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## **Bankruptcy**

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

There are five types of bankruptcy categorized by the “**Chapter**” of the Bankruptcy Law that authorizes that type of case Chapter 7, 9, 11, 12 and 13.

## **The Impact of Bankruptcy**

Bankruptcy is a mixed bag. Used properly Bankruptcy can have many beneficial effects for the Debtor. Conversely do not underestimate the adverse effects that will result from a Bankruptcy filing. It’s not for everyone. ***This brochure will attempt to outline some of the effects — both good and bad — that result from a Chapter 7 bankruptcy filing.*** Filings under other Chapters have similar but not identical impacts. Visit with your lawyer about these.

## **Credit Counseling**

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

## **Means Testing**

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

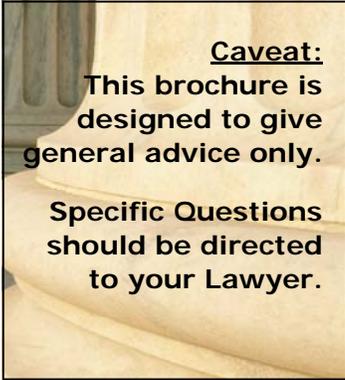
## **Lots of Paperwork**

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

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

Remember, if You File for Chapter 7 Bankruptcy:

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



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## Time Involved

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

From start to finish — from initial consultation to receipt of your Discharge — Bankruptcy typically takes four to six months.

## The Cost

Legal fees and costs have nearly doubled under the new law and vary with the services you require. The fee for a simple uncontested bankruptcy with no extraordinary services will usually be a minimum of \$1,500 plus postage, copying, counseling and court costs — nearly \$2,000.

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

If there is an Adversary Proceeding filed against you — which is quite rare — to object to your Discharge or to the Dischargeability of a particular debt, the cost will be much greater and in the thousands of dollars.

## Court Appearances

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

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

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

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

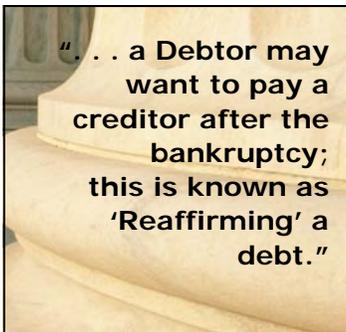
The Bankruptcy Trustee presides over this informal First Meeting and you must be present with your lawyer. Normally 20 to 50 other Debtors or persons like you who filed Bankruptcy at about the same time will also be at this informal First Meeting. During the First Meeting you will testify for a few minutes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

*This is the only court appearance for about 98% of the Debtors.*

## The Automatic Stay

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

*The Stay is a major reason for filing bankruptcy because it keeps creditors from hassling you.*



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## Reaffirming Debts

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

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

If a Creditor has collateral subject to a mortgage or lien that you want to keep, you must negotiate the *Reaffirmation Agreement* on terms acceptable to the Creditor because a Creditor is not obligated to permit you to Reaffirm.

*If you Reaffirm a Debt and fail to pay as agreed, the Creditor may pursue to recover Collateral and any deficiency as though you had never filed for Bankruptcy.*

## Debts You Still Owe

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

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

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

## Objections to Discharge

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

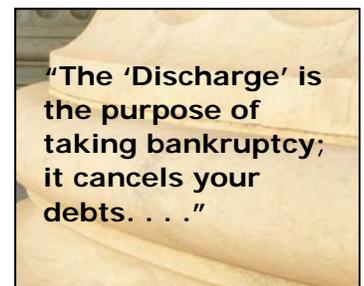
- ❑ **Prior Bankruptcy.** You cannot be Discharged in Bankruptcy more often than every eight years except in very unusual circumstances. This is a change to the law.
- ❑ **Inaccurate Information.** Failure to answer all questions on your Bankruptcy Petition with reasonable accuracy. Failure to list all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

## Exceptions to Discharge

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

Reasons for this include (i) making major purchases or taking cash advances with unsecured credit shortly before filing Bankruptcy; (ii) intentionally damaging collateral for a loan; (iii) giving a materially false financial statement to a Creditor that relied on the false statement to loan you money; and several other less common reasons.

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



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## State's Oldest Law Firm

Near as we can tell Mitchell DeClerck's roots in Oklahoma can be traced back to shortly after noon on September 16, 1893, when Charles H. Parker came to Enid on the train during the Land Run of 1893. The Cherokee Strip Land Run began that day with more than 100,000 participants hoping to claim land.

We don't know exactly when Mr. Parker opened his law practice in Oklahoma but until someone who was there tells us otherwise, we think that shortly after noon on September 16, 1893, the original predecessor of Mitchell DeClerck first opened its doors.

Parker was later joined by the former Attorney General of Oklahoma Territory Percy C. Simons forming Parker & Simmons in 1906. Simons had also made the run into Oklahoma in 1893 but began his practice in Grant County on the Kansas-Oklahoma border. Simons became the Attorney General of Oklahoma Territory in 1904 serving until 1906 when he came to Enid to join Parker.

Parker & Simmons grew in stature and was the only Enid firm listed in the prestigious Hubbell's Law Directory in 1918, the year of Parker's death. Mitchell DeClerck or its predecessors have been continuously listed in Hubbell's or its successor Martindale-Hubbell for 98 years.

For a number of decades Mitchell DeClerck and many of its members have held Martindale's highest possible "AV" peer review rating.

Mitchell DeClerck is the oldest law firm in Enid, Oklahoma by nearly a century and the oldest law firm in the state of Oklahoma by nearly a decade. So, over parts of three centuries we've long done most everything involving Oklahoma law.

**Our point:** If you need an Oklahoma Lawyer to help you solve a problem, in our 125 years representing Oklahomans beginning with Charles Parker in 1893 you can be assured that:

*We've been there and done that.*

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## Property You May Keep

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

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

If you have any assets **not** listed above, you may lose them to the Trustee and your Creditors unless you tell your lawyer about it so he can develop a legal method to protect them for you.

***Remember, you will likely have to pay creditors that hold a mortgage or lien on property you keep – even Exempt Assets.***

## Future Credit

Bankruptcy will help your credit and hurt your credit. It will allow you to slowly remove your existing bills that are discharged but your credit report will show that you have filed for bankruptcy for a number of years.

Your bankruptcy will not prohibit your from borrowing money in the future but the terms will be more onerous and some creditors may not deal with you at all until you have reestablished credit. For example you will likely begin to receive solicitations from credit card companies shortly after your are Discharged. You should consider these carefully so as not to get into financial difficulty again.

Assuming you have a good job with the ability to repay a loan, you should be able to purchase another automobile on credit; however, do not expect to qualify to purchase a new automobile with no down payment at zero percent interest. You will likely have to deal with a sub-prime lender and pay a larger down payment with a higher rate of interest.

Moreover it will be difficult to refinance your home at prime rates until you rebuild your credit.