

## **Notice to Individual Consumer Debtor Under Section 342(b) and 527(a) of the Bankruptcy Code**

In accordance with section 342(b) of the Bankruptcy Code, this notice: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case. You are cautioned that bankruptcy law is complicated and not easily described.

Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition.

Court employees can not give you legal advice.

**1. Services Available from Credit Counseling Agencies With limited exceptions, section 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis.** The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies.

### **2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors Chapter 7: Liquidation (\$335 filing fee to court)**

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a “means test” designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss your case under section 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.
2. Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.
3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.
4. Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a

motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

### **Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income (\$310 filing fee to court)**

1. Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.
2. Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.
3. After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

### **Chapter 11: Reorganization (\$1,717 filing fee to court)**

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

### **Chapter 12: Family Farmer or Fisherman (\$275 filing fee to court)**

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

## **3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials**

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

**WARNING:** Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

**In accordance with section 527(a)(2) of the Bankruptcy Code, be advised that:**

1. All information you are required to provide with a bankruptcy petition and during a bankruptcy case must be complete, accurate, and truthful.
2. All assets and all liabilities must be completely and accurately disclosed in the documents filed in your case, and the replacement value of each asset must be stated in those documents where requested after reasonable inquiry to establish such value.
3. Current monthly income, the amounts specified in the means test under section 707(b)(2), and disposable income in chapter 13 cases must be stated after reasonable inquiry.
4. Information that you provide during your bankruptcy case may be audited, and the failure to provide such information may result in dismissal of the case or other sanction, including a criminal sanction.

**\*\*\*\*PLEASE NOTE:** The term “filing fee” as used in this required disclosure means just that, a filing fee. When litigants or parties, including debtors, file various documents in courts, they are charged filing fees by the court. The filing fee is a type of user fee for governmental agencies. The filing fees mentioned in this required disclosure have *absolutely nothing* to do with any attorney fee charged. You will be quoted an attorney fee when we decide whether you will file bankruptcy and what chapter you’ll file. We will also enter into a written fee agreement regarding the attorney fee and any other costs, including the filing fee. \*\*\*\*

**Section 527(b) Notice**

**IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.**

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 will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of the creditors where you may be questioned by a court official called a “trustee” and by creditors.

If you choose to file a 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 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.

### **Section 527(c) Notice**

Except to the extent DeMott Law Firm, P.A. (“Debt Relief Agency”) provides the required information itself after reasonably diligent inquiry of the CLIENT (“Person Assisted”) or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, DeMott Law Firm, P.A. hereby, by this CLEAR AND CONSPICUOUS WRITING desires to inform you how to provide the information required in your Bankruptcy Petition, Schedules and Statements of Financial Affairs:

#### **(1) HOW TO VALUE ASSETS AT REPLACEMENT VALUE:**

You must determine how much your personal property is worth as it is today. Do not value your property based upon what you can sell it for. Instead, value it at what you would have to pay to replace it. If your property is new or close to new, consider retail value adjusted to whatever extent appropriate for the amount the property has been used. If there is a market for your property as used, you may use that market to determine value. For example, you may consider using thrift store prices or prices at house or garage sales or at a secondary marketplace such as eBay to determine what it would cost you to replace your personal property.

#### **(2) HOW TO DETERMINE CURRENT MONTHLY INCOME:**

In order to determine current monthly income, you must consider your income for the six months immediately prior to the commencement of your Bankruptcy Petition. If you provide us with accurate payment advices for the six months immediately prior to the commencement of the Bankruptcy Petition, we will assist you in determining your “Current Monthly Income”.

#### **(3) HOW TO DETERMINE THE AMOUNTS SPECIFIED IN SECTION 707(b)(2) AND IN A CHAPTER 13 CASE, HOW TO DETERMINE DISPOSABLE INCOME IN ACCORDANCE WITH SECTION 707(b)(2) AND RELATED CALCULATIONS.**

In order to determine these amounts, you should provide us with actual expenditures you make in each of the pertinent categories. We will compare them to the allowed amounts pursuant to current Internal Revenue Standards in order to determine your “Disposable Income” in accordance with Section 707(b)(2).

#### **(4) HOW TO COMPLETE THE LIST OF CREDITORS, INCLUDING HOW TO DETERMINE WHAT AMOUNT IS OWED AND WHAT ADDRESS FOR THE CREDITOR SHOULD BE SHOWN**

In order to determine your list of creditors, the amount owed and what address should be shown, we will need to see your bills for each creditor for a period of 90 days immediately prior to the commencement of your case. We may utilize a National list of creditors' addresses for additional information. **IT IS VITAL TO HAVE THE PROPER ADDRESS FOR EACH CREDITOR, AS WELL AS THE ACCOUNT NUMBER FOR EACH CREDITOR. FAILURE TO PROVIDE THIS INFORMATION MAY RESULT IN ANY NOTICE BEING GIVEN TO THAT CREDITOR BEING TREATED AS INVALID, RESULTING IN THAT DEBT NOT BEING DISCHARGED IN YOUR BANKRUPTCY CASE.**

**(5) HOW TO DETERMINE WHAT PROPERTY IS EXEMPT AND HOW TO VALUE EXEMPT PROPERTY AT REPLACEMENT VALUE AS DEFINED IN SECTION 506 OF THIS TITLE.**

When you provide us the complete list of your property, we will evaluate with you the applicable law of South Carolina as well as any other state in which you may have lived in recent years to determine which exemption applies. We don't think that it will be very easy or appropriate for you to determine exemptions without appropriate and competent "Bankruptcy Assistance."

**Certificate of the Debtor**

I (We), the debtor(s), affirm that I (we) have received and read the notices and disclosures contained herein.

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_