WHAT YOUR CREDITORS MAY NOT WANT YOU TO KNOW ABOUT SOLVING DEBT PROBLEMS

This information is not legal advice. There are exceptions to some of the rules that an attorney can help identify. Quality legal advice can only be provided when an attorney understands the specific facts involved in your case. This information is designed to help Debtors obtain the relief they are entitled to, to allow them to better assist their attorney in their representation and to give the peace of mind that can come from better understanding the process.

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WARNING SIGNS THAT DEBT MAY BE OUT OF CONTROL

Anyone who is experiencing any of these should consider seeking advice.

* Losing sleep with worry, guilt or fear
* Otherwise sacrificing your health due to stress
* Being depressed or considering suicide over debt (Please seek the help of a qualified professional or call a suicide hotline).
* Being unable to make all of the required payments on time
* Creditor calls - fear of answering the phone
* Creditor letters - fear of opening the mail
* Borrowing money to pay debt - (This includes not just cash advances on credit cards but also consolidation loans - especially mortgages)
* Charging necessities on credit cards (For any reason other than convenience)
* Charging frivolous items on credit cards
* Borrowing from a 401K or retirement plan
* Late charges
* Over limit fees
* A “deck” of credit cards
* Carrying balances on credit cards
* Overdrafts on bank accounts
* Lack of savings
* Not having a budget
* Living paycheck to paycheck
* Regularly borrowing from friends or family members

* Taking paycheck advance loans and cash advances

* Picking and choosing which creditors to pay

* Paying creditors only occasionally

* Paying less than the full amount

* Borrowing from your business to pay personal debts

* Borrowing from your personal credit cards or other lenders to pay business debts

* Continuously putting money into your business

* Being sued or threatened with suit

* Doing without necessities - such as food, clothing, medical care or utility payments to pay debt

* Paying credit cards instead of mortgage payments, car payments or other payments that directly benefit the Debtor

* Failing to withhold adequate taxes

* Owing taxes

If you, or someone you love, is experiencing any of the above, it may be time to seek advice on how to get control of debt problems. Many realize they are in trouble too late. Early information can prevent debtors from creating new problems that endanger necessary assets, involve others in their debt problems, create tax issues and otherwise serve to make matters worse than they need to be and make the problem harder to solve. Early assistance is both less expensive and more effective.

How bankruptcy resolves debt problems

Breathing room to prepare

Access to immediate court protection

Consolidation and control

Forgiveness of debts

Protection for necessary assets

Breathing room to prepare

If you intend to file bankruptcy, you may be able to obtain protection even before the case is filed, if you have an attorney or use state and federal laws that protect individuals from creditor harassment. It is important, however, that a Debtor obtain information about these laws before using them as some can have some adverse consequences, such as causing a repossession or hastening the filing of a lawsuit by a Creditor. In most cases, creditors will quit calling the Debtor as soon as we confirm that we represent the Debtor.

Our office provides some protection to clients from the moment they retain our office. Clients are instructed to refer most creditors to our office as soon as our office is retained. We can determine, based upon the Debtors circumstances and goals, whether it is appropriate to refer each creditor to our office. This will stop almost all calls while you are working on getting your bankruptcy prepared. If necessary, we can use debt collection laws other than bankruptcy laws to stop the calls and letters even before a bankruptcy case is filed. Our attorneys can help clients determine when or whether to stop making payments to creditors and explain the likely consequences, if

any, depending on the plan for a particular client. We can also advise as to which creditors you should not tell that you intend to file for bankruptcy.

Access to immediate court protection

The automatic stay is a court order that goes into effect when a bankruptcy case is filed. (In a small number of cases where a Debtor has filed more than one case, the stay may not be automatic.) This order requires that creditors cease and desist from certain activities. Things that creditors are **not** allowed to do include:

Commencing a new lawsuit

Continuing a lawsuit they already have pending

Enforcing a judgment they have already obtained -

by garnishing wages

by calling for a deposition to discuss income and assets and require the Debtor to bring requested documents (called a deposition in aid of execution)

by seizing assets (called a levy)

by freezing your bank account to take it (garnishment)

by conducting other discovery such as requesting documents from third parties

by any other means

Calling you in an effort to collect the debt (If creditors call excessively, while you are at work or are otherwise harassing you, there may be legal ways to obtain relief, including damages. See Special Topics - Creditor Harassment)

Sending collection notices

Foreclosing on homes or other property (Depending on your goals, it may be critical to file before the foreclosure sale. An individual who is in

foreclosure, should speak with an attorney about rights quickly, particularly if they want to keep their home.)

Repossessing vehicles or other assets

Engaging in most other efforts to collect a debt

In some instances, the automatic stay's protection of a particular asset may be waived at the beginning of a case, such as where a Chapter 13 plan is filed stating that the Debtor is giving up or surrendering a particular asset. In other instances, the protection of the stay may be temporary or there may be grounds for a creditor to argue that the stay does not apply. These are issues that a bankruptcy attorney can provide advice regarding, depending on your particular situation.

There are a few situations where the automatic stay does <u>not</u> apply:

Prosecutors can, in most instances, continue a criminal prosecution, even if there is a related debt issue (For instance, bad check prosecutions may or may not be stayed. It could depend on the policies of the prosecutor or the person or entity holding the check.)

Governmental entities are permitted to pursue "police actions".

Many Domestic Actions continue- including the dissolution of marriage (except property division), establishing or modifying an order for child support or alimony or domestic violence.

The automatic stay goes into effect as soon as your case is filed. The notice of a filing is sent to the creditors by the Court shortly after the case is filed. If a creditor is in the process of some action against a debtor or debtor's property, our attorney's can contact the creditor directly (or through their attorney if they have one) and/or provide you with your case number and filing date. This is the information that your creditors usually want in order to cease collection actions against you. If a lawsuit is pending by

or against you, a document called a suggestion of bankruptcy is typically filed so that the Court and the parties to the lawsuit are aware of the bankruptcy.

After your case is filed, a creditor may file a motion for relief from stay, to modify the stay or to lift the stay. These are all different ways to describe the same motion. The creditor is requesting permission from the bankruptcy court to end the stay in your bankruptcy case. Such a motion should be granted under some circumstances, such as for property that the Debtor intends to give back to a creditor anyway or may result in an order that the Debtor must make payments while the bankruptcy is pending and meet other requirements of the agreement with the creditor in order to keep the collateral. This can be a complex area which should be discussed with an attorney as regards to your specific circumstances. Sometimes a Trustee or other Creditors will be as interested as or more interested than the Debtor in motions for relief concerning certain assets.

Consolidation and control

One of the big advantages of bankruptcy is the ability to deal with all or most of your debt problems in a single place. Outside of bankruptcy, most options for dealing with debt problems require an individual or business to deal with all of their creditors individually. Laws regarding the collection of debts outside of bankruptcy encourage a "race to the courthouse" which provides that, in the event a debtor experiencing financial problems defaults on obligations, whoever obtains the first judgment against the Debtor gets first crack at the Debtor's non-exempt assets and non-exempt income and later creditors only gets what's left (if anything) after each creditor that precedes

them gets paid in full. This sometimes discourages creditors from working with you without obtaining a judgment.

Typically, the only option to get many of your creditors to work together is through credit counseling programs -which are often funded by the credit card industry and may be for-profit entities. Credit Counseling may not be your best option. It may even be beyond your reach or render reasonable living expenses beyond your means. The limited nature of non-bankruptcy options that are available to bring your creditors together makes bankruptcy an attractive option for a troubled individual or business. A bankruptcy attorney can help you evaluate what options are available and would best serve the interests of the individual or business involved.

A bankruptcy filing often also allows a debtor to gain control of a financial situation that has gotten out of control. Some forms of bankruptcy allow debtors opportunities to remain in control of their assets (even non-exempt assets - typically the reorganization chapters of 11 and 13. In a Chapter 7 case, the debtor can give control over some of all of its assets to the Chapter 7 trustee. Some of the responsibilities of the assets can be transferred to the Chapter 7 trustee, as well.

Forgiveness of debts

Bankruptcy often involves a legal forgiveness of debts. A discharge is the end result of a successful personal bankruptcy. It acts as a permanent court order or injunction preventing your creditors from pursuing collection actions with respect to any debts that were included in your discharge. Most debts are included in the discharge

are “dischargeable”. (With respect to a secured creditor, such as a mortgage or car loan, this does not mean that you get to keep the collateral without paying for it.)

The major exceptions are nearly all student loans, most taxes, and marital or child related obligations that are defined as domestic support obligations under the bankruptcy code. An attorney can provide assistance in determining whether particular obligations are dischargeable in bankruptcy. At our offices, an initial consultation will include some discussion of potential non-dischargeability issues that might apply to a particular debtor based on facts.

Protection for necessary assets

An exemption is a law that protects all or some of a Debtor’s assets from creditors. Individual Debtors get to keep certain assets, which are protected from creditors by these exemptions. Bankruptcy is one of the best ways for a Debtor to assert entitlement to exemptions in certain assets and receive a determination from a Court of which assets they will be entitled to keep. Certain assets are set aside for the benefit of the individual debtor. Although bankruptcy law is national in scope, the laws the govern exemptions consist of a combination of state and federal laws, including case law. If you have lived in the state of Florida for the last two years , then you will likely be entitled to the Florida exemptions. Florida residents who have resided here for this long are required to use Florida exemptions.

If you have not lived in the state of Florida during that period of time, then you may be entitled to a choice between the exemptions from the state you left or federal

exemptions. Sometimes you will be required to use one or the other set of exemptions. In other instances, you will be able to choose state or federal exemptions.

You will be permitted to keep assets which are exempt. At our office, attorneys assist debtors in determining which exemptions they are entitled to and the most beneficial manner of applying their exemptions. Our attorneys can also discuss whether and what options exist for a Debtor to retain and protect assets that are not exempt when filing bankruptcy.

Requirements for filing bankruptcy

Payment of fees

Disclosure

Honesty

Attendance at a meeting with your trustee

Cooperation with the trustee

In some instances, monthly payments

Payment of fees

Except in very rare instances, Debtor's who file for bankruptcy are required to pay the following fees:

Filing fees that vary by Chapter;

Credit counseling fees;

Debtor education fees and

Attorneys fees if the Debtor wants to be represented by an attorney.

Credit counseling fees and debtor education fees tend to vary by company. Attorneys fees are based on the facts of a particular case and are quoted by the attorney after consultation with the client about their goals. If the Debtor has multiple options available, then one of our attorneys will explain the fees for each of the available options. We also recommend in most cases and require in some cases that a Debtor purchase a credit report through our office.

Disclosure

The filing of a bankruptcy case requires Debtors make a fairly full disclosure to their creditors regarding their financial situation. The disclosures relate to assets and debts, income and expenses and historical information such as transfers. Debtors also answer a series of questions intended to provide a sort of “executive summary” of the Debtor’s financial situation for the last few years. In my opinion, these disclosures provide Debtors an opportunity to provide this information to all of the creditors at one time and impose on the creditors a time limit to make any relevant objections. An independent trustee will also review the Debtor’s disclosures to determine whether there are any non-exempt assets and, if so, what to do with them. The trustee may also bring it to the Court’s attention if the case appears to be a problem one for certain reasons. In most bankruptcy cases, creditors will not actively participate in a bankruptcy case. A few may. After discussing an individual situation, our attorneys can provide a prediction of whether and which creditors are likely to actively participate in a case and why.

Our attorneys discuss many of the disclosures and questions at the initial consultation in order to provide advice on how the law applies to a particular situation. At the final signing, our attorneys review each question on the paperwork the client will be signing under oath. It is very important for clients to make all the disclosures and answer all of the questions completely in order to protect assets, the right to obtain and retain a discharge and the full protection of the bankruptcy court.

A number of documents are to be automatically provided to the trustee prior to the meeting with the trustee and Debtors may be required to provide additional documentation upon request from the trustee. Our office can assist in assembling a complete set of documents for the trustee. Our office also typically requests that all or most of the documents that the trustee will require be provided to us in advance of the final signing appointment.

Honesty

It is very important that Debtors are completely honest in their filings with the bankruptcy court. The failure to do so can result in the loss of assets and/or the loss of control of assets, the loss of some or all of the bankruptcy relief otherwise available to the Debtor and in extreme instances, criminal prosecution for perjury or bankruptcy fraud. The disclosures are the basis for bankruptcy relief. Understandably, regular participants in the bankruptcy process take such dishonesty personally as it undermines the system. (That includes us.)

Our attorneys strongly encourage Debtor's honesty with the court and require it of our clients. Our attorneys will not knowingly file papers with the court containing false statement and advise anyone who cannot or does not intend to be completely honest with the court and trustee against filing bankruptcy at all. Our agreement with our clients requires that clients provide complete and honest disclosure to the Court.

Obviously, most will be honest because it is the right thing to do. However, for anyone who is left with any lingering temptation and requires additional persuasion, it is not worth the risk. The chances of "getting away with it" are not very good. There

are numerous ways for trustees and creditors to obtain information online. Many have a large network of contacts. Some creditors (or people who are not fans -think of unhappy ex-spouses, partners or neighbors) know a lot about personal habits or hobbies (know right where to look for assets and income) and may even have documents. There may be records a Debtor is unaware of or information that is not really as private as thought. Incentives exist for creditors and the trustee to discover hidden assets, and chances are, they will. Any discharge a Debtor manages to obtain or assets a Debtor manages to retain will not be safe if based upon bad information.

Attendance at a meeting with the trustee

In each form of bankruptcy the Debtor is required to attend a meeting of creditors, also called a 341 meeting. This is typically the only hearing that a Debtor is required to attend. (The Balance of the information here about the 341 meeting does not apply to Chapter 11 Debtors.) In both a Chapter 7 and a Chapter 13 case the meeting is approximately 30 days after the bankruptcy petition is filed with the bankruptcy court. The date and time and the trustee for your case will be selected by the Court. Debtors receive a notice directly from the Court of the meeting date and time, the trustee and contact information, your case number and the Judge selected to handle your case. Our office will also provide notice of the 341 meeting to our clients. One of our attorneys will appear to attend the 341 meeting with the client, discuss any issues with the client, discuss any reaffirmation agreements with the debtor and assist, where necessary, with any issues that arise with the trustee or creditors.

Debtors are required to bring identification and proof of social security number to their meeting. In some instances, a trustee will request additional documents be brought to the meeting. The Debtor is required to be placed under oath and to testify under oath about the information contained in their papers and information otherwise related to their financial situation. Most meetings last approximately 5-10 minutes. They are scheduled in "bunches" on the hour and half hour so Debtors should plan on an hour, and rarely even longer.

The different types of trustees for a Chapters 7 and 13 serve different but related purposes and have some overlapping duties. A Chapter 7 trustee is chosen from a panel of trustees. Chapter 7 trustees tend to focus on issues related to assets they might be able to liquidate on behalf of creditors or that might affect entitlement to a discharge. Your Chapter 13 trustee is a standing trustee and is selected for you based upon the Bankruptcy Judge assigned to your case. Chapter 13 trustees (or, their attorneys, who often also represent the Chapter 13 trustees in Court and question debtors at 341 meetings, the same as the trustee's themselves) also focus on the Debtor's income, budget and the means test (more on that later) in order to determine whether the Debtors plan meets the requirements for confirmation (more on that later, too), essentially a blessing by the Court.

In most cases, you will not know your trustee in advance of filing. In most cases, it should make little difference who your trustee is. Each Chapter 7 trustee and Chapter 13 trustee has the same rights and responsibilities.

<u>Cooperation with the trustee</u>

Debtors are required to cooperate with the Chapter 7 trustee. Commonly required cooperation includes providing tax returns and sometimes a portion of the tax refund to the trustee. Debtors are required to turn non-exempt assets over to the trustee, unless arrangements have been made to retain them. Debtors are required to inform the trustee if certain things happen within 180 days (roughly six months) after the case is filed. Debtors may also be asked to store assets that the trustee intends to take at a later time, and to care for and insure such items, particularly if the Debtor benefits from possession of the assets and is using them. If the trustee is both entitled to and attempting to sell the Debtor's property, the Debtor must reasonably cooperate. For instance, if the trustee is attempting to sell real estate belonging to the Debtor, the Debtor would typically be required to keep the real property in suitable condition for showing to prospective purchasers and make it reasonably available for that purpose.

In some instances, payments

Debtors are sometimes required to make payments to their trustee or creditors. Monthly payments are often made directly to creditors for debts such as car loans and mortgages where the Debtor intends to keep the collateral. In both Chapter 13 and Chapter 11 cases, monthly payments are anticipated.

Credit counseling briefing and debtor education

Each individual debtor must obtain a credit briefing prior to the case being filed with the Court. The briefing can be obtained from a variety of sources and is provided online (completed on the telephone), in person or by telephone. It includes some analysis of the debtor's income and expenses and advice regarding areas where a

budget may be out of line with recommendations. In other words, where a debtor appears to be spending too little or too much on a given expense or category of expenses.

An additional debtor education class must be taken before an individual debtor obtains a discharge in a Chapter 7 case. This one can also be taken online, by telephone or in person. The available providers provide a wide range of classes from fairly brief to fairly in depth. They also vary wildly in price. We typically recommend a basic (read- inexpensive) class but those who can afford it and enjoy learning may benefit from one of the more in depth courses available.

Bankruptcy Options

Chapter 7

Chapter 13

Chapter 11

Chapter 7 Bankruptcy

A Chapter 7 case is one option for an individual or married couple. It is the simplest and quickest form of bankruptcy. It is sometimes referred to as a liquidation bankruptcy. It is also the most common form of bankruptcy. An individual must pass an income based test called the means test or show special circumstances in order to file a Chapter 7 case. The means test is intended to determine whether Debtors have enough money after paying their expenses to pay unsecured creditors in a Chapter 13 bankruptcy. If the means test shows that Debtors have enough income to pay creditors, the debtor cannot qualify for a Chapter 7. Many debtors will pass the means test because their income is below the median income for a particular family size. We maintain a chart on our website with the current median income information for Florida. The numbers are adjusted regularly. In Florida, it has remained fairly constant that a single debtor must make above $40,000.00 annually, and a couple or a family above $50,000.00 in order to exceed the median income. Debtors whose family size is not addressed here and/or who are close to these income numbers or who reside outside Florida may want to reference the chart.

A Chapter 7 Debtor typically will not make payments to the trustee unless they are retaining non-exempt assets via a buy-back from the trustee. A Chapter 7 Debtor is not entitled to control over non-exempt assets during a case or until the trustee closes the case or otherwise abandons an asset.

The Chapter 7 Debtor will want to be current with loans on vehicles and mortgages on property that the Debtor wants to keep and needs to keep up payments on these debts. A creditor may request that a debtor sign a document called a reaffirmation agreement. This document is usually one that restates the parties agreement as it stood on the date of the bankruptcy case filing and asks the Debtor to sign a document agreeing to continue to be bound personally. Some creditors may offer better terms in an effort to get you to agree to be personally bound. If a Creditor does not obtain a signed reaffirmation agreement before the Debtor's discharge, the creditor would be able to repossess the vehicle but not obtain any money from the Debtor after obtaining its collateral.(See Special Topic - Reaffirmations).

For debts that will not be discharged, the Debtor is protected from collection activity regarding the debt from the date his bankruptcy case is filed until the date his discharge is entered. (Except in the unusual circumstance that one of these creditors obtained relief from stay to pursue its remedies.) Tax creditors and student loan creditors may commence or continue collection activity once the Debtor receives a discharge. The Debtor should pay ongoing child support during the bankruptcy case, even though the collection activities are stayed regarding the past due amount.

Chapter 13 Bankruptcy

Individuals and married couples can also file a form of bankruptcy called a Chapter 13 or wage-earner plan. In a Chapter 13 case, a Debtor makes payments to creditors. The duration of the payments can range from three to five years depending on income and whether it is advantageous to the Debtor to pay for a long period of time, such as the reduced monthly payments. The amount of the Chapter 13 payment required to be dedicated to the unsecured creditors depends on Debtor's income and expenses or the value of non-exempt assets the debtor wants to keep.

The Debtor's payment may also include monies allocated to pay other debts. Special claims that have priority such as some tax claims or child support or alimony arrearage claims can be paid in full. When a debtor is behind to a secured creditor, a chapter 13 plan can provide for catch-up payments to that creditor in addition to the regular monthly payments to prevent the loss of an asset. The Debtor then returns to making the regular monthly payment after the bankruptcy is complete.

Chapter 13 provides a number of other options for paying certain debts and can also be used as a problem solving tool. It can allow debtors to "buy back" non-exempt property for its value and make the payments more affordable by paying over time. It can sometimes make secured creditor payments more affordable. It can give a debtor breathing space and a convenient forum to resolve payment and balance due disputes with creditors.

In most instances, a bankruptcy court cannot modify a mortgage that is secured by the Debtor's primary residence. One big exception is a mortgage that does not have a single penny of equity protecting its debt. In other words, if the balance of the

first mortgage is higher than the value of the property, then a second mortgage or line of equity behind it can be stripped from the property, as of the date the Chapter 13 case is completed by entry of a discharge.

Chapter 11 Bankruptcy

Few individuals will need to file bankruptcy under Chapter 11. For those who do, there is typically a good reason. One of those reasons is the debt limitations for Chapter 13. Another is the need for a Debtor to have greater flexibilty in dealing with Debt problems. A Chapter 13 case is intended to be relatively simple, which limits flexibilility but also provides a lot of predictability. Attorneys fees for Chapter 13 are relatively inexpensive compared to a Chapter 11 and Debtors are routinely permitted to pay a portion of the fees as a part of their payment to the Chapter trustee. A Chapter 11 case is much more expensive to file, both as to the filing fees and the attorneys fees and involves a substantial retainer payment, all of which must typically be paid before the case is filed. In a Chapter 13 case, a Debtor's attorney can easily determine, based on the law and local practice, whether a case meets the legal requirements for confirmation and obtain success if those legal requirements are met. A Chapter 11 case, on the other hand, is more of a controlled negotiation where creditors are often more closely involved in the process and a successful plan usually represents compromise on the parts of both the Debtor and the Creditors to achieve a result that should be in the best interests of all. Creditors have the opportunity to vote with respect to the plan and may have competing interests.

For those who need Chapter 11 relief, the higher fees may very well be justified. It may be the only option available to some debtors that allows the Debtor to retain control of their assets. It provides debtors with an opportunity to bring all of their creditors to one place for a resolution of their issues. From a Creditor's point of view, it allows them to negotiate with the Debtor with knowledge of the Debtor's entire financial situation. The process allows Creditors a level of transparency with respect to how the Debtor's arrangements with other Creditors are and will be handled for better decision making. Sometimes Creditors are better off working with Debtors to find a solution that is better for both the Debtor and the Creditor.

Disadvantages of Bankruptcy

Credit

Potential loss of some assets or control

Embarrassment

Credit

A bankruptcy filing will be reflected on a Debtor's credit report for 7 to 10 years from the date it is filed, depending on the type of bankruptcy that is filed with the Court. It will impact a Debtor's credit score for as long as it is reflected in the Debtor's credit report. Bankruptcy does not usually "ruin" the Debtor's credit at all, much less "ruin" the Debtor's credit for the entire time that is reflected on a Debtor's credit report. For many mortgages, a debtor must be at least two years past a bankruptcy to be considered for a new mortgage.

For many creditors, the granting of new credit is based almost solely on the Debtor's credit score. Other creditors will obtain a lot of additional information and engage in a thorough process designed to predict your ability to pay back money you borrow. In addition, such a creditor will look closely at factors such income, employment history, assets a potential borrower owns, other debts and their ratio to income and whether events that led to any prior credit issues are likely to repeat themselves. They will look at how the debtor has dealt with credit in the past.

The real impact bankruptcy has on a Debtor's credit score depends on what their credit score is like in the first place. For starters, the information included here is

based on my experience, reading virtually everything I can find on credit scores and any other means I can find to study credit scoring. The company that generates credit scores closely guard the secret of exactly how they are generated. They want to protect their product.

For some Debtors, filing a bankruptcy and getting a discharge will have the somewhat odd effect of making the Debtor's credit score go up. This often happens with Debtor's who have particularly poor credit scores. The company from which we have our client's purchase credit reports provides as a service a prediction of the effect that a bankruptcy filing will have on a Debtor's credit score. The result is usually an increase in the credit score, in part because the Debtor's have often been in financial distress for some time. One reason that it seems odd that a credit score would increase when a bankruptcy case is filed is because we tend to think of it as a "grade" for how well we have done with credit in the past. This perception is furthered by how banker's, mortgage companies and tend to talk about credit as "A" credit or "B" and so on, recalling our school days where reward were given based on excellence in a particular skill. If financial responsibility is what is being measured, a credit score does a poor job. That's OK, however, because that's not really what it is supposed to do.

What a credit score is supposed to do is predict how well the person whose credit score we are looking at it going to pay back money loaned at the time the credit is given. When looked at this way, it is easy to see how a bankruptcy might make a Debtor more likely to pay that new debt:

Many Debtors leave bankruptcy with much less debt than their counterparts who have not filed for bankruptcy. Their remaining Debt tends to be necessary debt that the Debtor continues to receive a tangible benefit from such as a car or home loan. The Debtor's clean slate means there will be less competition for the Debtor's dollars.

A Debtor with a Chapter 7 discharge must wait eight years before another Chapter 7 bankruptcy can be filed. The Creditor needn't be concerned that the Debtor will file again soon.

Many Debtors learn lessons at some point in the process, and they have often learned lessons that will help them avoid the same result happening again. They have also learned to do without credit cards.

There is often an aggravating factor that preceded the bankruptcy that may be unlikely to be repeated. Divorce, loss of assets through some calamity, health issues for the Debtor or family members, a death in the family, unanticipated job loss by both spouses or a car accident. In short, some calamity that is unlikely to be repeated. Sometimes one of these calamities leads to another or more than one calamity befell the Debtor at the same time.

Most Debtor's do not want to repeat the process, not that the process of filing for bankruptcy was that bad, people do not want to be in the position where they are experiencing the problems that create the need for bankruptcy.

So, from that standpoint, it is easy to see why a debtor's score might actually go up after a bankruptcy filing. For more indications that the score is not for good financial behavior, think about the individual who is arguably the most financially responsible. He saves his money for all purchases, even cars and homes, and does not have a credit card. He should have the highest credit score. However, our credit avoider instead has a low credit score because there is nothing in his credit report file.

I have gleaned the following:

> The higher the Debtor's credit score, the more a Debtor's score drops when a bankruptcy is filed.
>
> Keeping certain debts, such a car loans or mortgages current through the bankruptcy process helps the credit score recover from the bankruptcy.
>
> It is critical that there be no post-bankruptcy defaults on new debt in order to prevent a reduction in the score.
>
> It appears that two years post bankruptcy without a new default is something of a crossroads for many creditors and underwriters.
>
> After the two years, Debtors who have maintained good payments on some debt post-bankruptcy can obtain mortgage loans and car loans if they otherwise meet the qualifications for the loans.
>
> A chapter 7 appears to be better credit score wise than a Chapter 13.

A Debtor who does the right things after a bankruptcy case, is not sentenced to a ruined credit score for years to come. Our attorneys discuss with clients the likely impact of a bankruptcy on their personal situation and credit score and provide advice to clients as to how to minimize the adverse effect of their bankruptcy filing on their credit, how to obtain an improved credit score over time after the bankruptcy and how to deal with situations that appear to require a credit card.

It is not particularly uncommon for Debtors in a Chapter 13 case to be able to obtain credit for a new vehicle, when necessary. Chapter 7 Debtors are often able to obtain car loans shortly after discharge. There are even some lenders to whom our firm can refer you to, if appropriate, that regularly offer loans to Chapter 7 debtors to redeem vehicles or purchase replacement vehicles when one is surrendered in a bankruptcy case.

In summary, bankruptcy does affect your credit. Despite that initial increase in the credit score, it appears likely that the bankruptcy case has some depressing effect on the credit score until it is no longer on the credit report and the bankruptcy may stay on your report for up to ten years, longer than other forms of bad debt. Debtors should expect to be offered less favorable terms than someone with a higher credit scores. Their options to borrow will be more limited. What credit is offered will be more expensive. The consequences of bankruptcy are the consequences of bad debt. To put a positive spin on it, this will discourage the accumulation of “bad” debt such as most credit card debt.

<u>Potential loss of some assets or control</u>

In a Chapter 7 Bankruptcy, the Debtor has exemptions to be applied to certain assets. Assets that are not exempt are subject to being taken by the trustee to sell for the benefit of the unsecured creditors. Sometimes arrangements can be made in a Chapter 7 to retain non-exempt assets. A Chapter 13 or a Chapter 11 can seek to retain non-exempt assets, which may require more payments to creditors than would otherwise be required. If the retained assets are luxury items or not reasonably necessary or beneficial to the Debtor, it must be in the best interests of the Creditors for the Debtor to retain the asset.

Our attorneys can discuss exemptions and how they can be most beneficially used for the benefit of the Debtor, based upon the individual's needs and priorities. In the event a Debtor wants to retain non-exempt assets, our attorneys can explain potential options for doing so and the advantages or disadvantages of these options. Our attorneys can also predict whether a trustee is likely to object to the retention of an asset by the Debtors and whether and how the objections may be overcome.

Embarrassment

Some are concerned that they will be embarrassed during the bankruptcy process. This rarely occurs. In most cases, the only time the Debtor must be present is for the 341 meeting. The meeting itself is held at the federal building in one of three meeting rooms . (They remind me of classrooms. Rows of chairs and the big desk for the trustee up front.) There is rarely much offered up in the way of excitement and is rare for anyone to be in attendance besides Debtors attorneys, others waiting for their own trustee meeting, the trustee (and maybe staff) and occasionally creditors or their

attorneys. Other than those waiting for their own meetings, those in attendance have typically observed many of these meetings and find them rather routine.

Most Debtors who insisted on worrying about the meeting of creditors found afterwards that is was pretty much a non-event. Nearly all of the participants in the bankruptcy system are professionals who are just doing their jobs. They make every effort to be fair. With rare exceptions they are polite and respectful. One of our attorneys attends the meeting of creditors with each of our clients. In the unlikely event a trustee or an attorney is behaving inappropriately we can address the situation. Our attorneys often help ensure that the Debtor understands the trustee questions and provides appropriate answers. Our attorneys provide documents to the trustee in advance of the meeting of creditors. In the event that a meeting goes as anticipated, our attorneys can answer any questions, deal with any client concerns and discuss any reaffirmation agreements with the Debtors. Our attorneys will assemble documents related to any unusual issues that we are aware of in your case, so that they can be provided to the trustee in advance of your meeting and available at the meeting. This will allow the trustee to question you at the meeting and hopefully get matters resolved quickly and without undue effort on the trustee's part or inconvenience to you.

In the event that a meeting of creditors goes as anticipated, which most do, we can re-assure the Debtor that the meeting was routine and raises no concerns. In the event there may be an issue, we can discuss the issues and how they can be resolved. We protect the Debtor and provide peace of mind.

Attendance at a meeting of creditors that is scheduled in advance seems less embarrassing than being surprised by a process server. Less so than having a garnishment or document request served on an employer.

Alternatives To Bankruptcy

Consumer credit counseling

Debt settlement

Attempting to resolve the issue on your own

Denial

Consumer credit counseling

For some of our clients, credit counseling may be an option such as if an individual's debts are limited to credit cards or the non credit-card debts can be dealt with separately if the credit card debts are brought under control. In most instances, credit counseling will require that a Debtor pay all of the credit card debt, often with interest.

Arrangements that are set up by credit counseling agencies typically can obtain up to five years to re-pay the credit card debt (some agencies do not have programs this long). Creditors will often reduce or eliminate interest. They will also often agree to re-age an account so that the debtor does not continue to be charged late charges and other fees. The effect on a debtor's credit can also be mitigated by stopping repeated reporting of late payments. However, participation in a credit counseling program is reflected on an individual's credit report and lowers a credit score. The rules of the program likely also prevent or discourage the use of credit cards, including new credit cards or existing cards that are not included in the program.

It is important to consider that credit counseling agencies are not necessarily motivated solely by a client's best interests. The credit counseling agencies are often owned by the credit card companies or sponsored by them. Even in circumstances where credit card companies do not directly own the agencies, they typically provide the funding that allows the agency to remain in business. In most instances, the credit counseling arrangements are possible because the credit card companies offer terms intended to make it easier for and give debtors incentive to participate in credit counseling. These terms may include eliminating or reducing new interest charges, reducing payments, eliminating late charges and other fees and paying a percentage of the monies paid to them by credit counseling clients to the credit counseling agencies to cover their expenses. Each creditor may offer different terms for the re-payment of the debt or may refuse to participate in credit counseling (it is unusual for a credit card company to refuse to participate).

We sometimes suggest to clients whose problems might be resolved by credit counseling that they speak with a credit counselor to compare options available for a Debtor via credit counseling. Sometimes a credit counseling company will refer a client to a bankruptcy attorney if they cannot offer an arrangement to the debtor that benefits the debtor and is likely to work.

It is very important before considering credit counseling that an individual or couple carefully choose a credit counseling agency. The agency should be a non-profit entity, be accredited and should not charge the debtor for their services. Checking for complaints against the agency is a good idea. It is also important that

the debtor avoid accidently entering into a debt settlement program. Many of the debt settlement organizations present their plans in a way that causes debtors to mistake these programs for credit counseling. See below for a discussion of debt settlement and why it is not usually recommended.

Credit counseling is a good alternative to bankruptcy for a few. During a credit counseling session, a credit counselor will obtain information about a particular debtor's debts. They should be able to tell a debtor what payment terms are offered by each creditor. Most counselors will know the terms available from each creditor. Clients should beware of entering into an unrealistic program. Once the program is set up, it is very difficult to reduce payments. Some credit counseling agencies will place debtors in credit counseling programs that have a limited likelihood of being completed. If the program does not leave the Debtor with enough money to pay necessary expenses or requires too much sacrifice from the debtor, it is unlikely to be completed successfully. While most are willing to make some cuts to re-pay debt, a bare bones budget that does not allow for anything enjoyable or unanticipated expenses will not likely lead to success.

Debt settlement

A debt settlement program is not suitable for most. In a debt settlement program the debtor will make payments to the entity assisting them with the program. These payments are not paid to creditors as received. Instead, they are accumulated. The debt settlement companies then contact creditors in an attempt to make a lump sum settlement arrangement with the creditor as adequate funds are accumulated for

the debtor. As time passes, the amount a creditor will accept in re-payment of the debt in a lump sum typically decreases. In theory, as increasing amounts are accumulated to pay an individual's debts and creditors requirements decrease, there will be a point at which the amount accumulated and the amount required to settle all of the debts magically coincides and the debtor can re-pay all of the creditors.

There are a number of problems with this arrangement. Of great concern is that many of those we speak to who are or have been in this type of program have no idea how the program is supposed to work. These people are often under the impression that they are in a more traditional credit counseling program. It is very difficult for these debt settlement companies to predict the results of their programs. There is little incentive for creditors to co-operate.

There are a number of other concerns with these programs. Many of the clients who come into our offices did not even understand that they were in a debt settlement program. They thought there was a payment going to their creditors each month. Clients in debt settlement programs may continue to receive calls and letters, be instructed to exercise their rights under various credit protection laws or even to forward their bills and other correspondence to the company unopened. Sadly, this often has the effect of provoking their creditors to more aggressive action because they are cut off from all contact with the Debtors and are being offered an unacceptable settlement as their only choice. The debt settlement companies may view this as a good thing because the creditor's desperation, in theory, causes them to become willing to accept less.

Unfortunately, this desperation can also have the effect of prompting creditors to file a lawsuit. Even where no lawsuit is filed, the effects of the debt settlement on the Debtor's credit score are devastating. All of the accounts go into default and continue to be reported later and later. The Debtor is left in blissful ignorance that the problem has been addressed until served with a lawsuit or is waiting locked in uncertainty for an unpredictable amount of time to achieve an unpredictable result. Meanwhile, the Debtor's credit score gets worse and worse. The debt settlement companies often take both up front fees and monthly fees from the monthly payments made by the Debtors.

These programs are typically far more harmful to the Debtor's credit score than bankruptcy would be. They are also fairly ineffective as a bankruptcy avoidance method. These programs are almost never recommended. Our bankruptcy attorneys can review documents pertaining to any programs in which a Debtor is participating. We will typically be able to identify the type of program a Debtor is in, discuss its advantages and disadvantages, and compare it to other alternatives, including bankruptcy.

Trying to resolve debt problems yourself

There are many obstacles to this approach, particularly where Debtors have multiple accounts. Many Creditors simply do not maintain staff to accommodate negotiations with individuals involving anything other than payment in full or minor concessions such as waiving a late charge or temporarily lowered payments and will instead refer you to credit counseling. Once the account gets to a point where a

Creditor will negotiate a reduction in balance due for a lump sum settlement, the account is in collections and credit has been severely damaged. There are also often tax implications to debt settlement. Our attorneys can discuss issues surrounding attempts to resolve debt issues yourself including advantages, disadvantages and alternatives.

Denial

I do not really consider this a legitimate alternative to bankruptcy. However, we often find that clients have been employing this perfectly understandable strategy. Anyone who is employing this strategy, may want to come in and talk to one of our attorneys. It costs nothing but time to discuss a financial situation with one of our attorneys. Talking to someone often prevents missteps that make the situation worse. Many clients find that an option is available to address their particular situation. It is not necessary to suffer without information about how to resolve financial problems.

The spiral of unsettled debt

There are a number of issues with leaving debt problems unaddressed. They tend to get worse, more difficult to solve and more difficult to recover from if left ignored.

One problem occurs when a creditor obtains a judgment. Once a creditor has a judgment, this will allow them to use certain methods to collect the Debt. These include requiring automatic disclosure of some information that may allow them to collect the debt, asking for additional documents and information and requiring an appearance in person to answer questions that may help them collect their debt. Judgment creditors may garnish wages (with some limitations) or bank accounts. They may also record the judgment in the public records where it acts as a lien against certain assets. They can also levy or seize certain assets. The judgment can last up to 20 years, if properly renewed by creditors. This means that Debtors can be sentenced to years with minimal assets or income or the worry that income or assets can be lost.

Perhaps worse, unresolved debt lingers on a Debtor's credit report for seven years after the last payment. Judgments are reported on credit reports. Other debts are reported on credit reports, including any defaults. Defaults can be reported on credit reports, together with how long the debt has been in default. Past defaults that have been corrected still remain on your credit report for a period of time. Some accounts that go into default will be sold or sent to collection agencies. This often increases the impact of these debts disproportionately because they are often reported in such a way that it appears to be multiple creditors.

Worse than bankruptcy is the toll of uncontrolled debt on health and family. Many unnecessarily lose sleep and experience all sorts of health problems because of the stress of unresolved debts. Some even do without necessities, including adequate food and medical care. The consequences of bankruptcy are often far less severe than assumed and the best alternative available. No one should suffer continual worry when relief is likely available. Our attorneys can provide a free consultation to discuss the specifics of relief available to a Debtor's situation.

Who we are

This book was written by Sheila D. Norman, Esquire, with thanks to Walter G. Bullington, Jr. Esquire for Editing and Proof-reading. Sheila and Walt help debtors file for relief under the bankruptcy code in Tampa, Florida. In addition to their main office in Tampa, they have offices in Dade City and Spring Hill, Florida.

Sheila started the practice in 1993, working extensively with experienced bankruptcy attorneys and trustees. In 2005, Walt joined the firm, after working as an attorney at the offices of each of the current standing Chapter 13 trustees.

Sheila is board certified in consumer bankruptcy, having passed an examination, demonstrated certain experience and completed legal education about bankruptcy in addition to that normally required. She and Walt are members of the National Association of Consumer Bankruptcy Attorneys and regularly attend the convention. Both regularly attend educational programs about bankruptcy and related topics.

For more information check out our website where you can find additional information about a number of topics related to bankruptcy. You will also be able to ensure that you have the most recent version of this books and look for new titles in our library. Coming soon, Practicing Safe Credit, a helpful guide to developing credit relationships that keep credit safe. Feel free to pass this book along to anyone or send them to our website for a free copy of their own.