the Chapter 13 trustee for payment to all of the debtor's other creditors. At the end of the 3 or 5 year payment period, the debtor receives a discharge.

The Bankruptcy Clinic DOES NOT handle Chapter 13 cases

4. CHAPTER 7, focused on liquidation - the debtor gives up all of his or her non-exempt property, with certain exceptions, and is relieved of all liability for his or her debts, with certain exceptions.

The Bankruptcy Clinic handles ONLY Chapter 7 cases.

IV. Bankruptcy Procedure in General

A. How to Start the Process

1. You must receive **Credit Counseling** from an approved, non-profit budget and credit counseling agency before you file your case. You must file a certificate from the agency with the court. A list of approved credit counseling agencies is on the UST's website at <http://www.justice.gov/ust/credit-counseling-debtor-education-information> Credit counseling may be completed over the phone or via the internet. Agencies approved by the UST are to charge a reasonable fee, ranging from \$0 to \$85, and are to provide services regardless of ability to pay.

2. You will need to complete a petition and schedules with lots of personal and financial information about all of your belongings, and a list of all your creditors with their addresses. You should assemble pay stubs or evidence of other income from all sources, (including pensions, worker's comp., and unemployment) for the 6 months before you file your case, your tax return for the most recent tax year, any documentation about your home, your car, or other assets, copies of 2 months' worth of credit card statements and any letters from creditors. You should make sure you have a photo id issued by a governmental entity and proof of your social security number.

3. You will need to complete a form averaging your income for the 6 months prior to the month in which you file your bankruptcy case. If your income is above the median income for a family of your size you will also have to provide information about how much your allowable expenses are under the IRS's guidelines so that the court, creditors and the UST can determine whether you should not be allowed to proceed in Chapter 7 because you could pay a sufficient amount to your creditors over 5 years.

4. File the petition with the court and pay the \$335 filing fee, either in cash, or in 3 installments. The first installment is due within 30 days, the second within 60 days, and the third within 90 days. If any installment is late, your case will be dismissed.

YOU MAY BE ELIGIBLE to ask to have the filing fee waived, if your income is less than 150% of the poverty line. For a family of 1, 150% of the income is \$17,655. For a family of 2, it is \$23,895 and for a family of 3, the income is \$30,135. EVEN IF YOUR INCOME IS LESS THAN THE REQUIRED AMOUNT IT WILL BE UP TO THE JUDGE WHETHER TO WAIVE YOUR FILING FEE.

For instance, the judge will consider the amount of cash on hand, your bank account balances, whether you have extra income each month, whether you are entitled to a large amount of money in the near future or are entitled to receive any tax refunds.

B. Effect of Filing

Upon filing the petition, several things happen.

1. *Automatic Stay* becomes effective. None of your creditors can continue to try to collect debts. They cannot call you, write letters, sue, garnish etc. If you filed a Chapter 7 bankruptcy case that was dismissed in the last year, the automatic stay may only protect you for 30 days from the filing date. If you filed 2 bankruptcy cases which were dismissed within the last year, you may not receive the benefit of the automatic stay.

a. Note that there are some exceptions to the automatic stay. For instance, the automatic stay does not apply to:

i. Continuation of criminal proceedings

- ii. Commencement or continuation of an action to establish a domestic support obligation, paternity, child custody or visitation, domestic violence, or divorces, and payment of most child support obligations.

2. A *trustee* is appointed to determine if you have any assets to take and sell, with the sales proceeds to be distributed to your creditors.

3. Title to all of your property transfers to your *estate*, the fictional entity that acquires all of your property.

4. Notice of your bankruptcy and the date, time and place of your *first meeting of creditors* is sent by the court to ALL of your creditors at the addresses you listed in your bankruptcy schedules.

You MUST list all of your creditors, even friends and relatives and those creditors you intend to repay.

5. You must attend the hearing called the *first meeting of creditors*, and answer questions under oath about your assets and liabilities. You will be asked to present a photo ID to prove your identity, and verification of your social security number.

6. At least 7 days before the *first meeting of creditors* you must provide the trustee with copies of 2 months' worth of pay stubs and a copy of your tax return for the most recent tax year. If you do not provide your tax returns to the trustee at least 7 days before the *first meeting of creditors*, the court SHALL dismiss your case unless you can show that the failure was beyond your control.

7. If you have no assets that the trustee can sell or collect, the *trustee* will declare your bankruptcy to be a *no asset* case. You will not have to give up any property. Most individual Chapter 7 cases are *no asset* cases.

8. You will need to take a debtor education class before you are able to receive your *discharge*. A list of approved debtor educators may be found on the UST's website at <http://www.justice.gov/ust/credit-counseling-debtor-education-information>. You may complete this class over the phone or via the internet. Debtor educators approved by the UST are to charge a reasonable fee, ranging from \$0 to about \$50, and are to provide services regardless of the ability to pay.

9. About 75 days after the *first meeting of creditors*, and if you have completed your debtor education class, the court will issue a permanent order of *discharge*, which means that you are relieved of all of your obligations. Your creditors are prevented from taking any additional collection action. The court sends a notice of *discharge* to you and all of your creditors.

BUT

(1) Only those debts accrued before you filed for bankruptcy will be *discharged*. So, if you file on Monday, incur debt on Tuesday, the Tuesday debts cannot be *discharged*.

(2) Certain categories can never be discharged. Never.

(3) Certain categories of debts may be discharged, depending on what the creditor does in response to the bankruptcy.

C. What Property Can I lose?

1. Your *estate* includes almost everything you own, from false teeth to shoe inserts to bank accounts, to house, to car, to washing machine, to causes of action for damages.

- a. All the property you own on the date filing is property of your bankruptcy *estate*. BUT if someone dies and leaves you an inheritance in the 180 days after you file your case, or you become divorced and become entitled to property within the 180 days after you filed your case, this property becomes part of your *estate* and you could lose it.
- b. Except for property described above in paragraph a, property of the *estate* does not include property you acquire after you file your case.

You will be entitled to *exempt* certain property which means that your trustee either will not take it from you or will pay you the dollar amount of the exemption if the trustee sells the property. We will come back to this in a minute or two.

V. Considerations

A. Will all of your debts be *discharged*?

The general rule is that all of your debts incurred before you file your petition will be *discharged*, but there are certain exceptions. You should carefully consider these exceptions in determining whether to file for bankruptcy protection at this particular time.

1. Debts that CANNOT be *discharged*

Domestic support obligations including child support and alimony whether owed to a former spouse or a governmental unit,

Property settlements arising from divorce or separation proceedings,

Fines, including parking tickets

Drunk driving resulting in personal injury

2. Debts that MAY be *dischargeable*

a. **Personal income taxes**, but only if

(i) Return filed

(ii) 3 years passed since tax due. Taxes are generally due April 15 of year following year in which income is earned. eg. Taxes for 2015 are due on April 15, 2016. They will be dischargeable on April 16, 2019.

(iii) If return filed late, 2 years passes since date the return actually filed. May run concurrently with the 3-year period.

(iv) 240 days passed since date the tax liability was assessed by IRS

NOTE this is a complicated area. If you have a tax problem, you need to review it carefully with your attorney.

b. Student loans, but only if

the denial of a discharge would cause an undue hardship on the debtor and the debtor's dependents. If you have a student loan that you are trying to discharge, you will have to file a lawsuit in the Bankruptcy Court against the student loan creditor. If the creditor contests the suit, there will be a trial on whether paying the loan will be an undue hardship for you. This process can take 4-6 months.

NOTE the standard to obtain an undue hardship of a student loan is a difficult one to meet.

THE CLINIC DOES NOT HANDLE STUDENT LOAN DISCHARGES.

c. Debts left off the petition, but only if

the debt which is left off the petition was NOT the result of your fraudulent conduct (NSF checks, overpayment of welfare or unemployment benefits) or certain other wrongful conduct.

It is unwise to leave debts off the petition, if only because of the problem of dealing with creditors who did not receive notice of the bankruptcy and think their claim has not been discharged.

3. Debts Which Might Be Discharged Depending on the Creditor

(a) these debts are dischargeable unless the creditor OBJECTS by filing a suit in Bankruptcy Court to stop the dischargeability of the debt. If no suit filed, the debt is discharged. If suit filed, proceeds to trial for determination of the facts. The creditor must file suit 60 days from the first date set for the Meeting of Creditors, about 90 to 100 days after the case is filed.

(i) Debts incurred as the result of fraud or misrepresentation

eg. NSF checks, checks written with reckless disregard for whether sufficient funds in account to cover the check

eg. Failure to return welfare or unemployment overpayments. Typically where debtor is receiving benefits and working, or spouse living with them, and thus not eligible. State of Oregon often objects

(ii) Debts owed to a single creditor for LUXURY GOODS of \$650 or more, and incurred within 90 days before filing, or cash advances of \$925 or more incurred within 70 days before filing.

(iii) Debts incurred as a result of willful and malicious conduct

B. Will You Lose Any Of Your Property?

All of your assets as of the date of filing are turned over to the bankruptcy estate, with certain exceptions.

The property you get to keep is the same property you get to keep as against a judgment creditor under state law.

Eg. If a creditor sues and obtains a judgment, this is not a court order that you have to pay. It is a court determination that you owe the money. **IT IS NOT AGAINST THE LAW NOT TO PAY YOUR DEBTS.**

The creditor uses the judicial process to collect.

This means **GARNISHING** your wages or bank account

Having the SHERIFF TAKE YOUR PROPERTY AND SELL IT

But, under Oregon and Bankruptcy law, each person is entitled to keep certain **EXEMPT** property. It cannot be taken from you even if you owe \$ 1 million in a judgment.

If **ALL** the property you have is **EXEMPT**, you are **JUDGMENT PROOF**

Note: Oregon residents who file bankruptcy may choose exemptions under Oregon or Federal law. You should carefully review the list of exempt property to determine whether you are better off choosing Oregon or Federal exemptions. You may not use Federal exemptions if you do not file bankruptcy.

However, using Oregon exemptions, the **SAME** property that you can keep as exempt if you file bankruptcy you can keep if you **DO NOT** file bankruptcy and the creditor has a judgment against you which the creditor is trying to collect

So the question is, ARE YOU TOO POOR TO FILE BANKRUPTCY? This means, if you file bankruptcy, will you gain any advantage that you did not have if you do not file bankruptcy?

IF you file, you keep all your exempt property.

IF you don't file, you keep all your exempt property.

THERE WOULD BE NO FINANCIAL BENEFIT to filing bankruptcy.

You should look at the list of EXEMPT property and see if all of your assets are exempt

REMEMBER:

- Your right to tax refunds accrues on a daily basis throughout the year. So, if you file bankruptcy on December 1, 2016, the trustee would have the right to collect 11/12ths of your 2016 refund even though you will not receive it until 2017. Depending on your cash on hand and bank account balances, you may be able to exempt up to \$400 of the refund if you choose the Oregon exemptions. If you choose the Federal exemptions, you may be able to exempt all of the refund. Under the Oregon exemptions, the Earned Income Tax Credit is entirely exempt.
- Government benefits, like unemployment, Social Security, or welfare, cannot be garnished
- Money in your bank account is exempt if it came from an exempt source and can be traced to the exempt source. If you commingled exempt and nonexempt money, this may be difficult.
- Money in your bank account is automatically exempt if it was deposited during

the calendar month before the month in which the garnishment occurs, and came from:

- Payments from a retirement plan
- Social Security payments
- State public assistance payments
- Unemployment compensation
- Black lung benefits
- Veterans' benefits
- All you have to do is tell your bank in writing. The bank will give you a form. This means that a creditor may not garnish your account. Other money from other sources may also be exempt, but you may have to court to protect it.

\$ Under the Oregon exemptions, you are entitled to exempt the first \$218 of net wages each week. They cannot be garnished. If you are paid every 2 weeks, the first \$435 is exempt.

C. Yeah, but if I file bankruptcy, I can get all my debts discharged, I get rid of creditors. They will stop bugging me.

Good point. But there are other considerations

a. You can receive **discharge of your debts under Chapter 7 only once every 8 years.**

If your financial situation deteriorates after filing, you no longer have bankruptcy available for 8 years.

b. No medical insurance

File without medical insurance. Incur future medical bills. Cannot discharge them. Medical costs always expensive. Try to obtain insurance before filing.

c. No automobile liability insurance.

Same problem. Damages can be astronomical. Extremely risky to drive without insurance. More so if you do not have bankruptcy available to bail you out. Try to obtain car insurance before you file.

d. Debts to utilities for services still receiving.

Can require security deposit for continuation of service.

e. Secured debts

These are debts which you incurred to buy something, like a car or a TV or a microwave. Something significant.

If you file bankruptcy you can discharge the debt, but you may have to give up the property. If the creditor kept a security interest in the car, or TV or furniture, they have title to the property. You can discharge the debt, but the creditor has the right to demand that you return the property. If you sign a reaffirmation agreement or redeem the property, you may be able to keep it.

f. Student loans

Very difficult to discharge for undue hardship.

g. Taxes

Your tax liability will never be discharged if you did not file a return!!

Under certain circumstances where you did file a return, the liability may be discharged after 3 years from the date the tax was due. If this period is getting close, you may be better off waiting to file bankruptcy.

h. Preferential Payments

If, within one year prior to filing, you repaid a relative or close friend \$600 or more for a debt which you incurred prior to filing bankruptcy, this could be what is called a PREFERENTIAL TRANSFER of your assets. The trustee could sue your relative and recover all of the money you paid them. If this might be your situation, you may want to consider waiting sufficient time so that when you file bankruptcy, more than a year has passed since you repaid \$600.

VI. Alternatives to Bankruptcy

A. Simply not pay your obligations. It is not a crime to fail to pay your bills. You cannot go to jail.

B. Stop all communications from COLLECTION AGENCIES.

1. The *FAIR DEBT COLLECTION PRACTICES ACT* is a federal statute which prohibits collection agencies from doing certain things. This Act provides that a debtor can stop communications from a **collection agency** or an attorney by:

a. Writing them a letter saying EITHER

(i) you will not pay the debt (NOT that you cannot pay)

or

(ii) stop all further communications

b. The collection agency can contact you one more time, but only to tell you what action they intend to take. They cannot make a demand for payment.

c. Keep a copy of any letter that you write

d. Unfortunately, this Act does not apply to the conduct of original creditors, only to collection agencies.

e. Under this Act a debtor also has the right to dispute the validity of a debt. If you dispute the validity of any debt IN WRITING and within 30 DAYS of receiving the initial communication from the collection agency, the agency MUST CEASE all collection activities until it VERIFIES the debt and mails a copy of the verification to you. A SIMPLE LETTER which says something like I DISPUTE THE VALIDITY OF THIS DEBT will be sufficient. BUT it MUST be SENT within 30 days of the date you received the INITIAL communication from the collection agency.

C. Unlawful Debt Collection Practices Act under Oregon law applies to original creditors

The Oregon Unlawful Debt Collection Practices Act applies to collection agencies and original creditors. While it prohibits certain types of conduct, and provides damages for those debt collectors who violate the law, it does not allow the debtor to stop communications from creditors. Only the Fair Debt Collection Practices Act, which does not apply to original creditors, allows the debtor to stop communications.

You cannot use either the Fair Debt Collection Practices Act or the Oregon Unlawful Debt Collection Practices Act to stop communications from ORIGINAL creditors.

D. Document collection practices

If you feel that you are receiving harassing telephone calls, DOCUMENT the date, time and substance of the calls. Keep any letters you receive, as well as the envelopes. Collection agencies who violate the FDCPA or original creditors who violate a similar statute in Oregon (see above) may be liable for damages.

E. Cooperation with Your Attorney

Filing bankruptcy is a team effort involving you and your attorney. It requires effort on your part. All of the attorneys at the Pro Bono Clinic are volunteers. If you had to hire a private attorney to file a Chapter 7 bankruptcy for you, it would cost around \$1500. If you decide to file bankruptcy, please make every effort to cooperate with your attorney.

Be prepared with tax returns, pay stubs, other sources of income and list of creditors.

BANKRUPTCY CLINIC

A project of Legal Aid Services of Oregon & the Debtor-Creditor
Section of the Oregon State Bar

BANKRUPTCY CLINIC CONSULTATION AGREEMENT

There is no charge for this initial consultation. This agreement is entered into on this ____ day of _____, 2016, by and between _____, (hereinafter referred to as the "Client" whether one or more) and Bankruptcy Clinic Pro Bono Attorney (hereinafter the "Attorney").

Client has requested the opportunity to consult with and obtain information and advice from the Attorney obtaining relief from debts, including relief from debts by filing bankruptcy under the United States Bankruptcy Code. This agreement is for purposes of that consultation only. If client retains the Attorney to file a bankruptcy, the parties shall execute a separate contract setting forth the fees and other terms of such representations. With respect to the consultation, the parties agree as follows:

The fee for this consultation is \$0.00.

Client Initial

Date

Bankruptcy Clinic Pro Bono Attorney

Date

Client

Date

Client

INITIAL CONSULTATION WORKSHEET

NAME _____ DATE _____

YES NO (Oregon exemptions / **Federal exemptions**)

____ Was another party present at meeting? _____ Was conflict waived?
(Meet w/client first **alone** and have them agree to other(s) attending)

____ Okay to release information to third party? _____

____ Been to see a bankruptcy attorney before? _____

____ Has a friend or relative filed with our office in the past? _____

____ Have you ever been listed as a creditor in someone else's bk? _____

____ Checked for e-mail address. Noted on client information sheet. Does client want contact by e-mail or mail or both? _____

____ Resident for 91 days? OR / WA (circle one)

____ Have you lived in OR/WA (circle one) for the last 3 yrs? If not, where and when?

Lived in _____ from _____ to _____.

Lived in _____ from _____ to _____.

Paralegal - Please verify _____ (initial once verified).

If debtor has not lived in state for 2 years, look at where they lived 180 days prior to 2 years ago. _____

____ Prior bankruptcy? Y / N If yes, pull PACER Service Center for date(s) of all bankruptcies. Date filed _____ Location filed _____.

Date filed _____ Location filed _____.

Date filed _____ Location filed _____.

Paralegal - Please verify _____ (initial once verified).

<u>Previous Case</u>	<u>New Case</u>	<u>Time</u>
7	7	8 years
7	13	4 years
13	7	6 years
13	13	2 years

____ Case(s) dismissed within the last year? How many _____. Dates of cases dismissed. _____. **If yes, we need to immediately file the motion to reimpose or continue the stay.**

____ *Memo completed as to reasons/change in circumstances, etc.*

____ Residence (**\$20,200/\$40,400**) \$40k/\$50k (same for manufactured homes)

FMV _____ per _____ purch'd _____ for _____

last refi? _____ how used? _____

Are taxes and insurance included in monthly mortgage payments? YES NO

If no, how much are taxes and insurance? Taxes \$ _____ Insurance \$ _____

Variable interest rate? Y / N Current interest rate _____ When will rate increase? _____

1st _____ \$ _____ mo.behind _____ arrears _____ % Creditor _____

2nd _____ \$ _____ mo.behind _____ arrears _____ % Creditor _____

3rd _____ \$ _____ mo.behind _____ arrears _____ % Creditor _____

_____ X.92 = _____ - _____ = _____

	FMV		debts		equity		homestead
YES	NO						
_____	_____	HOA dues? _____.					
_____	_____	Did attorney discuss HOA dues/assessments after the bankruptcy is filed?					
_____	_____	Other properties currently owned? (attach extra page if additional space needed)					
		FMV	per		Rental/Residential		
		1st	\$	mo.behind	arrears	%	Creditor
		2nd	\$	mo.behind	arrears	%	Creditor
		3rd	\$	mo.behind	arrears	%	Creditor
_____	_____	Timeshare? If yes, balance owed \$ _____, name of Timeshare _____					
		Value \$ _____. Yearly maintenance fees \$ _____.					
_____	_____	Have you owned or had any interest in any form whatsoever in any real property in the last 6 years, including time shares or partial ownership interests with other parties? _____					
_____	_____	Foreclosure? Date _____ Trustee conducting sale _____					
		Do we have a copy of the Foreclosure Notice Y / N.					
		Does client want to retain property Y / N. Surrender? Y / N					
		Does client want to try to postpone the foreclosure sale Y / N					
		(Remember to give notice to Stephanie)					
_____	_____	Cash and/or Bank/Credit Union Accounts					
		1. Bank	_____	Checking/Savings Amt.	_____	Debt	_____
		2. Bank	_____	Checking/Savings Amt.	_____	Debt	_____
		3. Bank	_____	Checking/Savings Amt.	_____	Debt	_____
		4. Bank	_____	Checking/Savings Amt.	_____	Debt	_____
_____	_____	Is client's name on any of relative/other parties bank accounts? _____					
		*Attorney to include advice in PC Memo					
_____	_____	Did attorney verify accounts in Credit Unions.					
_____	_____	Credit Union Debts _____					
_____	_____	Did atty advise client to open new bank account if client has debt at that bank?					
_____	_____	Household Goods (\$3000 / \$11,200) _____					
_____	_____	Books / Art / Musical Inst's (\$600/1200, \$1075+) _____					
_____	_____	Coin / Stamp / Collectibles (\$400/800, \$1075+) _____					
_____	_____	Wearing Apparel (\$1800/3600, \$1150 jewelry) _____					
_____	_____	Firearms (\$1000, \$1075+) How many _____ Type _____					
		Value _____					
_____	_____	Sports / Ex. Equip (\$400/800, \$925 +) _____					
_____	_____	Life Insurance? Term Y / N Beneficiary? _____					
		Whole life Y / N Cash value _____ Beneficiary? _____					
_____	_____	Is client beneficiary on another policy? Y / N _____					
_____	_____	Husband's Pension(s) _____					

Employee contribution = \$ _____ / _____

Wife's Pension(s) _____

Employee contribution = \$ _____ / _____

YES NO

_____ Loan? Y / N \$ _____ / _____

\$ owing _____ \$ original _____

Loan repayment allowed in Chapter 13 plans and deductible when calculating means test issues.

_____ 529 College Tuition Plan? Amount \$ _____

_____ Stocks / Bonds (\$400/800, \$1075 +) _____

_____ Tax Refund (\$400/800, \$1075 +) Rec'd/Due \$ _____

When received? _____ What did client do with refund? _____

_____ Any payments to family/friends? Yes / No

_____ Was client advised to adjust withholdings due to large tax refund.

_____ Taxes Owed? Year(s) _____ \$Fed _____ \$state _____

Pers. / Bus. Filed? _____ When _____ Liens _____

Any extensions filed _____

Any offer and compromises filed _____

No difference between 13 and 7's with taxes. In 13's last 4 years of taxes must be filed. In both 7 and 13's, need to present last required year of taxes (or transcripts) to the Trustee 7 days before the 341. In 13's, if taxes are not filed - non priority, non-dischargeable. If not filed, it may help with feasibility.

_____ Inheritance _____

_____ Any possibility of an inheritance within six months of filing? If yes, did attorney discuss alternatives for client to eliminate the inheritance issue?

_____ Claims? (circle if applicable)

Workers comp _____

Personal injury _____

Social security benefits _____

Disability benefits _____

Other _____

_____ Do any friends/relatives owe client money? _____

_____ Does anyone else owe client money?
**If any of the above claim answers are yes, please explore this in more detail and provide information in the PC memo.*

_____ Patents / Copyrights _____

_____ Tools (of trade / not of trade) (\$5000 / 10,000, \$1750 / 3500) _____

Computer (**hhg/tool**) _____

_____ Boats (\$400/800, \$925 +) _____

_____ Animals (\$1000, \$925 +) _____

_____ Cars (OR\$3000/6000)(WA\$3225/6450)

_____ Reaffirm? Did attorney discuss reaffirmations on the vehicles? _____

YES NO _____

_____ (Cars) Purch. w/in 6 mo? car / model (Request copy of title or registration)

_____ (____ K) fmv _____ owe _____ \$mo _____ bhind _____ %
creditor _____ PMSI _____ Non-PMSI _____

Date of purchase _____

_____ (____ K) fmv _____ owe _____ \$mo _____ bhind _____ %
creditor _____ PMSI _____ Non-PMSI _____

Date of purchase _____

_____ (____ K) fmv _____ owe _____ \$mo _____ bhind _____ %
creditor _____ PMSI _____ Non-PMSI _____

Date of purchase _____

If car purchased in the last 910 days, no cram down unless (1) refinanced, (2) for business use, and (3) not for debtor.

_____ Other _____

_____ Other Assets _____

_____ Assets of non-filing spouse _____

_____ Security Interests _____

Car House Rent-to-Own (e.g. Aaron's) furniture/appliances

Timeshare Other _____

All assets (except cars - 910 days) cannot be crammed down unless purchased over 1 year ago.

_____ Non-PMSI v. Liens _____

_____ Any judgments against you? Name of creditor _____

Amount \$ _____ Mo/Year judgment entered _____

_____ Child support / alimony: current _____ arrears _____

(PRIORITY _____ ASSIGNED _____)

**Reminder - discuss child support issues with client if there are arrears (even in chapter 7 cases) since no assets of the debtor are exempt as to child support.*

**Assigned child support must be paid in full in Chapter 13 cases unless plan stipulated to run 60 months. Then any balances not paid are non-dischargeable.*

_____ Overpayments to State? _____ State agency? _____

Mo/Year overpayment created _____ Is state pursuing debtor? Y / N _____

_____ Tickets/fines/restitution/fraud (May still be dischargeable ?) Appeared _____ Jurisdiction? _____

_____ Student Loans? Who _____ Amount _____

Explained about discharge Y / N _____

_____ Payday Loans?

Creditor _____ Amount _____ Date of Origin _____

Creditor _____ Amount _____ Date of Origin _____

Creditor _____ Amount _____ Date of Origin _____

YES NO

____ Divorce / separated? Assigned debts _____
____ has ex filed a bankruptcy? Y / N
Does the attorney believe that the divorce may pose a problem in the bankruptcy
with respect to A-15 issues? Y / N Please advise.
**No A-15 action anymore in Chapter 7 cases. Property settlements not
dischargeable in a 7 but are dischargeable in a 13.*

____ NSF checks?

____ Co-debtors _____ Given letter

____ Has client cosigned for anyone else's vehicles or other debts? If yes, please
provide name, amount of debt, who is making payments. _____

____ Has anybody else cosigned for the client? If yes, provide name, amount, and who
is making payments. _____

____ Children? How many? _____ with client / with other. Ages _____

____ Do you share household with anyone else (i.e. significant
other)? _____

Paid when _____

CMI (11-01-14) (h) \$ _____ /hr/salary (w) \$ _____ /hr/salary

OR WA

47,055 53,234 - 1
58,110 66,869 - 2
65,147 75,635 - 3
72,668 86,161 - 4
+8100 +8100 - 5+

Other \$ _____

*Use quick means testing form. Get all income from any source.
Give client self employment CMI worksheet*

____ **Commissions/Bonuses?** When _____ Paid? _____ Amt _____

____ Does client receive SS / amount _____ disability / amount _____
 unemployment / amt _____ pymt from relatives / amt _____
 other income / source/amount _____

____ Unusual medical condition / expenses _____

____ **Preferences:** to relatives (2 yrs) _____ STOP!
to creditors (3 mo) _____

____ Is there any money owed, in any form to any relative/friend/acquaintance?

____ If Yes, has the attorney advised the client not to make further payments regarding
that party? _____
Also, if Yes, **what repayments have been made, or what agreements have
been entered into?** _____

_____ Pending law suits? Who? _____ Debt owed _____
 _____ Served on _____
 _____ Is anyone holding your property _____
 _____ Unusual gifts? Asset transfers (4 yrs) _____
 _____ Are you holding property for anyone? _____

YES NO

_____ **Sold, transferred, given away anything of value in last 2 years?** (Including any
 _____ transfers through a divorce decree, cashed out retirement accounts, traded in a
 car)

* Include what/when/how much/party transferred to/details

_____ Charitable contributions (tithing, donations, etc.)? _____

_____ Safe deposit box: contents _____

_____ dba in last 6 years _____

_____ Name of business _____

fdba _____ Type of business _____

Ind. Cont / Sole Prop. / P'ship / Corp. / Franchise

Tools of the trade _____

_____ Bus. tax debt? _____ Assets/Inventory \$ _____ A/R \$ _____

Estimated biz debt minus estimated biz assets = _____

_____ Claims for fraud / misrepresentation _____

Not dischargeable in a 13, but must bring an action in 60 days from 341 just as in a 7.

_____ Credit Cards: Used in last 6 mo over \$1000/creditor? Y / N

Creditor _____ Amt charged _____ Last used on _____

Creditor _____ Amt charged _____ Last used on _____

Creditor _____ Amt charged _____ Last used on _____

Over _____ yrs; CA / Loans _____ w/in 6 months

Change in circumstances? _____

_____ Do you have car / health insurance _____

_____ Balance transfers in last 6 months _____

_____ If Ch. 13, Attorney discussed TAX RETURNS, AND WAGE STUBS?

_____ Dates unavailable for hearing IN NEXT 90 DAYS? _____

_____ Estimated total debt \$ _____ estimated number of creditors _____

BANKRUPTCY CLINIC

A project of Legal Aid Services of Oregon & the Debtor Creditor
Section of the Oregon State Bar

MINI MEANS TEST

1. Establish Monthly Income

A. If Hourly Employee:	Last 6 Months Gross
1. Monthly income	_____
2. Overtime	_____
3. Bonus	_____
4. Other Employment Income	_____
B. If Commission/Other:	6 Months
1. Bonus	_____
2. Other Employment Income	_____
C. Other Income:	6 Months
1. Pension*	_____
2. Gifts	_____
3. Unemployment**	_____
4. Roommates	_____
5. Other (all income)	_____

2. Divide by 6 and multiply by 12 to determine CMI:

CMI: _____

	1	2	3	4	5
Oregon:	47,055	58,110	65,147	72,668	80,765
(as of 5/15/15)					

STOP: If CMI is Lower than median

GO: If CMI is Higher than median.

3. Deductions:

A. Autos:

1. Buying _____0_____1_____2

Balance	Payment
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

B. Buying Home

1. Payment

Balance	Payment
1. _____	1. _____
2. _____	2. _____
3. _____	3. _____

C. Other Secured Debt: (Car Description)

Item	Balance	Payment
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

D. Payroll Tax***

E. Court or Payment

- 1. Child Support
- 2. Restitution

F. Child Care

Ages of Children: _____

G. Health Care Cost

- 1. Medical
- 2. Insurance

H. Charity

I. Care of Dependents****

*Pension - Do not list Social Security.

**Unemployment - List but still subject to litigation since it comes under Social Security Act. And code says not to list items under the Social Security Act.

***Estimate - 17% Oregon and 12% Washington.

****Must be Pre-Filing payment and anticipate Post Filing payment.

BANKRUPTCY CLINIC

**A project of Legal Aid Services of Oregon & the Debtor Creditor
Section of the Oregon State Bar**

DOCUMENTS THE CLIENT SHOULD OR MUST SIGN

Client(s)

Date

Check When

Document

_____ First Visit

Bankruptcy Clinic Consultation Agreement

_____ First Visit

Tax Information Authorization of Power of Attorney forms (8821 or 4506-T) and equivalent for state income tax agency [should sign] – optional

_____ First Visit

General authorization to obtain financial information on behalf of client [should sign] – optional

_____ At petition signing

Receipt of Court's 342(b)/527(b) notice [must sign]

_____ At petition signing

Cover sheet for Credit Counseling Certificate or plan [must sign]

BANKRUPTCY CLINIC

A project of Legal Aid Services of Oregon & the Debtor-Creditor
Section of the Oregon State Bar

DOCUMENTS TO BE PROVIDED TO THE ATTORNEY BY THE DEBTOR(S) – IMMEDIATELY

Client(s)

Date

Most of my debts are related to problems: [check one]

- regarding a business I now operate or did operate
- regarding taxes
- a lawsuit against me regarding an accident or injury
- mostly credit card or medical debt, car loans, or home loans

I expect my income to [go up / go down / stay about the same] in the next month or so [circle one]

Documents Regarding Income [check when provided]

- Paycheck stubs for both husband and wife for the last seven months, including the most recent paycheck stubs – if you do not have paycheck stubs, start saving them
- Papers showing commissions or bonuses received during the last seven months
- Papers regarding any unemployment benefits received during the last seven months
- Papers regarding any child support or spousal support received during the last seven months
- Papers regarding any Social Security payments received by any member of your household who is contributing to household expenses
- Papers regarding any retirement benefits received during the last seven months
- Papers regarding any rental income from any house or land or other real property you own
- A listing of money contributed to your living expenses by other members of your household, including your spouse if he/she is not filing bankruptcy with you

Documents Regarding Deductions from Your Income [check when provided]

- _____ Papers regarding any retirement plan contributions you have made during the last seven months
- _____ Papers regarding any retirement loan currently owed
- _____ Papers regarding any insurance that is being paid from your paycheck
- _____ Papers showing any other deduction from your paycheck which is required or mandatory - not voluntary
- _____ From your payroll department at work, get copies of any wage garnishment orders or voluntary automatic deductions from your paycheck
- _____ Any court orders setting child support or spousal support amounts that you should be paying, including the order setting regular ongoing monthly amounts and also setting any monthly amounts for catching up on past-due support
- _____ Is any support you owe secured by a lien on your home or other security interest?
- _____ If you have your own business, a complete listing of all your monthly business expenses, including a year-to date Profit & Loss Statement for your business, as well as Profit and Loss statements for the past seven months, for each month individually.

Documents Regarding Your Finances [check when provided]

- _____ A list of all your addresses for the last three years
- _____ Tax returns (both state and federal) for the last four years. *[Note to attorneys: If the client fills out the 8821 form, then you, as attorney, can request the account transcripts by calling 1-866-860-4259 (option 2). The representative will ask you to fax the 8821 while on the phone with them. If you do not have a CAF number, tell the representative and they will send it to the CAF Unit and you will receive that number in 2 to 3 weeks. Use that number the next time you request transcripts for a client. Once the transcripts are requested via telephone they should be faxed to you within 24 hours.]*
- _____ Papers regarding any real property you now own or have owned within the last four years
- _____ If you did or may receive any money or property from a trust or probate estate, get documents regarding it
- _____ Contracts (with all the attachments) for all car loans purchased within the last two years, and for furniture and jewelry loans for items purchased within the last year
- _____ Proof of insurance for any vehicle (which you still owe money)
- _____ Proof of business liability insurance
- _____ Bank account statements for the past seven months, Husband and Wife
- _____ If divorced in the last 8 years, a copy of your divorce judgement.

BANKRUPTCY CLINIC

A project of Legal Aid Services of Oregon & the Debtor-Creditor Section of the Oregon State Bar

Statement Mandated by Section 527(b) of the Bankruptcy Code

Important Information about Bankruptcy Assistance Services

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.** 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.

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. 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 may 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 will be questioned by a court official called a 'Trustee' and by creditors.

If you choose to file a bankruptcy 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.

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.

If you select another type of relief under the Bankruptcy Code other than a Chapter 7 or Chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

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.

Updated 10/15

Date

Client

Date

Client

PLEASE LIST ALL OF YOUR CREDITORS (Businesses and people you may owe money to). We have included some common types of debts to help you get started.

What Debt Is For

Full Name of Creditor

Housing

Rent _____

Mortgage or Home Loan _____

Electricity _____

Gas _____

Heat _____

Water _____

Sewer _____

Garbage _____

Telephone _____

Cable TV _____

Home Repairs _____

Property Taxes _____

Insurance _____

Other _____

Transportation

Car or Truck Loan _____

Repairs _____

Gas Company Credit Cards _____

Insurance _____

Traffic or Parking Tickets _____

Claims or Judgments from Accidents _____

Other _____

Medical

Hospitals _____

Doctors _____

Dentists _____

Insurance _____

Other _____

Banks and Credit Unions

Loans _____

Bounced Checks _____

Other _____

Consumer

Credit Cards (VISA, Mastercard, etc) _____

Department Store Credit Card (Meier & Frank, J.C. Penney, etc.) _____

Installment Contracts and Sales _____

Other _____

Family and Friends

Alimony _____

Property Settlement Agreement _____

Child Support _____

Loans _____

Government Agencies

Federal Tax _____

State Tax _____

Overpayment of Benefits _____

Fines _____

Criminal Restitution _____

Student Loans

Collection Agencies

(Include name of original creditor) _____

Attorneys

Other Creditors

**Legal Aid Services of Oregon & Debtor-Creditor Section of the Oregon
State Bar Bankruptcy Clinic**

RETAINER AGREEMENT

FILE NO. _____ ATTORNEY'S NAME _____

CLIENT'S NAME _____

This agreement represents the understanding between the Client and the Attorney about the Client's request for help with a bankruptcy. The Attorney is participating in the Bankruptcy Clinic sponsored by the Debtor-Creditor Section of the Oregon State Bar. This agreement is based on the information on the intake form signed by the Client.

1. The Attorney agrees to represent the Client on the following matter: _____

This does not include representation on an appeal or other legal issues.

2. The Attorney will not charge the Client for his or her time or legal services involving representation. However, the Attorney can ask for attorney fees and costs from an opposing party. The Attorney can keep any fees or costs advanced by the Attorney that are awarded by the court or agreed to by an opposing party.

3. The Attorney may advise the Client to file a Chapter 13 bankruptcy instead of a Chapter 7 bankruptcy, based on the Client's individual circumstances. The Bankruptcy Clinic does not provide free representation in Chapter 13 cases. If the Client decides to file under Chapter 13, the Attorney is not required to provide any further free services. The Client may hire the Attorney or another lawyer of his or her choice to file the Chapter 13 bankruptcy. The Client may call the Oregon State Bar Lawyer Referral Service at (503) 684-3763 to get referred to another lawyer who handles Chapter 13 bankruptcies.

4. The Client agrees to pay any filing fees and court costs by the date that they are due. The Attorney will, when necessary and possible, request an appropriate waiver or deferral of fees. Client will still be responsible for any filing fees or court costs that are assessed.

5. The Attorney may charge the Client for reasonable out-of-pocket costs like copying, long distance telephone calls and postage.

6. The Client agrees to:

- a. Provide the Attorney with complete and honest information;
- b. Attend and be on time for all appointments and court dates;

- c. Cooperate in the handling of my case and to stay in contact with my attorney;
 - d. Inform the Attorney of any change in the Client's address or telephone number;
 - e. Inform the Attorney of any change in the Client's income or financial situation. If there is a change, the Volunteer Lawyers Project will review whether the client is still eligible for free legal services. If Client becomes ineligible for free legal services through an increase in income, then this matter is no longer subject to the Volunteer Lawyers Project and the client may obtain legal representation from any source of their choice. The Client and Attorney may choose to continue the attorney/client relationship in this matter for a fee, with the knowing and informed consent of the Client, and the approval of the Attorney; and
 - f. Allow the Attorney to give statistical information about the Client's case to the Volunteer Lawyers Project.
 - g. Give my Attorney permission to discuss my case with the Volunteer Lawyers Project at Legal Aid Services of Oregon. My Attorney and LASO will keep the information confidential.
7. The Attorney agrees to:
- a. Inform the Client of the status of his or her case;
 - b. Keep all sensitive information about the Client confidential unless the Client agrees that the information can be given out, or unless the Attorney needs to use the information to represent the Client;
 - c. Check with the Client before making important decisions about the Client's case; and
 - d. Not settle the case without the Client's permission.
8. The Client may end this Agreement at any time for any reason by informing the Attorney.
9. The Attorney may end this Agreement for good reasons, including for violations of this agreement, as allowed by Oregon State Bar rules and other laws. The Attorney will inform the Client of the reason in writing before ending this Agreement.

Client's Signature

Date

Attorney's Signature

Date

Servicios Legales de Oregon

Sección de Deudores-Acreedores de la Barra de Abogados de Oregon

CLÍNICA DE BANCARROTA CONTRATO DE SERVICIOS

Expediente No. _____ NOMBRE DEL ABOGADO _____

NOMBRE DEL CLIENTE _____

Este acuerdo representa un entendimiento entre el abogado y cliente sobre la solicitud de bancarrota. El abogado participa en la Clínica de Bancarrota patrocinada por la Sección de Deudores-Acreedores de la Barra de Abogados del Estado de Oregon. Este acuerdo está basado en la información que el cliente ofreció a la oficina de Servicios Legales cuando abre el caso.

1. El abogado representará el cliente en el siguiente asunto: _____
El cual no incluye representación en una apelación u otro asunto.
2. El cliente no tendrá que pagar por los servicios proporcionados por LASO. Aunque el abogado se puede solicitar honorarios de abogado del otro partido y puede quedarse con cualquier dinero que gané en el caso.
3. El abogado puede avizorar al cliente que declaré bancarrota de acuerdo con el Capítulo 13 en lugar de bancarrota de acuerdo con el Capítulo 7, basado en las circunstancias individuales del cliente. La clínica de bancarrota no proporciona representación gratis en casos de bancarrota de Capítulo 13. Si el cliente quiere presentar bancarrota de acuerdo con el Capítulo 13 el abogado no está obligado a continuar a proporcionando servicios gratis. El cliente puede emplear el abogado u otro, o el cliente puede llamar a la Barra de Abogados del Estado de Oregon al (503) 684-3763 donde recibirá referencia de abogados que se encargan de casos de bancarrota de Capítulo 13.
4. El cliente concuerda pagar cualquier costo de archivamiento y de corte para la fecha en que estos se vencen. El abogado establecerá, si es necesario y posible, llenar una solicitud para deferir y/o eliminar dichos costos. El cliente aun será responsable por el pago de cualquier costo de archivamiento o de corte que no sea anulado.
5. El abogado puede cobrar al cliente una razonable cantidad por gastos de copiado de documentos, llamadas de larga distancia y estampillas postales.
6. El cliente está de acuerdo con:
 - a. Proporcionarle al abogado información verdadera y completa.
 - b. Asistir y llegar en tiempo para todas las citas y audiencias.

- c. Cooperar en el manejo de su caso y mantenerse en contacto con el abogado.
 - d. Informar al abogado sobre cualquier cambio en su información de contacto (Número de teléfono y/o dirección personal)
 - e. Informar al abogado sobre cualquier cambio referente a sus ingresos y/o situación financiera. Si existe algún cambio en la situación financiera del cliente, el Proyecto de Abogados Voluntarios revisara si el cliente aun es elegible para nuestros servicios legales gratuitos. Si resulta que el cliente no es elegible producto de un incremento en sus ingresos, entonces el Proyecto de Abogados Voluntarios no podrá seguir representación, y el cliente deberá obtener representación legal por otra fuente de su elección. El cliente y el abogado pueden decidir continuar la relación Abogado/Cliente en dicho asunto legal por establecidos honorarios, con el conocimiento y consentimiento del cliente y la aprobación del abogado.
 - f. Permitir que el abogado de información estadística sobre su caso al Proyecto de Abogados Voluntarios.
 - g. Permitir que el abogado discuta su caso con el Proyecto de Abogados Voluntarios de Servicios de Ayuda Legal de Oregon. Su abogado y LASO mantendrán su información confidencial.
7. El abogado está de acuerdo con:
- a. Informar al cliente sobre el estatus de su caso.
 - b. Mantener toda la información sobre el cliente que sea sensible, confidencial a menos que el cliente este de acuerdo con proporcionar dicha información o a menos que el abogado necesite hacer uso de dicha información en la representación del cliente.
 - c. Consultar con el cliente antes de tomar decisiones importantes sobre el caso; y
 - d. No negociar un acuerdo sin el consentimiento previo del cliente.
8. El cliente puede terminar este acuerdo en cualquier momento, previa notificación al abogado.
9. El abogado puede terminar este acuerdo por buenas razones, incluyendo violaciones a este acuerdo, de acuerdo con lo establecido por las reglas y otras leyes de la Barra del estado de Oregon. El abogado informara las razones para terminar este acuerdo al cliente por escrito antes de terminar el contrato.

Firma de Cliente

Fecha

Firma de Abogado

Fecha

Legal Aid Services of Oregon

PRO BONO PROJECT - EVALUATION FORM

The Volunteer Lawyers Project at the Portland Regional Office of Legal Aid Services of Oregon sponsors several pro bono projects. We would like to get your opinion of the services you received. Please take a few minutes and fill out this form *after the lawyer has completed your case*. Then mail the form to the Volunteer Lawyers Project. Thank you.

Name & Phone Number (optional): _____

1. Which pro bono project did you participate in?

2. How did you find out about the pro bono project?

3. Were you satisfied with how you were treated? Yes No Why?

4. What type of legal problem or question did you have? _____

5. Were you satisfied with your experience with the VLP attorney? Yes No Why?

6. How could the project be improved? _____

7. Other comments: _____

8. On a scale of 1 – 5 how satisfied were you with your experience with the Volunteer Lawyers Project?
1 2 3 4 5

The Volunteer Lawyers Project has a process that you can use if you have a complaint about the services you received. The complaint form is on the back of the evaluation form.

Please return this form to:

Pendleton Regional Office, Legal Aid Services of Oregon
PO Box 1327, Pendleton, OR 97801
541-276-6685 (Phone) 541-276-4549 (Fax)

Legal Aid Services of Oregon

PRO BONO PROJECT COMPLAINT FORM

Please fill out this form if you have a complaint about the services that you received through a Legal Aid Services of Oregon pro bono project. The Pro Bono Coordinator will contact you to discuss the complaint as soon as possible.

Your Name _____ Date _____

Address _____

Telephone Number _____

Lawyer's Name _____

What is your complaint? _____

What would you like to have done? _____

Other comments: _____

STUDENT LOAN PRIMER FOR LEGAL AID PRO BONO CLINIC

As with all resources, each attorney should verify that the information is still current and reliable as the student loan area is changing. While the 3 prong test of the Brunner case is still the law in the 9th Circuit, it is weakening.

Student loan litigation is beyond the scope of representation in Clinic cases, but it is helpful to give the clients some idea of what the law is rather than just says student loans are not dischargeable.

First, the Brunner test is as follows: 1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for the debtor and any dependents if forced to repay the loans; 2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period; and 3) that the debtor has made good faith efforts to repay the loans.

However, in addition to knowing the history of the debtor with regard to meeting the Brunner test, it is important to know what kind of loans are being dealt with by the client. Federally insured loans and private loans are totally different. About all that they have in common is that at this time they are both non-dischargeable in a basic bankruptcy. BUT, there are other potential remedies, depending on the kind of loan. To determine the kind of loan, the client needs to go to the government website to get the federal loan account information. That web site is "nslds.ed.gov". First, the client has to obtain a PIN number from the site and then return to get their loan info. If a loan is not there, it is 99% likely that the loan is private. There is no central clearing house for private loans, though a credit report can be of some help.

Essentially, private student loans are glorified credit cards that are non-dischargeable, but still subject to all traditional defenses – Statute of Limitations, TILA, FDCPA, etc.. Complications arise when one agency, such as Sallie Mae collects both private and federal loans and they misstate remedies available (a violation of debt collection practices laws). The major differences in the loans are the following:

	PRIVATE	FEDERAL
Parties	Co-signers may exist	Only co-signing is through "parent plus"
Interest	High / often variable	Generally lower and fixed
Statute of limitations	Yes, contractual	No
Formal work-outs	No, not usually	Yes, IBR, ICR, etc.
Wage Garnishment	Must get judgment	Can take 15% by letter w/o court
Social Security offset	No	Yes
IRS refund intercept	No	Yes

Discharge on Death	No	Yes
Disability Discharge	Not usually (some banks do)	Yes
Cure Default	No	Yes
Credit Re-hab	Not usually	Yes
Consolidation	No	Yes

Prepared by Richard J. Parker - rjp@pbl.net

Pro Bono Program
 Legal Aid Services of Oregon, Pendleton Regional Office

Case Closure Form - Representation

Client Name:		Date Opened: (or Clinic Date)	
Attorney Name:		LASO Case #:	
<u>Case Closing Information</u>			
<i>To be completed by all volunteer attorneys at the completion of client's legal matter.</i>			
1. Please identify the client's legal issue:			
2. What assistance did you provide to the client? (i.e., drafted a will, represented client in a contested restraining order hearing, advised client regarding custody, drafted letter to creditor, negotiated a settlement with landlord). <i>Please tell us how the case was resolved.</i>			
3. Did your case settle (either with or without litigation)? The Legal Services Corporation, LASO's Federal funder now requires that LASO have written documentation of the settlement agreement. This could be a formal memorialization, a letter to opposing counsel, or a letter of explanation to the client. If your case settled, please email/send us written documentation of your settlement agreement.			<input type="checkbox"/> Yes <input type="checkbox"/> No
3. How many hours did you spend on the matter?			
4. Date you completed work on the matter:			

Please mail/fax/email (arron.guevara@lasoregon.org) this form to the Pro Bono Program as soon as you complete work on the case.

Thank you for your support of our pro bono program!

Pendleton Regional Office, Legal Aid Services of Oregon
 PO Box 1327, Pendleton, OR 97801
 541-276-6685 (Phone) 541-276-4549 (Fax)

Bankruptcy Information For Consumers

Published by the Debtor-Creditor Section of the Oregon State Bar

Updated December 2015

I. What Is Bankruptcy?

Bankruptcy is essentially a procedure whereby individuals (or businesses) can obtain court ordered relief from all of their debts (with certain exceptions) in return for giving up (with certain exceptions) all of their property. If the Pro Bono Clinic is able to provide assistance, you will be filing a *Chapter 7* bankruptcy. A Chapter 7 bankruptcy is a proceeding which will probably result in the discharge, or elimination, of your debts without the necessity of paying any money to any of your unsecured creditors or losing any of your property. Chapter 7 refers to the Chapter of the Bankruptcy Code which authorizes this type of bankruptcy.

A second type of bankruptcy is known as a *Chapter 13*, which is a bankruptcy option for individuals with a regular income, whether from wages, government benefits, or otherwise. Under this type of bankruptcy the debtor develops a plan to make monthly payments on his or her debts, over a three -to five-year period. The amount of the monthly payments depends on the amount of monthly disposable income and the nature of the debts. At the conclusion of this period the debtor is discharged from liability for any unsecured debts and hopefully is no longer delinquent on any secured debts. A few debts which are not dischargeable in a Chapter 7 bankruptcy are dischargeable in a Chapter 13.

The Pro Bono Bankruptcy Clinic does not handle Chapter 13 cases.

Chapter 11 is often used by businesses with debt problems arising from the operation of a business. *Chapter 12* applies to family farms. Chapter 15 applies to cross border bankruptcies. The Pro Bono Bankruptcy Clinic does not handle either Chapter 11, 12 or 15 cases.

The Bankruptcy Court for the District of Oregon has a website at www.orb.uscourts.gov which contains very useful information about many of the topics in this brochure.

II. Will All of My Obligations Be Discharged?

On the date your bankruptcy petition is filed, with a few exceptions, all of your creditors, including those who have obtained judgments against you, are generally prohibited from taking any action to collect the debts. This essentially means that your debts have been *discharged*, or that you no longer have a legal obligation to pay these creditors. This rule applies to those creditors which are inadvertently not listed in the petition.

(A) Debts That May Not Be Discharged

Certain debts, however, may not be discharged in a Chapter 7 bankruptcy. These include the following:

(1) Many Tax Liabilities

The most common tax liability is for personal income tax. Personal income tax may be discharged in a Chapter 7 bankruptcy only if: (a) a return was actually filed; (b) the return was not fraudulent; (c) more than 240 days have elapsed since the tax was assessed by the taxing authority; (d) more than two years have elapsed since the return was actually filed; and (e) more than three years have elapsed since the tax return was due.

For instance, assuming all of the other tests listed above in (a), (b), (c), and (d) have been satisfied, and since a tax is generally due on April 15th of the year following the tax year, a tax liability for income earned in 2010 would be dischargeable after April 15, 2014. A tax liability for 2011 would be dischargeable after April 15, 2015.

This is a complicated area and the foregoing is a *very general* explanation. Any question regarding the dischargeability of a tax liability should be discussed with an attorney.

- (2) Debts incurred as a result of fraudulent conduct (such as some types of non-sufficient fund, "NSF", checks);
- (3) Domestic support obligations, including child support and alimony obligations, whether owed to a former spouse or a governmental unit;
- (4) Other obligations owed to a spouse, former spouse or child incurred in the course of a divorce or separation proceeding by order of court or by agreement;
- (5) Criminal fines (including parking tickets);
- (6) Damages for death or personal injury resulting from the unlawful operation of a motor vehicle while intoxicated from alcohol or another substance;
- (7) Damages for injury to a person or property resulting from willful and malicious conduct;
- (8) Credit card purchases for luxury goods totaling more than \$650 and made on or within 90 days of the date the bankruptcy petition is filed, or cash advances in excess of \$925 taken on or within the prior 70 days;
- (9) Criminal restitution obligations;
- (10) Some types of debts which are not listed in the bankruptcy petition along with a correct address for the creditor; and
- (11) Educational obligations (e.g., student loans), unless the denial of a discharge of these debts would cause an undue hardship on the debtor and the debtor's dependents. This exception must be raised and argued in a separate judicial proceeding instituted during the course of the bankruptcy. If the issue is not litigated, or if the debtor is not successful in any litigation, the debt will not be discharged. The Pro Bono Bankruptcy Clinic does not handle educational obligation discharge cases.

If any of your debts fall into one of the categories listed above, you should discuss the situation with your attorney.

(B) Will My Spouse Still Be Liable for My Debts?

Maybe. This can be a complicated area and one which you should discuss with your attorney. If both you and your spouse are obligated on a certain debt, the fact that you are filing bankruptcy will not relieve your spouse from liability. Similarly, your bankruptcy will not relieve the liability of a person who has co-signed, or is otherwise obligated, on one of your debts.

(C) Can I Pay Some of My Debts Prior to Filing For Bankruptcy?

Generally, you can continue to pay those bills which you incur in the ordinary course of your financial affairs. This would include such bills as utility payments and payments on property which you intend to keep, such as mortgage payments on a house or monthly payments on an automobile. Prior to filing bankruptcy, **you should not repay \$600 or more on any debts to creditors, including friends and relatives.** Before you make any extraordinary payments on any debt you should consult with your attorney.

(D) Can I Still Use My Credit Cards?

Generally, it is not a good idea to continue to use any credit cards which you may have while you are in the process of preparing to file for bankruptcy. A credit card company may argue that your credit card debts were incurred by your fraudulent conduct since you knew that you could not pay for the charges. This advice is applicable to any credit purchases which you might make while you are considering bankruptcy.

III. What Happens to My Property?

When you file your bankruptcy petition, you must list all of your property and income, and their market value. *Market value* is generally neither what it would cost you to replace an item, nor is it the purchase price. Market value is often considered the price for which you could sell the item if you were under no pressure to sell (such as at a garage sale), and the purchaser was under no pressure to buy the item.

(A) Will I Lose Any of My Property?

On the day that the bankruptcy petition is filed, all of your property is considered part of a bankruptcy "estate" which means that it comes under the control of the Bankruptcy Court. Each person, however, is entitled to keep certain property for his or her personal use. This property is known as **exempt property**, which means that it is taken out of the bankruptcy estate and is protected from any claim of the trustee or the creditors. A *Summary of Oregon Bankruptcy and Judgment Exemptions* is at the end of this booklet. This is a list of typical property and values which are exempt from the claims of judgment creditors if you do not file bankruptcy. If you have lived in Oregon for at least two years prior to filing bankruptcy, this list also reflects **one alternative** of the property you may keep in a Chapter 7 bankruptcy. You also have the option to choose exemptions on the list entitled *Summary of Federal Bankruptcy Exemptions*. Which list is most advantageous will depend on your property and income when and if you decide to file bankruptcy. You cannot mix and match from the two lists. If all of your property is exempt, you will have a "no-asset" case and will not lose any property in the bankruptcy. Note that if you have not lived in Oregon for at least two years prior to filing bankruptcy, you may have to use the list of exempt property for the state where you resided just before the start of the two year period.

Any property which you acquire *after* the date the petition is filed is generally also exempt and not part of your bankruptcy estate. There are some exceptions. If you become entitled to an inheritance, an insurance settlement or property settlement following a divorce decree, within 180 days of filing, the property will become part of the bankruptcy estate.

If any of your debts are for property which you are purchasing as a result of signing a contract providing for periodic payments, or which was purchased with a credit card (e.g. retail merchants such as Sears, and Les Schwab), the property may be *secured*. Property which you already own, but pledge to a creditor to obtain a loan or other credit, is also *secured*. This means that until you pay the debt in full, you do not have clear title to the property. Consequently, even though this property may be of minimal value, you cannot claim it as *exempt*. When you file for bankruptcy, the creditor will have the option to demand the return of the property, unless you and your creditor enter into a *reaffirmation agreement*. This is an agreement which allows you to keep the property provided that you keep making the monthly payments which you agree to make in the reaffirmation agreement. If you sign a reaffirmation agreement, you are reobligating yourself on the contract. You must continue to comply with the terms of the contract and timely make the payments you agreed to make or the creditor may repossess the property and you may be liable for additional costs (e.g., attorney fees, the difference between the unpaid balance and any money obtained when the creditor sells the property). The reaffirmed debt will not be discharged in the bankruptcy. Any reaffirmation agreement must be filed with the Bankruptcy Court and either approved by the Court at a hearing or certified by your attorney as not imposing a hardship.

(B) Can I Transfer or Give Away Any of My Property Prior to Filing for Bankruptcy?

If you are considering filing for bankruptcy you often should not give away or transfer any of your property or income to another person. You can give ordinary presents, such as for birthdays and Christmas, and you can trade or sell your property for something of equivalent

market value. You can make certain charitable contributions, such as to a church. You should not transfer any property to a friend or relative to hold for you until your bankruptcy is concluded.

If any of your property is subject to a security interest, such as a washer or television for which you have not fully paid, or some property you purchased with a credit card, you should not transfer, sell, or give away the item, even as a gift.

(C) How Do I Qualify to File A Chapter 7 Case

One of the requirements to file a Chapter 7 bankruptcy is that you satisfy the "means test". You must complete a "means test" form, which is part of the bankruptcy petition.

The "means test" form requests information regarding your gross monthly income (e.g. all income except for Social Security benefits) for six months prior to filing. Generally, if your average gross annual income is below the median income in Oregon for your household size, you pass the "means test." Most people that qualify for the Pro Bono Clinic's services have gross annual income below the median in Oregon (e.g. in 2015, the median income for a single person household was \$47,807; for a two person household it was \$59,204). Information concerning the median income in Oregon and other states is available on the United States Trustee's website at www.usdoj.gov/ust. Click on Means Testing Information.

If your income is above the median income in Oregon for your household size, you will need to complete the expense portion of the "means test" form. Once you complete the expense portion of the "means test" form, if you have \$195 per month or more in disposable monthly income, you may be required to convert your case to Chapter 13. The Pro Bono Clinic does not handle Chapter 13 cases and will not take cases that will not pass the "means test."

IV. Costs And Filing Fees

The fee for filing Chapter 7 bankruptcy is currently \$ 335. This fee may be waivable if your income is below 150% of federal poverty guidelines and you are otherwise not able to pay the filing fee in installments (e.g. in 2015, for instance, 150% of the federal income poverty guidelines for a single person household was \$11,770. For a two person household, it was \$15,930). The guidelines are generally modified each February. You will have to apply for a fee waiver, and a judge may or may not grant your request. If you cannot pay the fee in full at the time the petition is filed, you have the option to pay the fee in installments.

The filing fee may be paid in a maximum of three installments, as follows: the first payment no more than 30 days from the date of filing; the second installment no more than 60 days from the date of filing; the third (and final) installment no more than 90 days from the date of filing. Each installment must be at least \$50, but otherwise can be in any dollar amount not involving cents.

The first installment does not have to be paid on the date the petition is filed.

It is your responsibility to make the filing fee installment payments to the Bankruptcy Court, on or before the respective due dates. This means that the payment must be at the Bankruptcy Court by the due date. Mailing the payment on the due date is not sufficient.

If you are late with any payment, the Court will automatically dismiss your bankruptcy. You will be required to file a motion to set aside the dismissal and reopen the bankruptcy, pay a fee of \$260, and pay the remaining unpaid balance of the filing fee in full.

You will not be notified of the potential dismissal, or given an opportunity to make the payment at a later date.

Payments may be made in person at the Court, or mailed to the Bankruptcy Court, 1001 S.W. 5th Ave., #700, Portland, Oregon 97204. **The Court does not accept third party personal**

checks.

V. Before the Petition Is Filed

In order to file a bankruptcy case, you must complete credit counseling from an approved nonprofit budget and credit counseling agency within 180 days before the petition is filed. You may take the course in person, by telephone, or on the internet. Once you complete the course you will receive a certificate of completion which must be filed with the bankruptcy petition. The certificate is valid for 180 days. The United States Trustee maintains a list of approved credit counseling agencies on its website at www.usdoj.gov/ust. Click on the link "Credit Counseling & Debtor Education".

There are limited circumstances in which the Court may extend the time for you to obtain credit counseling or waive the credit counseling requirement. To obtain an extension up to a maximum of 45 days, a motion and affidavit must be filed with and approved by the Court. In order to obtain a waiver of the requirement, a motion must be filed with and approved by the Court after a hearing. The circumstances for obtaining extensions and waivers of the credit counseling requirement are very limited. For instance, in order to obtain an extension of time, you must not only demonstrate to the Court that you were faced with an emergency, such as garnishment or foreclosure, you must also present the Court with proof that you contacted an approved credit counseling agency that could not provide you with services within seven days. In order to obtain a permanent waiver, you must generally demonstrate to the Court that you are either on active duty in a military combat zone, or so disabled or incapacitated that you cannot participate in credit counseling due to your physical or mental impairment. Also, if the Court does not approve an extension or waiver, the case could be dismissed, and the \$335 filing fee would not be refunded to you.

A credit counseling agency can charge a fee, but fees must be reasonable in amount, and an agency must provide services without regard to your ability to pay. In Oregon, the maximum fee for credit counseling is \$50. Many course providers charge a lesser fee, and you should try to compare prices. If you believe that you are financially unable to pay for credit counseling, you should ask the course provider to waive the fee.

Once you complete credit counseling, the credit counseling agency will send you a certificate. You must file this credit counseling certificate with your petition in order to prove that you completed credit counseling. Failure to file the certificate could result in the dismissal of your case.

VI. After the Petition Is Filed

Once you have reviewed and signed the petition and the "means test" form, these documents must be filed with the Bankruptcy Court at the address noted above to start your bankruptcy case. Once the petition is filed, the Bankruptcy Court will mail a notice to all of your creditors listed in the petition notifying them that you have filed for bankruptcy. The Court will also mail a copy of the Notice to you. The notices will be mailed to the creditors at the addresses you list in the petition.

(A) Will I Have to Go To a Hearing?

Yes. The Notice which is sent by the Bankruptcy Court will specify a hearing date, called the *Meeting of Creditors* or the *341(a) Meeting*. This is the hearing at which the bankruptcy trustee, who is the representative of the bankruptcy estate, will review your petition and ask you questions about your debts and your property. Any of your creditors may also attend this

hearing and ask you questions. The meeting typically lasts about five minutes, and usually is the only hearing which you must attend.

Attendance at this meeting is mandatory. If you do not attend the meeting, the Court will automatically dismiss your bankruptcy.

The 341(a) Meeting is generally scheduled 30 to 35 days after the petition is filed. For cases filed through the Portland office of the court, the meeting is usually scheduled on Monday, Wednesday, Thursday or Friday. The meeting is held at the office of the United States Trustee, 620 S.W. Main Street, #223, Portland, Oregon 97205.

You must bring government issued photo identification and proof of your social security or tax identification number with you to your 341(a) Meeting and present them to the bankruptcy trustee. Also, certain documents must be provided to the bankruptcy trustee and United States Trustee in advance of the 341(a) Meeting.

At least 7 days before the 341(a) Meeting you must send the bankruptcy trustee a copy of the federal income tax return that you filed for the most recent tax year ending before you filed your case (e.g. the last federal tax return you filed before you filed bankruptcy). At the 341(a) Meeting, you will have to present the bankruptcy trustee with statements for all bank accounts for the time period that includes the date you filed your petition, and a copy of any pay stub from employment covering the date you filed your petition. Additionally, within 15 days of filing the petition, you must send the United States Trustee copies of all pay stubs from employment received during the 60 days before you filed your case.

(B) What Happens If I Leave Some of My Creditors Off of My Petition?

You must list every debt in the petition, including those which are owed to friends or relatives; which you intend to pay; which are not dischargeable; and which are not delinquent.

If a debt is inadvertently not listed on the petition, the debt may nevertheless be discharged. It is possible to amend the petition to add omitted debt(s). The filing fee for an amendment is \$30, provided that it is filed before the Court closes your case. The case will generally be closed by the Court very shortly after 60 days from the date of the 341(a) Meeting. After the case is closed, you must file a motion with the court to obtain permission, and pay at least \$290 (\$260 to reopen, \$30 to amend schedules) to amend the petition to add creditors who were not listed.

However, it may not be necessary to amend the petition to discharge an omitted debt. Many debts will be discharged even if they are not listed in the petition, or the creditor is not listed in the bankruptcy.

(C) Can I Include and Discharge Debts Which I Incur After the Petition Is Filed?

No. Only those debts existing on the date the petition is filed will be discharged.

(D) Can I Dismiss my Petition After it is Filed?

Maybe. The Bankruptcy Rules provide that a petition may be dismissed only with permission of the Court, after a hearing, and if it is determined that the dismissal is in the best interests of your creditors.

(E) When Can I File Bankruptcy Again?

If you have received a discharge in a prior Chapter 7 bankruptcy, you cannot file another Chapter 7 case for 8 years from the filing date of the prior bankruptcy. The 8 year limitation does not apply if you did not receive a discharge (e.g. the case was dismissed) in the prior Chapter 7 case. You may also file a Chapter 13 bankruptcy even if you have already received a Chapter 7 discharge within the last 8 years. However, you may not receive a discharge in a

Chapter 13 bankruptcy if you received a discharge in a Chapter 7 case within the last 4 years. If you have received a Chapter 13 discharge, unless you paid 70% or more to your unsecured creditors, you are not eligible for a Chapter 7 discharge until 6 years has elapsed from the date of filing your Chapter 13.

(F) How Long Will My Bankruptcy Take?

Once your bankruptcy petition is filed, the 341(a) Meeting will be held in approximately 30 to 35 days. There is a 60-day waiting period after the meeting, and the Court will close your bankruptcy case shortly after the waiting period. Consequently, your bankruptcy may be pending for as long as three months. Your debts, however, are discharged on the date the petition is filed. Of course, this is a general rule and there may be reasons why your particular bankruptcy will take longer to conclude.

(G) Personal Financial Management Course Required Before you Receive your Discharge.

You must complete a course in personal financial management from an approved debtor education provider in order to receive a discharge. If you do not complete a personal financial management course and provide proof to the Court within 60 days of your 341(a) Meeting, the Court may close your case without a discharge. After the case is closed, it will require permission from the Court and cost at least \$260 to reopen the case. The United States Trustee maintains a list of approved debtor education providers at www.usdoj.gov/ust.

(H) What Will Happen to My Credit?

It is unclear. Different creditors react in different ways to the fact that a bankruptcy has been filed. The fact that you have filed for bankruptcy can stay on your credit report at a consumer reporting agency for 10 years. A bad debt can be reflected on the report for 7 years.

There are three national credit reporting agencies: TransUnion, Equifax, and Experian. You have the right to obtain a free credit report from each of these agencies once each twelve months. You can access your free credit reports at annualcreditreport.com. You do not need to access all three reports at the same time. You should print for your records any report that you access.

NOTE: The FTC has numerous easy to read educational materials on a variety of credit reporting, credit, and consumer protection issues. Generally go to ftc.gov and access the Consumer Protection or Consumer Information tabs.

(8) Can I File Bankruptcy in Oregon If I Moved Here 3 Months Ago?

You may properly file a bankruptcy petition in Oregon only if you have resided in Oregon for the 180 days immediately preceding filing, or if you lived here for a longer portion of the 180 days than in any other state.

VII. Reasons Not to File Bankruptcy Now

THE FOLLOWING IS IMPORTANT: Filing for bankruptcy protection can result in significant benefits for the debtor. However, this option may be used only sparingly, and may have unforeseen adverse consequences. The debtor considering bankruptcy must weigh a number of factors.

When faced with significant unpaid obligations, many individuals consider filing a Chapter 7 bankruptcy as the first and only option. However, factors like a fixed low income, minimal assets and significant obligations often make bankruptcy an inappropriate choice. The best course of action may be neither filing for bankruptcy protection nor making payments on

obligations.

(A) A person may receive a Chapter 7 discharge only once every eight years

(B) Once the bankruptcy is filed, it cannot be dismissed without permission of the Court

(C) It costs \$335 to file for bankruptcy protection

The fee to file a Chapter 7 case is \$335. This fee may be waivable because of poverty, but only if a judge decides to waive the fee. A husband and wife may file a joint bankruptcy for one fee. The filing fee may be paid in a maximum of three installments, with the first installment paid within 30 days of the filing date; the second installment paid within 60 days; and the final installment paid within 90 days. You are not required to pay any portion of the filing fee at the time of filing. If any installment is late, your case will automatically be dismissed without prior notice. The filing fee is not refundable if your case is dismissed.

(D) Judgment Proof Status

The commencement of a bankruptcy case creates an estate, which consists of all of the debtor's legal and equitable interests in property. The law provides, however, that each debtor may retain certain property so that a fresh start may be made after bankruptcy. The nature of the property which may be retained is determined by the available *exemptions*. A *Summary of Oregon Bankruptcy and Judgment Exemptions* is at the end of this booklet. This is a list of typical property and values which are exempt from the claims of judgment creditors. If you have lived in Oregon for at least the prior two years, this list also reflects **one alternative** of the property you may keep in a Chapter 7 bankruptcy. You also have the option to choose exemptions on the list entitled *Summary of Federal Bankruptcy Exemptions*. If all of your property and income is exempt, and you do not file bankruptcy, you are *judgment proof*, and creditors cannot take any of your property or income even if they obtain judgments against you. You should seriously consider that bankruptcy may not be appropriate, since it will not provide you with any additional protection. If you are not going to voluntarily pay your obligations, and if your property and income are such that creditors cannot obtain an involuntary payment, bankruptcy may not provide any financial benefit to you.

How to Stop Creditor Communications

Debtors who are otherwise judgment proof often file for bankruptcy protection simply to stop collection calls and dunning notices from their creditors. The Fair Debt Collection Practices Act, 15 USC § 1692c(c), however, directs that a third party debt collector (*i.e.* a collection agency) must cease communications with the consumer if the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or that the consumer wishes the debt collector to cease further communication.

The debt collector may still communicate with the consumer but only to advise the consumer that (1) the debt collection efforts are terminated or (2) that the debt collector may or will invoke specific remedies which are ordinarily invoked by the collector. The debt collector is prohibited from including a demand for payment in this last communication.

An original creditor is not subject to the provisions of the FDCPA. However, the Oregon Unlawful Debt Collection Practices Act, which applies to original creditors, contains numerous provisions proscribing creditor communications. ORS 646.639 et seq.

(E) Property Encumbered by Security Interests

To the extent that you have property which is subject to a security interest, you may be required to return the property to the secured creditor, or if you want to keep the property reaffirm the debt (thereby minimizing the beneficial effect of the bankruptcy), or pay the debt

in full (e.g. "redeem" the property) which is an impossibility for most low income debtors.

Certain security interests are readily apparent from the nature of the obligation (e.g. an automobile purchase obligation). Other security interests may not be readily apparent and may require investigation and further documentation.

Some purchases made with a credit card involve the retention of a security interest by the card issuer. If the debt is not current, card issuers who are local merchants with adequate facilities for storage and resale (e.g. Sears, Les Schwab) may demand either a reaffirmation of the debt or a return of any significant items purchased with the card (e.g. laptops, ipad).

(F) Nondischargeable Debts

Certain types of debts are not dischargeable in a Chapter 7 bankruptcy. If a significant portion of your obligations are nondischargeable, the benefits of bankruptcy will be reduced, or even eliminated.

The types of debts which are nondischargeable are discussed above. Several, however, should be specifically mentioned.

1. Taxes

Many debtors have delinquent personal income tax liabilities. An explanation of the circumstances under which taxes are dischargeable is in section II.A.1, above.

2. Nonsufficient Funds (NSF) Checks

Nonsufficient funds (NSF) checks which were written with reckless disregard to whether there were sufficient funds in the account to pay the check, are potentially nondischargeable. If the creditor files an objection, you may be required to appear in court at a trial or other proceeding. If the debt is not discharged, you will owe the creditor additional sums of money.

3. Student Loans

Student loans are not dischargeable unless excepting the debt from discharge would impose an undue hardship on you and your dependents. 11 USC § 523(a)(8). If you want to raise the issue of undue hardship, you must file a lawsuit against the student loan creditor, and have the issue decided by a bankruptcy judge after a trial.

4. Domestic Support Obligations

Debts for alimony, maintenance and child and spousal support, whether owed to a former spouse or a governmental agency, are not dischargeable.

(G) Fraudulent Transfers

The trustee may avoid any transfers of property by the debtor that are considered fraudulent. A fraudulent transfer is any transfer of property made within two years (and in some circumstances four years) before the date of the filing of the petition, if the debtor (1) made the transfer with the intent to hinder, delay or defraud any creditor; **or** (2) received less than a reasonably equivalent value in exchange for such transfer or obligation; and was insolvent on the date that such transfer was made. The trustee may recover the property from the recipient.

(H) Preferential Transfers

If you paid \$600 or more on a debt within 90 days prior to filing bankruptcy, or paid an

insider (e.g. generally a relative or spouse) \$600 or more within one year prior to filing bankruptcy, the trustee may be able to recover all of the payments from the recipient of the payments. You may wish to delay filing bankruptcy until the 90 day or one year period has expired.

(I) Automobile Liability Insurance

An uninsured automobile accident is a virtually instantaneous method for an individual to incur a significant debt. If you are involved in an uninsured accident after the date the bankruptcy petition is filed, the resulting financial liability could erase any benefits flowing from the bankruptcy.

In Oregon, any person who is involved in an automobile accident who does not have liability insurance will lose his or her right to drive for one year, regardless of who was at fault for the accident. Bankruptcy will not relieve you of this suspension, and the results of the license suspension (*i.e.*, citations for driving while suspended; inability to satisfy employment requirements) can result in further financial problems.

A person who obtains a judgment against an uninsured driver arising from an accident may have the person's driver's license suspended until the earlier of the expiration of 7 years from the date of the accident or until the judgment is discharged in bankruptcy. While bankruptcy will discharge any liability on the judgment, and remove the unsatisfied judgment as a basis for a license suspension, this is an option which is not available if a bankruptcy has been commenced and completed within the prior eight years.

Your lack of liability insurance, and the potential adverse results from a post filing uninsured automobile accident, strongly counsel against filing bankruptcy until you obtain liability insurance.

(J) Medical Insurance

Medical bills are one of the major reasons why debtors file Chapter 7 cases. Medical insurance is costly, and often cannot be obtained unless the debtor is employed. Some medical insurance has a significant deductible or co-pay requirement. Despite your best intentions, illness and accidents may force you to incur significant medical bills. As with an uninsured automobile accident, however, significant post filing uninsured medical bills can effectively erase the fresh start benefits of bankruptcy. Debtors who incur significant medical bills after bankruptcy may be in worse financial shape than they were before they filed bankruptcy.

The availability to the debtor of a Chapter 7 bankruptcy is a significant tool to deal with medical bills, but it can be used only once every EIGHT years. Consequently, you should consider delaying bankruptcy until you are able to obtain medical insurance.

(K) Utility Bills

If you are discharging utility bills from a utility which is currently providing services to you, the utility company may terminate services if you do not pay a reasonable security deposit, in cash, within 20 days of commencing the bankruptcy.

(L) The Right to Tax Refunds

State and federal tax refunds owing to you on the date the petition is filed are considered property of the estate. Consequently, these refunds may be collected by the trustee when you receive them. The Earned Income Tax Credit (EITC) portion of a federal refund is entirely exempt if you use the Oregon exemptions.

The right to a tax refund accrues on a daily basis throughout the year. For instance, if you

file bankruptcy on November 1st, you will have earned 83.56% of the potential total refund for year. On December 31st you will have earned 100% of the potential total refund. (e.g. on January 2nd, you will have earned 100% of the refund for the prior year, but only 0.27% of the next year's refund). If on the date you file bankruptcy you will have earned a large enough portion of your ultimate total refund, the trustee may claim the refund, even though you may not actually receive the refund until sometime early the next year. As explained earlier, you may use either the Oregon exemptions or the federal exemptions. Which set of exemptions will be most advantageous will depend on your property and income on the date you file bankruptcy. Again, depending on which set of exemptions you use, a debtor who is going to file bankruptcy on a date when the debtor has already accrued the right to a large portion of the ultimate refund may need to consider filing bankruptcy only after the refund is received and spent.

(M) Possibility of Inheritance or Property Settlement

The general rule is that the debtor's estate consists of all the debtor's property as of the date the bankruptcy is filed. But if the debtor acquires the right to property from an inheritance, life insurance policy, or property settlement or divorce decree, within 180 days of the filing date, this property also becomes part of the estate. As an example, if you file bankruptcy on March 1, 2014, and a relative dies within 180 days, and you have the right to acquire some of your relative's property, the bankruptcy trustee may claim the non-exempt portion.

(N) Ability to Fund A Chapter 13 Plan

If your monthly income exceeds your monthly expenses by an amount which is sufficient to pay to your unsecured creditors over a 5-year period, the court may dismiss the bankruptcy unless you convert it to a Chapter 13 case. The amount which will be considered as sufficient will vary with each case.

(O) Unpaid Wages

If you are owed any accrued but unpaid wages by an employer on the date you file a bankruptcy case, the trustee may assert an interest in the unpaid net wages owing to you as of that date. Of course, you will be able to exempt a portion of those wages. You can always exempt at least 75% of the net unpaid wages. However, depending on the amount of the wages owed to you, the existence of other assets in the case, and the set of exemptions that you choose, the trustee may require you to pay over the nonexempt portion of the net wages owed to you.

SUMMARY OF OREGON BANKRUPTCY AND JUDGMENT EXEMPTIONS

WAGES Disposable (Net) earnings for individuals paid weekly, biweekly, semi-monthly or monthly, may not be garnished unless they are in excess of the following amounts (ORS 18.375, ORS 18.385):*

EFFECTIVE DATE	WEEKLY	BIWEEKLY	SEMI-MONTHLY	MONTHLY
(6/2/11)	\$218	\$435	\$468	\$936

If the disposable earnings are more than the foregoing figures, then the *lesser* of (1) the amount by which the disposable earnings exceed the foregoing figures, or (2) 25% of the disposable earnings may be garnished.

*Not applicable to debts for tax, certain bankruptcy orders, or child support payments deducted pursuant to a court order.

<p>HOMESTEAD (if the debtor, parents, spouse or child resides in it), including manufactured dwelling and floating home, to the value of \$40,000 (\$50,000 if debtors are married) or proceeds from its sale for one year. (ORS 18.395)</p> <p>BURIAL LOTS in non-profit cemetery. (ORS 97.675)</p> <p>HOUSEHOLD GOODS, furniture, radios, a television, and utensils to \$3,000, and fuel and provisions for 60 days. (ORS 18.345(1)(f))</p> <p>+AUTOMOBILE to \$3,000. (ORS 18.345(1)(d))</p> <p>+TOOLS and a library necessary for the debtor's occupation to \$5,000. (ORS 18.345(1)(c)) (effective 5/19/11)</p> <p>+BOOKS, PICTURES AND MUSICAL INSTRUMENTS to \$600. (ORS 18.345(1)(a))</p> <p>+WEARING APPAREL, JEWELRY and other personal items to \$1,800. (ORS 18.345(1)(b))</p> <p>DOMESTIC ANIMALS and POULTRY for family use to \$1,000, and food for 60 days. (ORS 18.345(1)(e))</p> <p>RIFLE or SHOTGUN and PISTOL to combined value of \$1,000. (ORS 18.362)</p> <p>PENSIONS except support. (ORS 18.358(2))</p> <p>+\$400 INTEREST in any personal property. <i>Cannot</i> be used to increase the amount of any other exemption. (ORS 18.345(1)(o))</p> <p>PREPAID RENT, SECURITY DEPOSITS required on residential lease (ORS 18.395. <i>See In re Casserino</i>, 379 F3d 1069 (9th Cir. 2004). <i>But see In re Schuhmann</i>, 2010 WL 5125321 (Bkcy D Or 12/19/10) (voluntary prepaid rent not exempt)</p> <p>EARNED INCOME TAX CREDIT, and monies traceable thereto. (ORS 18.345(1)(n)). Does NOT include Child or Additional Child Tax Credit, or state EITC.</p> <p>ANNUITIES, but only certain types. (ORS 743.049. <i>See In re Thompson</i>, 197 BR 326 (Bkcty D Or 1996))</p>	<p>HEALTH AIDS professionally prescribed for debtor or dependents. (ORS 18.345(1)(h))</p> <p>SPOUSAL or CHILD SUPPORT, or separate maintenance to the extent reasonably necessary for support of debtor and any dependents. (ORS 18.345(1)(i))</p> <p>+CRIME VICTIM AWARD and property traceable thereto. (ORS 18.345(1)(j))</p> <p>+BODILY INJURY payment, and property traceable thereto up to \$10,000. (ORS 18.345(1)(k))</p> <p>+FUTURE EARNINGS loss of future earnings payment, and property traceable thereto, to extent reasonably necessary for the support of the debtor and dependents. (ORS 18.345(1)(L))</p> <p>SOCIAL SECURITY - including SSI (42 USC 407); TANF (WELFARE); UNEMPLOYMENT (657.855); WORKERS COMPENSATION (656.234); and most government benefits.</p> <p>VETERAN'S BENEFITS and LOANS. (ORS 18.345(1)(m))</p> <p>HEALTH & LIFE INSURANCE PROCEEDS (ORS 743.046 - 743.050)</p> <p>BANK ACCOUNTS - Social Security, Veterans benefits, Federal Railroad and Civil Service retirement, State of Oregon Public Assistance, unemployment benefits, public or private retirement plans, Workers Compensation, Black Lung, all protected to total of last two months if by direct deposit (ORS 18.348). Other funds exempt if traceable to exempt source. \$400 <i>wild card</i> can be used for non-exempt deposits. First-in, first-out applies.</p> <p>COLLEGE SAVINGS ACCOUNTS. (ORS 348.863(2))</p> <p>IRA, KEOGH or other plans as specified in statute and except for support obligations. (ORS 18.358(2))</p> <p>CASH SURRENDER VALUE of life insurance policies not payable to decedent's estate. (ORS 743.046(3))</p> <p>STUDENT LOAN proceeds. (20 USC 1095a(d))</p>
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+ NOTE: If two or more members of a household are judgment debtors, each may claim the exemption.

• NOTE: The foregoing exemptions are available to a debtor *in bankruptcy* only if the debtor has resided in Oregon for a least two years prior to filing bankruptcy. If the debtor does not meet this residency requirement, the debtor must use the exemptions for the state where the debtor resided for the greater part of the 180 days immediately before the two year period.

SUMMARY OF FEDERAL BANKRUPTCY EXEMPTIONS

A debtor who has continuously lived in Oregon for at least two years prior to filing bankruptcy may choose either the Oregon (*see other side*) or the federal bankruptcy exemptions. Dollar amounts are adjusted for inflation every three years. Next adjustment April 1, 2016. Married debtors may double any exemption.

HOMESTEAD, real property, including co-op, mobile home, burial plot, and personal property used by debtor or dependent as residence, to \$22,975; **unused portion of homestead to \$11,500 may be applied to any property.** (11 USC 522(d)(1); (d)(5))

HOUSEHOLD GOODS, animals, crops, clothing, appliances, books, furnishings, musical instruments to \$575 per item, \$12,250 total. (11 USC 522(d)(3))

AUTOMOBILE to \$3,675. (11 USC 522(d)(2))

TOOLS OF THE TRADE, implements, and books of debtor or dependents to \$2,300. (11 USC 522(d)(6))

MUSICAL INSTRUMENTS, animals, crops, clothing, appliances, books, furnishings, household goods, to \$575 per item, \$12,250 total. (11 USC 522(d)(3))

BOOKS, animals, crops, clothing, appliances, furnishings, household goods, musical instruments to \$575 per item, \$12,250 total. (USC 522(d)(3))

JEWELRY of debtor or dependent to \$1,550. (11 USC 522(d)(4))

ANIMALS, crops, clothing, appliances, books, furnishings, household goods, musical instruments to \$575 per item, \$12,250 total. (11 USC 522(d)(3))

\$1,225 INTEREST in any personal property. (11 USC 522(d)(5))

\$11,500 OF UNUSED HOMESTEAD exemption amount, for any property. (11 USC 522(d)(5))

HEALTH AIDS professionally prescribed. (11 USC 522(d)(9))

ALIMONY or **CHILD SUPPORT.** (11 USC 522(d)(10)(D))

PERSONAL INJURY RECOVERIES to \$22,975 (does not include pain and suffering or actual pecuniary loss). (11 USC 522(d)(11)(D))

WRONGFUL DEATH RECOVERY for person for whom debtor was a dependent to the extent reasonably necessary for support. (11 USC 522(d)(11)(B))

FUTURE EARNINGS, loss of future earnings payment. (11 USC 522(d)(11)(E))

SOCIAL SECURITY (the **right** to receive) and unemployment compensation; public assistance benefit; veteran's benefit; disability, illness or unemployment benefit. (11 USC 522(d)(10)). *See, In re Carpenter*, 614 F3d 930 (8th Cir 2010) (Social Security is excluded from debtor's estate so the phrase "right to receive" is not an issue for payments already received).

CRIME VICTIMS recovery. (11 USC 522(d)(11)(A))

LIFE INSURANCE POLICY with loan value, in accrued dividends or interest, to \$12,250. (11 USC 522(d)(8))

LIFE INSURANCE PAYMENTS from policy for person for whom debtor was a dependent, to extent reasonably necessary for support. (11 USC 522(d)(11)(C))

UNMATURED LIFE INSURANCE contract, except credit insurance policy. (11 USC 522(d)(7))

TAX EXEMPT RETIREMENT ACCOUNTS (including 401(k), 403(b), profit sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans). (11 U.S.C. 522(b)(3)(c))

IRAs and ROTH IRAs to \$1,245,475 per person. (11 USC 522(b)(3)(C)(n))

Volunteer Lawyers Project
Legal Aid Services of Oregon, Portland Regional Office

DEBTOR-CREDITOR SECTION OF THE OREGON STATE BAR

BANKRUPTCY

BANKRUPTCY QUESTIONNAIRE INSTRUCTIONS

PLEASE READ THIS BEFORE FILLING OUT THE ATTACHED FORM

These instructions have been prepared to help people who will meet with a lawyer at the Bankruptcy Clinic. The information in this Questionnaire will be used to decide if bankruptcy is appropriate for you, and whether a volunteer lawyer will be able to help you. These Instructions also give you some basic information on the bankruptcy process. The information in the Instructions is general. It is not intended as specific legal advice and it is not substitute for consulting an attorney. These Instructions are intended only for people who have an appointment at the Bankruptcy Clinic.

These instructions are important. Please read and save them

The Questionnaire that is attached to these Instructions has been prepared as a guide for your attorney. The Questionnaire is lengthy. However, all of the information that is requested is important. Allow yourself enough time to answer all of the questions completely and accurately. If the answer to a question is *no*, please write that in the space for the answer. If a question is not applicable to you, please answer the question *Not Applicable* or *N/A*. Do not leave any questions unanswered, unless you cannot obtain the requested information.

Following are suggestions to help you complete the Bankruptcy Questionnaire, as well as some answers to common questions regarding bankruptcy. Please remember that the following information

is general in nature, and the applicability of the information may vary depending on the particular circumstances of each client.

A. IF I FILE BANKRUPTCY, WHAT KIND WILL IT BE?

Bankruptcy is essentially a procedure by which individuals (or businesses) can obtain court ordered relief from all of their debts (with certain exceptions) in return for giving up (with certain exceptions) all of their property. If the Bankruptcy Clinic is able to assist you, you will be filing a chapter 7 bankruptcy. A chapter 7 bankruptcy is a proceeding that will probably result in the discharge of your debts without the necessity of paying any money to any of your creditors who do not have a security interest in your property, or forfeiting any of your property. *Chapter 7* refers to the chapter of the Bankruptcy Code that authorizes this type of bankruptcy.

A second type of bankruptcy is known as a *chapter 13*, which is a bankruptcy option for individuals with a regular income, whether from wages, government benefits, or otherwise. Under this type of bankruptcy the debtor develops a plan to make monthly payments on his or her debts over a three to five year period. The amount of the monthly payments depends on the amount of monthly disposable income and the nature of the debts. At the conclusion of this period, the debtor is discharged from liability for the unpaid balance of any unsecured debts and hopefully is no longer delinquent on any secured debts. Some debts that are not dischargeable in a chapter 7 bankruptcy are dischargeable in a chapter 13. The Bankruptcy Clinic does not handle chapter 13 cases.

Chapter 11 is often used by businesses with debt problems from the operation of a business. Another type of bankruptcy is a *chapter 12*, which applies to family farmers and fisherman. A chapter 15 bankruptcy is a cross-border bankruptcy. The Bankruptcy Clinic does not handle chapter 11, 12, 13, or 15 cases.

B. IDENTIFYING YOUR CREDITORS

If you file for bankruptcy, one of the most important tasks is making sure that all of your creditors are notified that you have filed for bankruptcy. If one of your creditors is not listed in the bankruptcy petition, or is listed with an incorrect address, that creditor will not be notified that you have filed bankruptcy. If a creditor is not notified, it is possible that your debt to that creditor may not be discharged in the bankruptcy proceeding.

It is your responsibility to make sure that you have the names and addresses of all of your creditors

If a volunteer lawyer with the Bankruptcy Clinic is able to represent you, he or she will want copies of all of your bills. Please bring these bills to your appointment. If you have creditors for which you do not have bills, please make a list of these creditors. When you list your creditors, please try to write the following: (1) the creditor's full and correct name; (2) the creditor's full and correct address, with the zip code; (3) the amount of the debt, as close as you can determine; (4) the date, or approximate date, you first owed the debt; and (5) the nature of the debt (what it was for), and the account number, if any.

Some debts may have been assigned to a collection agency. An attorney may be representing the creditor. If this is the case, you also need the name and address of the collection agency and/or the attorney, since they have to be listed in the petition along with the original creditor. If a debt has been assigned to a collection agency, we will need the name and address of *both* the collection agency and the original creditor. Remember, you should list the name and address of the collection agency and the name and address of the creditor. Your credit reports do not necessarily reflect all of your creditors.

Please remember, when you file for bankruptcy, you must list all of your creditors, even those who may be friends and relatives. You must list **all of your debts**, even those that you dispute, do not intend to pay, are not being pressed to pay, or are not dischargeable.

(1) Are There Any Debts That Will Not Be Discharged?

Once your bankruptcy petition is filed, all of your creditors listed in the petition, or who otherwise have actual knowledge of your bankruptcy, including those who have obtained judgments against you, are prohibited from taking any action to collect the debts. This essentially means that your debts have been *discharged*, or that you no longer have a legal obligation to pay these creditors.

Certain debts, however, may not be discharged in a chapter 7 bankruptcy. These include the following:

(1) Many Tax Liabilities

The most common tax liability is for personal income tax. Personal income tax may be discharged in a chapter 7 bankruptcy only if: (a) a return was actually filed; (b) the return was not fraudulent; (c) more than 240 days have passed since the tax was assessed by the taxing authority; (d) more than two years have passed since the return was filed; and (e) more than three years have passed since the tax was due. A tax return is generally due on April 15th of the year following the tax year.

For instance, assuming all of the other tests have been satisfied, a tax liability for income earned in 2009 would be dischargeable after April 15, 2013. A tax liability for 2010 would be dischargeable after April 15, 2014.

This is a complicated area. The above is a *very general* explanation. Any questions regarding the dischargeability of a tax liability must be discussed with your attorney.

(2) Debts incurred as a result of fraudulent conduct (such as some types of non-sufficient fund, “NSF” checks) if the creditor objects and prevails at a trial

(3) Child support and alimony obligations;

(4) Certain domestic support obligations arising from a property settlement agreement or divorce decree;

(5) Governmental fines (such as parking tickets);

(6) Damages for death or personal injury resulting from the unlawful operation of an automobile while intoxicated from alcohol or another substance;

(7) Damages for injury to a person or property resulting from willful and malicious conduct;

(8) Credit card purchases for luxury goods totaling more than \$650 and made within 90 days of the date of the bankruptcy petition filed, or cash advances totaling more than \$925 taken within the prior 70 days. If a creditor raises the issue of nondischargeability, there is a presumption that these types of debts were incurred as the result of fraudulent conduct;

(9) Criminal restitution obligations;

(10) Some types of debts not included in the bankruptcy petition;

(11) Educational obligations (*e.g.*, student loans) unless denying a discharge would cause an undue hardship on the debtor and the debtor's dependents. This hardship exception must be raised in a separate court case after you file for the bankruptcy and generally before the case is closed, and then ultimately litigated.

If any of your debts fall into one of the categories listed above, you should discuss the situation with your attorney.

(2) Will My Spouse Still Be Liable For My Debt?

Maybe. This can be a complicated area and one that you should discuss with your attorney. If both you and your spouse are obligated on a certain debt, the fact that you are filing bankruptcy will not end your spouse's liability. Also, your bankruptcy will not end the liability of a person who has co-signed on one of your debts.

(3) Can I Pay Some of My Debts Before I File For Bankruptcy?

Generally, you can continue to pay the ordinary bills that you have. This would include bills for electricity, gas and telephone service, and payments on assets that you intend to keep, such as

mortgage payments on a house. Before you file bankruptcy, you should not repay any debts to friends or relatives, either in whole or in part. Before you make any extraordinary payments on any debts, you should check with your attorney.

(4) Can I Still Use My Credit Cards?

Generally, it is not a good idea to continue to use any credit cards that you may have while you are in the process of preparing to file for bankruptcy. A credit card company may argue that you ran up your credit card debts by your fraudulent conduct since you knew that you could not pay for the charges. This advice applies to any credit purchases that you might make while you are filling out the attached Questionnaire and considering bankruptcy.

C. LISTING YOUR PROPERTY (e.g. ASSETS)

When you file your bankruptcy petition, you must list all of your property and their market value. *Market value* is generally neither what it would cost you to replace an item nor the original purchase price. Market value is the price for which you could sell the item if you were under no pressure to sell (such as at a garage sale), and the purchaser was under no pressure to buy the item. Please give your best estimate of the market values for your property.

(1) Will I Lose Any of My Property?

On the day that the bankruptcy petition is filed, all of the property that you have on that date is put into an “estate” which means that it comes under the control of the Bankruptcy Court. Property includes bank accounts and cash on hand, and money which you earned before the date you file bankruptcy but will not be received until after you file your case (e.g. wages). Property also includes the amount of state and federal refunds that you have earned as of the date you file your bankruptcy, even though the refunds may not be received for several months.

Each person who files bankruptcy is entitled to keep certain property for his or her personal use. This property is known as exempt property, which means that it is taken out of the estate and

cannot be taken by the trustee for distribution to your creditors. A partial list of exempt property is attached to these instructions. Most property that you get after the date the petition is filed (with the exception of the right to an inheritance, property from a property settlement or divorce decree with a spouse, or life insurance policy proceeds acquired within 180 days after the date the case is filed) is excluded from your bankruptcy. If all of your property is exempt, or only slightly over the exemption amount, you will not lose any of it in the bankruptcy.

If any of your debts are for property that you are buying on a contract with installment payments, or is for significant property that you bought with a credit card (such as a card from a retail store such as J.C. Penney, Sears, or May Company) the property may be *secured*. Property that you already own, but pledge to a creditor to get a loan, is also *secured*. This means that until you pay the debt in full, you do not have legal title to the property. As a result, even though this property may be of little value, you may not be able to claim it as *exempt*. When you file for bankruptcy, the creditor will have the option to demand the return of the property, unless you and your creditor enter into a *reaffirmation agreement*. This is an agreement that allows you to keep the property, provided that you keep making the monthly payments. If you sign a reaffirmation agreement, and it is approved by the court at a separate hearing, or certified by your attorney as not imposing a hardship, the debt will not be discharged in the bankruptcy. Reaffirmation agreements are complicated and this is an issue you should discuss with your attorney.

If any of your debts are secured, or if you think they may be secured, please tell your attorney.

(2) Can I Transfer or Give Away Any of My Property Before I File for Bankruptcy?

If you are considering filing for bankruptcy you should not give away or transfer any of your property, including money, to another person. You can give ordinary presents, such as for birthdays and Christmas, sell your property for reasonably equivalent value, or trade property. You can make

your normal contributions to charities or your church. However, you should not transfer any property to a friend or relative to hold for you until your bankruptcy is concluded.

If any of your property is subject to a security interest, such as a washer or television for which you have not fully paid, or property of significant value which you purchased with a credit card, you should not transfer, sell, or give away the item, even as a gift. If you intend to transfer or sell any of your property, please check with your attorney.

D. COSTS AND FILING FEES

The fee for bankruptcy is \$335.00. This fee must be paid. If you cannot pay the whole fee when you file, the Court will allow you to pay the fee in installments. The filing fee may be paid in a maximum of three installments, as follows: the first payment no more than 30 days from the date of filing; the second installment no more than 60 days from the date of filing; the third (and final) installment no more than 90 days from the date of filing. Each installment must be at least \$50 but otherwise can be in any amount not involving cents. **The first installment does not have to be paid on the date the petition is filed.**

You are responsible for making the filing fee installment payments to the Bankruptcy Court on or before the dates that they are due. This means that the payment must be at the Bankruptcy Court by the due date. Mailing the payment on the due date is not sufficient.

If you are late with any payment, the Court will automatically dismiss your bankruptcy.

You will not be notified of the potential dismissal, or given an opportunity to make the payment at a later date.

Payments may be made in person at the Court, or mailed to the Clerk, Bankruptcy Court for Oregon, 1001 S.W. Fifth Avenue, #700, Portland, Oregon 97204. **The Court does not accept third party checks. Always put your case number on your check.** The filing fee may be waivable if your income is below 150% of federal poverty guidelines and you are otherwise not able to pay the filing

fee in installments (*e.g.* in 2013, for instance, 150% of the federal income poverty guidelines for a single person household was \$17,235. For a two person household, it was \$23,265). You will have to apply for a fee waiver as part of your petition, and a judge may or may not grant your request.

E. REQUIRED CREDIT COUNSELING COURSE

Prior to filing bankruptcy you must complete a credit counseling course with a provider approved by the United States Trustee. The course may be completed by telephone or online. Some course providers have in person classes. A credit counseling agency can charge a fee, but fees must be reasonable in amount, and an agency must provide services without regard to the ability to pay. In Oregon, the maximum fee for credit counseling is \$50. Many course providers charge a lesser fee, and you should try to compare prices. If you believe that you are financially unable to pay for credit counseling, you should ask the course provider to waive the fee. Once you complete the course you will receive a certificate of completion which must be filed with your bankruptcy petition. This certificate is valid for 180 days. You can access a list of approved course providers on the internet by searching “approved credit counseling courses department of justice” or at http://www.justice.gov/ust/eo/bapcpa/ccde/CC_Files/CC_Approved_Agencies_HTML/cc_oregon/cc_oregon.htm

F. IF THE BANKRUPTCY CLINIC IS ABLE TO ASSIST YOU

If the volunteer attorney with the Bankruptcy Clinic determines that bankruptcy is appropriate for you, and once you provide all of the necessary information, your attorney will begin to draft the petition that will be filed with the Court. Once the petition is complete, your attorney will give you a copy to review and ask you to contact him or her for an appointment to sign the petition. Your bankruptcy cannot be filed with the Court until you review and sign the petition.

G. AFTER THE PETITION IS FILED

Once you have reviewed and signed the petition, your attorney will file it with the Bankruptcy Court. When your petition is filed, your bankruptcy proceeding has begun. Once the petition is filed, the Bankruptcy Court will mail a Notice to all of your creditors notifying them that you have filed for bankruptcy. The Court will also mail a copy of the Notice to your attorney and to you. .

(1) Will I Have To Go To Court?

Probably not to an actual court, but you must attend a hearing. The Notice that is sent by the Bankruptcy Court will set a hearing date, called the *First Meeting of Creditors* or the *§341(a) Meeting*. This is the hearing at which the *bankruptcy trustee*, who is the representative of your bankruptcy estate, will review your petition and ask you questions about your debts and your property. Any of your creditors may also attend this meeting and ask you questions. The meeting usually lasts about five minutes, and usually is the only meeting which you must attend.

You MUST go to this meeting. If you do not attend the meeting, the Court will automatically begin the process of dismissing your bankruptcy.

When your attorney receives a copy of the Notice sent by the Court, he or she will notify you of the hearing date. You will also receive a Notice from the Court. The §341(a) Meeting is generally scheduled 30 to 35 days after the petition is filed. For cases filed through the Portland Office of the Court, the hearing is usually scheduled on Monday, Wednesday, Thursday or Friday.

(2) Do I Have to Complete Another Counseling Course?

Yes. At any time after you file bankruptcy, but no later than 45 days after your 341(a) hearing, you must complete a personal financial management (*e.g.* debtor education) course with a provider approved by the United States Trustee. The course may be completed by telephone or online. A credit counseling agency can charge a fee, but fees must be reasonable in amount, and an agency must provide services without regard to the ability to pay. In Oregon, the maximum fee for a personal

financial management course is \$50. Many course providers charge a lesser fee, and you should try to compare prices. If you believe that you are financially unable to pay for the course, you should ask the course provider to waive the fee. Once you complete the course you will receive a certificate of completion. This certificate must be filed with the court. If the certificate is not timely filed your case will be closed without the discharge of your debts. You can access a list of approved course providers on the internet by searching for “approved debtor education courses department of justice” or http://www.justice.gov/ust/eo/bapcpa/ccde/DE_Files/DE_Approved_Agencies_HTML/de_oregon/de_oregon.htm

(3) What Happens If I Leave Some of My Creditors Off of My Petition?

If a debt is not listed on the petition by mistake, the debt will likely still be discharged. It is possible to amend the petition to add debts that were left off by mistake. The filing fee for an amendment is \$30.00, provided that it is filed before the Court closes your case. The case will generally be closed by the Court anytime after 60 days from the date of the §341(a) Meeting. After the case is closed, it will require permission from the Court and cost at least \$290.00 (\$260 to reopen and \$30 filing fee) to amend the petition to add creditors who were not listed.

However, it may not be necessary to amend the petition to discharge an omitted debt. If you discover a debt that was not listed in the petition, please contact your attorney as soon as possible.

(4) Can I Include Debts That I Incur After the Petition is Filed?

No. Only those debts existing on the date and at the time the petition is filed will be discharged.

(5) Can I Dismiss My Petition After It Is Filed?

Maybe, but it is difficult. A petition may be dismissed only with permission of the Court, after a hearing, and if it is determined that the dismissal is in the best interests of your creditors.

(6) When Can I File Bankruptcy Again?

If you have received a discharge in a prior chapter 7 bankruptcy, you cannot file another chapter 7 case for 8 years from the filing date of the prior bankruptcy. The 8 year limitation does not apply if you did not receive a discharge (e.g. the case was dismissed) in the prior chapter 7 case. . You may also file a chapter 13 bankruptcy even if you have already filed a chapter 7 bankruptcy.

(7) How Long Will My Bankruptcy Take?

Once your bankruptcy petition is filed, the meeting will be held in approximately 30 to 35 days. There is a 60-day waiting period after the hearing, and the Court will close your bankruptcy case shortly thereafter. Your bankruptcy may be pending for as long as three months. Some cases may take longer.

However, your liability for your debts is essentially discharged on the day the petition is filed, and after that date you can begin to acquire new property (and, of course, new debts).

(8) What Will Happen to My Credit?

It is unclear. Different creditors react in different ways to the fact that a bankruptcy has been filed. The fact that you have filed for bankruptcy can stay on your credit report at a consumer-reporting agency for 10 years. A bad debt can be reflected on the report for 7 years.

A *Bankruptcy Questionnaire* is attached to these Instructions. Please try to complete the Questionnaire before you come to the Bankruptcy Clinic. Bring the Questionnaire and these instructions to your appointment.

Volunteer Lawyers Project
Legal Aid Services of Oregon, Portland Regional Office

**DEBTOR-CREDITOR SECTION OF THE OREGON STATE BAR
BANKRUPTCY CLINIC**

BANKRUPTCY QUESTIONNAIRE

This is the Questionnaire which must be completed before your appointment. The information in this Questionnaire will be used to decide if you would benefit from a Chapter 7 Bankruptcy and whether the Bankruptcy Clinic will be able to assist you. Please answer *all* of the questions. If you need more room, attach a separate sheet of paper and put the question number next to your answer.

Oregon is a state that recognizes married same-sex couples for bankruptcy filing purposes. If you married in another state and moved to Oregon, the United States Trustee will recognize your marriage as valid for bankruptcy filing purposes. If this is your situation, please make sure to discuss with your attorney if you are filing a joint petition with your spouse, we will assume that the answers to the questions apply to both of you, unless the Questionnaire indicates otherwise. If you are legally separated you may have to file individually rather than jointly with your spouse. When filing as a single person, please decide whether to report your information under “(H)” or “(W)” and be consistent in putting your information in that position throughout the questionnaire.

DATE: _____

1. Full name(s) (no initials)

(H) _____

(W) _____

2. Social Security Number(s)

(H) _____

(W) _____

3. Please list any other names which you have used or been known by within the last eight (8) years. Please explain (for example, maiden name).

(H) _____

(W) _____

4. Current address:

STREET & NO. APT.

CITY STATE COUNTY ZIP

5. Telephone:

(Home) _____ (Work) (H) _____ (W) _____

6. List all of the other addresses where you have lived in the last three years, including the dates you lived there and the name(s) you used. Don't forget the zip codes. If you lived in a state other than Oregon, but do not know the address, *please tell us.*

7. What is your occupation? (If you are unemployed, tell us your usual occupation.)

(H) _____

(W) _____

8. What is the name and address of your present employer(s)?

(H) _____

(W) _____

9. When did you begin working at your present place of employment?

(H) _____

(W) _____

10. We need to know some information about your income from employment.

a. How often are you paid? (for example, weekly, every two weeks, twice a month, once a month).

(H) _____ (W) _____

b. What is the next date that you will get paid?

(H) _____ (W) _____

c. What is your *net* take-home pay per pay period? (How much money do you get, after deductions for taxes, social security, etc., each time you are paid?) **We need more than your hourly rate of pay!**

(H) \$ _____

(W) \$ _____

11. Do you have any income from sources other than employment, such as Social Security, unemployment benefits, TANF, SNAP, annuities, or pensions? If you do, please tell us the amount you are paid and the source.

(H) Source: _____

\$ _____ How often? _____

(W) Source: _____

\$ _____ How often? _____

12. Has any person, including friends and relatives, given you financial assistance in the last six months? If so, please give us the name and address of the person, and the amount and type (e.g.

gifts, loans) of the assistance. Please note if you expect this assistance to continue.

13. If you are employed, does your employer owe you any money other than current wages (for example, accrued vacation or retirement pay; withheld wages)? If so, please describe the nature of the money owed to you.

(H) Source: _____ \$ _____

(W) Source: _____ \$ _____

14. Have you been in business by yourself or with others at any time during the last six years? If the answer is yes, please describe the nature of the business, your involvement, and the date the business started and stopped operating (if applicable).

15. We need some information about the amount of income you have received during each of the last two years, as well as this year.

	2012	2013
a. Income from <u>employment</u> :		
(H) \$	_____	\$ _____
(W) \$	_____	\$ _____

- b. Income from January 1, 2014, to the current date:

\$ _____

c. Income from each source other than employment (e.g., TANF, unemployment, child support):

	2012	2013	2014
(H) source: _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
(W) source: _____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____

16. In what state did you file your Federal and State income tax returns for each of the last two years?

(H) _____ (W) _____

17. Did you receive any tax refunds after January 1 of 2014? Yes ____ No ____.
If yes:

State income tax refund received \$ _____

Federal income tax refund received \$ _____

Other tax refunds received \$ _____

18. Will you be entitled to any tax refunds for 2013 or 2014? If so, please tell us the approximate amount.

	2013	2014
State tax refund to be received	\$ _____	\$ _____
Federal tax refund to be received	\$ _____	\$ _____
Other tax refunds to be received	\$ _____	\$ _____

If you are not going to receive any tax refunds, please tell us briefly why not.

19. We need some information regarding any bank accounts, money market accounts, certificates of deposit, stock, bonds, or mutual fund accounts, which you maintained in any type of financial institution at any time within the last one year. For each account we need: (1) the name and address of the bank or financial institution; (2) the name and last 4 digits of the account number under which the account was maintained; (3) the name and address of every person authorized to make withdrawals from the account; (4) whether the account is still open; and (5) the date any account was closed.

20. Have you used a safe deposit box at any time in the last one year?

Yes _____ No _____.

If your answer is Yes, we need to know: (1) the name and address of the financial institution where the box was located; (2) the name in which the box was kept; (3) the name and address of every person who had a right to use the box; (4) a brief description of what was kept in the box; and (5) whether the box has been surrendered or closed, and if so, the date this was done.

21. Do you have copies of your financial records (such as check registers and bank account statements) for the last two years?

Yes _____ No _____.

If your answer is No, briefly explain why you do not have these records.

22. Have you previously filed for bankruptcy?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the date your bankruptcy was filed; (2) your case number; (3) the state where it was filed; (4) whether or not a discharge was granted; and (5) the type of bankruptcy (*i.e.* Chapter 7 or 13).

23. Have you previously entered into any type of formal, written debt consolidation plan with your creditors?

Yes _____ No _____.

If your answer is Yes, please explain.

24. Do you have any property that you are keeping for someone else?

Yes _____ No _____.

If your answer is Yes, briefly describe the property, its value, why you are keeping it, and the name and address of the person for whom you are holding the property.

25. Does anyone else have any property that belongs to you?

Yes _____ No _____.

If your answer is Yes, give the name and address of the person(s) holding the property, and briefly describe the property, its value, and why the other person(s) is keeping it.

26. Do you have a financial interest in any property that you do not have in your possession, including such things as investments, stocks, bonds, real estate, rental property, etc.

Yes _____ No _____.

If your answer is Yes, briefly describe the property and the nature of your financial interest.

27. Have you been involved in any type of litigation in the past 10 years or are you currently involved in litigation, whether as the plaintiff or the defendant?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name of the person or company who sued you (or you sued); (2) the case number of the suit; (3) the court in which the suit was brought; (4) the reason for the suit; and (5) the result of the suit, if it has been concluded. You should give your attorney a copy of any court documents which you have regarding any litigation.

28. To the best of your knowledge, are there any outstanding judgments against you?

Yes _____ No _____.

If yes, we would like to know (a) the name(s) of the plaintiff; (b) the date the judgment was entered; (c) the amount of the judgment; (d) the court in which the judgment was entered; and (e) the basis for the judgment.

29. Have any of your creditors garnished your wages, taken money from your bank accounts, repossessed any of your property, or otherwise taken any of your property in the last year?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name and address of the creditor who took your property; (2) a description of the property; and (3) the date the property was taken.

30. Have you given away, destroyed, transferred, exchanged, or sold any of your property within the last four years?

Yes _____ No _____.

If your answer is Yes, we would like to have a description of the property, the date you transferred it, and the amount of money, if any, which you received.

31. During any of the last four years, have you given gifts to anyone totaling more than \$200 per recipient? Yes ____ No ____.

If Yes, please explain

32. During any of the last four years, have you made any charitable contributions?
Yes ____ No ____.

If Yes, please explain.

33. Has any of your property been returned to a creditor within the last year?

Yes _____ No _____.

If your answer is Yes, please explain the circumstances. Include the name and address of the repossessing party, the date of the repossession, and a description and the value of the property repossessed.

34. Have you suffered any losses from fire, theft or gambling during the last year?

Yes _____ No _____.

If your answer is Yes, please explain.

35. Do you have any IRAs, Keogh Plans, pension plans, retirement plans, or any type of investments, of whatever nature?

Yes _____ No _____.

If your answer is Yes, please explain. Please provide us with any written explanations of the plans which you may have (for example, an employee benefit book)

36. Have you repaid any debts of any type, in whole or in part, to any friends or relatives within the last year?

Yes _____ No _____.

If your answer is Yes, we need to know: (1) the name of the person to whom you repaid the debt; (2) the amount(s) which were repaid; (3) the dates the payments were made; and (4) the relationship between you and the person who received the money.

37. During the last three months, have you paid any single creditor, including a total of \$600 or more?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name of the creditor whom you paid; (2) the amount which was paid; and (3) the date the payment(s) was made.

38. Rather than continuing to make monthly payments, in the last year did you pay any of your creditors in full?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name of the creditor whom you paid; (2) the amount which was paid; and (3) the date the payment(s) was made.

39. Other than the Bankruptcy Clinic, within the last year have you consulted another attorney for any matter, paid any money to another attorney, or transferred any of your property to another attorney?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name and address of the attorney; (2) the date

you consulted the attorney; and (3) the date(s) and amount of money or property, if any, which you paid or transferred to the attorney.

40. Within the last six years have you been an officer, director, managing executive, or owner of more than 5% of the voting securities of a corporation, a partner in a partnership, a *sole proprietor* or *otherwise self-employed*.

Yes _____ No _____.

If your answer is Yes, please explain the nature of the business and how you are or were involved.

42. Do you owe or think you may owe money to the Oregon Department of Revenue, the Internal Revenue Service, or any other taxing authority (including property taxes).

Yes _____ No _____.

If yes, please explain: (1) the type of tax owed (for example, personal income, property); (2) the tax year the liability is owed for; (3) was a return filed?; (4) was the return filed on time?; and (5) a brief explanation of why you owe the taxes.

43. Other than an automobile, do any of your debts involve the purchase of personal property (for example, television, furniture) for which you have to make monthly payments?

Yes _____ No _____.

If yes, please list the property you purchased (or are purchasing) and state whether you wish to keep the property. Please note that the creditor may require you to reaffirm (and not discharge) your debt before you may keep the property.

44. Are any of your debts from using a credit or charge card to purchase property with a value of more than \$100? Did you use a credit card to pay a tax liability?

Yes _____ No _____.

If yes, please describe the property, state the name of the credit card used, whether you still have the property, and whether you would like to keep the property, even if you have to pay for it. If you used a credit card to pay a tax liability, please tell us the amount of the liability and the year on which the tax liability was based.

45. Do any of your debts involve a loan of money for which you pledged any of your personal property (for example, a loan from a bank or credit union)?

Yes _____ No _____.

If yes, please state the name of the lender, describe the property used as security, and state whether you wish to keep the property.

46. Has any of the property described in the above questions been destroyed, given away, sold, transferred, or simply "fallen apart?"

Yes _____ No _____.

If yes, please explain the circumstances under which you disposed of the property. Please be specific as possible.

47. Other than a spouse, is any other person liable for any of your debts?

Yes _____ No _____.

If yes, please explain. List the name and address of each co-debtor, and the name and address of the creditor.

48. Are you liable on any contracts that have not yet been fully performed, except for the payment of money (e.g., health spa contracts, time share agreements)?

Yes _____ No _____.

If Yes, please explain.

49. Are any of your obligations based on a requirement in a property settlement agreement or divorce decree? In other words, does either a property settlement agreement or divorce decree require you to pay certain obligations (other than child support or alimony)?

Yes _____ No _____.

If Yes, please explain.

50. Are you leasing (as compared to renting) any property?

Yes _____ No _____.

If Yes, please explain the nature of each lease. Please attach any copies of lease documents that you have.

LISTING YOUR PROPERTY (e.g. ASSETS)

Before completing this part, you should read the Instructions that are attached to this Questionnaire. You are going to be asked to list the *market value* of your personal property. The *market value* is not what it would cost you to replace an item of property, but rather what you could sell the item for if you were not under any pressure to sell it.

51. Do you own any real property, such as a house, real estate, mobile home, or burial plot?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the street address of the property; (2) the legal description of the property (this should be on your deed or contract); (3) the present market value or tax assessed value (this should be on the most recent tax assessor's statement); (4) the unpaid balance of your mortgage, if any; and (5) the names of everyone, other than yourself, who have any type of interest in the property.

52. Do you own one or more vehicles (cars, trucks, motorcycles, etc.)?

Yes _____ No _____.

If your answer is Yes, **for each vehicle** we would like to know: (1) the make, model, and year; (2) the present market value (what could you sell it for); (3) if you are purchasing the vehicle, the unpaid balance on your contract; (4) the names of all of the persons who are on the title; and (5) the name and address of the creditor to whom you are making payments.

53. Do you expect to receive any money in the future from an inheritance, trust, or the sale of property, of any type?

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) when you expect to receive the money; (2) approximately how much you will receive; and (3) why you will receive the money (such as through a will or a trust.)

54. Does anyone owe you any money, whether or not they intend to pay you or you intend to try to collect the money? This would include anyone who has injured you in any manner or broken any

agreements with you, and anyone whom you think that you could sue for damages.

Yes _____ No _____.

If your answer is Yes, we would like to know: (1) the name and address of the person who owes you the money; (2) why you think that person owes you money; and (3) the approximate amount of money which is owed to you.

55. Is anyone holding a deposit which you paid, such as a utility company or your landlord?

Yes _____ No _____.

If your answer is Yes, we need to know: (1) the name and address of the person who has the deposit; (2) the amount of the deposit; and (3) the nature of the deposit.

56. Do you expect to acquire the right to an inheritance within the next year? Are you now, or do you expect to be involved in a domestic relations proceeding (for example, divorce or separation) within the next year?

Yes _____ No _____.

If your answer to either question is Yes, please explain.

57. We need some information regarding your personal property. Listed below are certain types of personal property. Please list the market value in the appropriate space of any property which you own. If you do not own a particular type of property, please write "none" in the space provided. If you need more space, attach a separate piece of paper.

PROPERTY

1. Cash on hand\$ _____

- 2. Checking, savings or other financial accounts, certificates of deposit, or any deposits or accounts of any nature in a financial institution.
Itemize below \$ _____

- 3. Security deposits with public utilities, telephone companies, landlords, and others.
Itemize below \$ _____

- 4. Household goods and furnishings..... \$ _____
you do not need to itemize)

- 5. Audio, video, and computer equipment. *Itemize,*
and list value of each item below \$ _____
computer equipment (*please describe*) \$ _____
video equipment (*please describe*) \$ _____
audio equipment (*please describe*) \$ _____

- 6. Books, pictures and musical instruments. *Itemize,*
and list value of each category below..... \$ _____
books..... \$ _____
pictures \$ _____
musical instruments (*please describe*)..... \$ _____

- 7. Art objects, antiques, stamp, coin, record, tape, compact disc or other collections or collectibles.
Itemize, and list value of each category below \$ _____
art objects..... \$ _____
antiques..... \$ _____
compact discs..... \$ _____
stamp, coin, or other collections..... \$ _____

- 8. Clothes..... \$ _____

- 9. Furs..... \$ _____

- 10. Jewelry (*Please describe*) \$ _____

- 11. Firearms (*Itemize*) \$ _____

12. Sports, photographic, and other hobby equipment.
Itemize, and list value of each item below \$ _____
 sports equipment..... \$ _____
 photographic equipment \$ _____
 hobby equipment (*please describe*) \$ _____
13. Interests in insurance policies. Name the insurance company of
 each policy and *itemize* the surrender or refund value for each
 \$ _____
14. Annuities. *Itemize* and name each issuer \$ _____
15. Interests in IRA, ERISA, Keogh, or other pension
 or profit sharing plans. *Itemize below* \$ _____
16. Stock and interests in incorporated and
 unincorporated businesses. *Itemize below*..... \$ _____
17. Interests in partnerships or joint ventures.
Itemize below \$ _____
18. Government and corporate bonds and other negotiable
 and non-negotiable instruments..... \$ _____
19. Accounts Receivable \$ _____
20. Alimony, maintenance, support, and property
 settlements to which you are or may be entitled.
 Give particulars..... \$ _____
21. Money definitely owing to you (include tax
 refunds). Give particulars..... \$ _____
22. Equitable or future interests, life estates,
 and rights or powers exercisable for your
 benefit..... \$ _____
23. Contingent and non-contingent interests in

- estate of a decedent, death benefit plan,
 life insurance policy, or trust.....\$ _____
24. Other contingent and unliquidated claims of every nature (money which may be owing to you) including tax refunds, counterclaims, and rights to setoff claims. Give estimated value of each.....\$ _____
25. Patents, copyrights, and other intellectual property. Give particulars.....\$ _____
26. Licenses, franchises, and other general intangibles. Give particulars\$ _____
27. Automobiles, trucks, trailers, and other vehicles. *Describe* and give value of each item\$ _____
 first car\$ _____
 second car\$ _____
 third car.....\$ _____
28. Boats, motors, and accessories. *Itemize* and give value of each item.....\$ _____
29. Aircraft and accessories\$ _____
30. Office equipment, furnishings, and supplies.....\$ _____
31. Machinery, fixtures, equipment, and supplies used in business.....\$ _____
32. Inventory\$ _____
33. Animals (describe)\$ _____
34. Crops - Growing or harvested. Give particulars.....\$ _____
35. Farming equipment and implements.....\$ _____
36. Farm supplies, chemicals, and feed.....\$ _____
37. Other personal property of any kind not already listed.

_____ *Itemize and give value of each item* \$ _____

55. Please fill out the following budget forms labeled Schedule I and Schedule J.

NOTE: Please take your time. It is very important that this budget accurately reflect your financial situation. You need to include all of your income, including income from government benefits.

- **Your budget should reflect your POST FILING income and expenses. In other words, after the bankruptcy is completed and your debts have been discharged, what will be your monthly income and monthly expenses?**
- **Try not to guess! For instance, if you review your utility bills for the last six months, you can determine your average monthly cost. You can use this technique for other expenses, such as gasoline, clothes, and food.**
- **If your budget reflects that your expenses still exceed your income after you file for bankruptcy, you should consider whether bankruptcy will provide you with the intended benefits. How will you pay your expenses and avoid falling back into debt?**
- **An actual budget should balance! If your monthly income exceeds your monthly expenses, your budget should reflect how you use this excess income each month.**

Again, if your monthly living expenses exceed your monthly income, your budget should reflect how you are going to pay these excess living expenses after you file bankruptcy.

SCHEDULE I

Age of Debtor:

Age of Spouse:

Names of Dependents	Age	Relationship

Employment	Debtor	Spouse
Occupation/Name of Employer:		
How Long Employed:		
Address of Employer:		
City, ST, Zip of Employer:		

Income: (Estimate of avg. monthly income)

Debtor Spouse

Current monthly gross wages, salary, and commissions (pro rate if not paid mthly.)

\$ _____ \$ _____

Estimated monthly overtime

\$ _____ \$ _____

SCHEDULE I, continued

SUBTOTAL \$ _____ \$ _____

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and soc. security

\$ _____ \$ _____

b. Insurance

\$ _____ \$ _____

c. Union Dues

\$ _____ \$ _____

d. Other (Specify)

\$ _____ \$ _____

SUBTOTAL OF PAYROLL DEDUCTIONS \$ _____ \$ _____

TOTAL NET MONTHLY TAKE HOME PAY \$ _____ \$ _____

Regular income from operation of business

or profession or farm (attach Exhibit D)	\$ _____	\$ _____
Income from real property	\$ _____	\$ _____
Interest and dividends	\$ _____	\$ _____
Alimony, maintenance or support payments payable to you or for your use or that of dependents listed above	\$ _____	\$ _____
Social security or other government assistance (<i>Specify</i>)	\$ _____	\$ _____
Pension or retirement income	\$ _____	\$ _____
Other monthly income (<i>Specify</i>) _____	\$ _____	\$ _____
_____	\$ _____	\$ _____
TOTAL MONTHLY INCOME	\$ _____	\$ _____
TOTAL COMBINED MONTHLY INCOME \$ _____		

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the next year:

SCHEDULE J

Rent or home mortgage payment (include lot rented for mobile home) \$ _____

Are real estate taxes included? Yes No

Is property insurance included? Yes No

Utilities: Electricity and heating fuel \$ _____

 Water and sewer \$ _____

 Telephone \$ _____

 Other (*please describe*) \$ _____

Home maintenance (repairs and upkeep) \$ _____

Food \$ _____

Clothing \$ _____

Laundry and dry cleaning \$ _____

Medical and dental expenses \$ _____

Transportation (not including car payments) \$ _____

Recreation, clubs & entertainment, newspapers, magazines, etc. \$ _____

Charitable contributions \$ _____

Insurance (not deducted from wages or included in home mortgage payments)

 Homeowner's or renter's \$ _____

 Life \$ _____

 Health \$ _____

 Auto \$ _____

 Other \$ _____

Taxes (not deducted from wages or included in home mortgage payments.) \$ _____

SCHEDULE J, continued

Installment payments	
Auto _____	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____
Payments for support of additional dependents not living at your home	\$ _____
Regular expenses from operation of business, profession or farm (attach detailed statement)	\$ _____
Other _____	\$ _____
TOTAL MONTHLY EXPENSES	\$ _____

That's it. Once you have finished this Questionnaire, sign and date the Acknowledgment below and bring the Questionnaire to your appointment. This Questionnaire gives the attorney the information needed to begin to prepare your bankruptcy petition. If you have any questions or are having difficulty in completing this Questionnaire, you may ask the attorney during your appointment. ***Please retain the attached Instructions.***

Acknowledgement

I acknowledge that I have read the Bankruptcy Questionnaire Instructions attached to this Questionnaire and that my responses to the questions are accurate to the best of my knowledge.

Date _____

Signature: _____

Signature: _____

