



12 Step Bankruptcy Program

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Step No. 1 The Initial Consultation

When you appear for your free initial consultation at our office you will be given certain Bankruptcy Code-mandated disclosure documents to read in our lobby. We will need you to sign an Acknowledgment that you read them. Your consultation will be with one of our experienced Bankruptcy Lawyers, and usually lasts about 1 1/4 hours. You are encouraged to bring with you any troubling documents or notices that you would like the attorney to look at.

At your free consultation we will listen to your concerns in order to obtain an understanding of the financial problems confronting you. We will give you some basic information about the available consumer bankruptcy Chapters, namely Chapter 7 and Chapter 13. We will ask you questions about your household size and income to gain a feel for whether you would “pass” the [Means Test](#). We will ask detailed questions about assets that you own, such as houses or vehicles. If an asset runs the risk of being liquidated by a Chapter 7 Trustee we will tell you so. We will ask questions about the nature of your debts. If a certain debt is not dischargeable in bankruptcy, such as student loans or criminal fines, we will tell you so. We do not want you to have any surprises in your case. We will quote you a legal fee based on the information provided to us.

We do not, and will never, try to “sell” bankruptcy to anyone. We will try to find a solution to your unique financial problems. If you determine that you might like to proceed with bankruptcy, we will give you a list of documents and information to bring to an Intake Interview, a Retainer Agreement to review, and will assign one of our experienced paralegals to your case.

Step No. 2 Credit Counseling and Document Gathering

Prior to filing your case you must complete a course in Credit Counseling with an approved provider. The provider we recommend will charge about \$36.00, and the session usually lasts about an hour. You will be issued a Certificate by the provider at the conclusion of the course. Please have the Certificate faxed or emailed to us. The provider will ask you questions about your income and expenses, as well as your debts, and will probably end up telling you to “go file bankruptcy”. This counseling session is mandatory, even if most find it to be a waste of time. You must keep in mind that Congress wanted to make bankruptcy harder and more expensive when

they amended the Bankruptcy Code in 2005, and this Pre-Filing Counseling (as well as the Post-Filing course to be discussed later) is but one example of this.

You will have to gather together all of the many documents set forth on the list given to you at the Initial Consultation. Don't blame us for the length of the list; all of the requested documents are mandatory. Any case filed without them is subject to dismissal, and we will not file your case until we have all of them.

Gathering together the required [payment advices](#) is generally the biggest "pain" endured by clients in the entire process. The [payment advices](#) are needed for your [Means Test](#) to determine your "current monthly income" (CMI), which is your average monthly income from all sources for the 6 months prior to the bankruptcy filing. Your CMI is a critical component in determining your eligibility for Chapter 7. It is also relevant in Chapter 13's, though for a different reason. We ask the client to bring in their last seven (7) months of pay stubs, because this makes the calculation easier for us. For self-employed persons we need a Profit and Loss Statement for each month of the prior 6 months, setting forth (1) the business income received during each individual month, and (2) the business expenses paid out during each individual month. If you are paying personal expenses such as house mortgages out of the business account, these are not business expenses and cannot not be claimed as such.

Step No. 3 The Intake Interview

When (1) all of your documents and information are gathered together, (2) you have done your Credit Counseling, and (3) you have at least a portion of the legal fee, you call your assigned paralegal and schedule an Intake Interview. This session is pure data intake, and the attorney is in the office and always available if needed. It usually takes about 2 hours, and our experienced bankruptcy paralegal will go through with you every question posed on the bankruptcy petition. The questions will be somewhat duplicative of areas covered in The Initial Consultation, and represent a second attempt by our firm to extract the necessary information from you to make your bankruptcy petition as accurate as possible. There is nothing that can derail a bankruptcy quite like incomplete or inaccurate disclosure of assets or recent financial activities.

If all necessary documents or information are not brought in, you will be given a list itemizing what is missing, and a timetable for the completion of this Step. The missing items are to be provided to

us within one week of the Intake Interview, with the petition and related documents to be signed two weeks thereafter (the “Signing Date”). The purpose of this timetable is to keep the case progressing forward.

It is at this Step that you retain our firm by paying our fee. If you cannot pay the entire fee (which is not unusual), you simply pay as much of it as you can. The Retainer Agreement will be signed, of which you will receive a fully signed copy. Once we are retained you are authorized to refer all subsequent creditor calls to our office for handling.

Step No. 4 Preparing the Petition and Means Test

For some reason clients can lose their focus once the Intake Interview is completed and fail to bring in missing documents or information in a timely fashion. This can cause the process to become stalled, which can be bad news for the client. The longer it takes to get the petition filed, the greater the chance that creditor activity such as [wage garnishment or bank account restraint](#) can rear its ugly head and ruin your day. Nothing good ever happens if it takes too long to get a bankruptcy petition filed.

If the case stays on track (as hoped) and we have ALL necessary documents and information, your petition will be ready for review and signing on the Signing Date. During this period we may contact you if we need something explained, such as a deduction on a pay stub. It is critically important for the client to be responsive to our inquiries so that the common goal of getting the documents ready for signing as soon as possible can be achieved. You must also continue to provide your paralegal with any pay stubs received during this period.

Step No. 5 Signing the Petition

During this Step you and your assigned paralegal will review the information set forth on each and every page of your bankruptcy petition and Means Test. The attorney will be on hand if any legal issues must be explained. If any information has to be added, deleted or corrected, it will be done at this time. If creditors have to be added, they will be added. It is not unusual for your Means

Test to have to be recalculated. If the Intake Interview occurred in January your CMI calculation would have been based on your average monthly income for the 6 prior months, from July thru December. However, if the petition is not signed until February, the relevant 6 month period for CMI calculation becomes August thru January, which can cause minor (hopefully) changes to the CMI calculation. If a Means Test recalculation is required, it will be done. Our goal is for the petition and Means Test to be totally accurate when signed, and our attorneys and experienced paralegals will take all steps necessary to achieve this. In many instances this Signing session can take an hour or more, but it is a critical stage of the process that should not be rushed through.

If there is an unpaid balance due on the legal fee, it must be paid at this time. Once the petition is signed and the fee paid in full, the petition and Credit Counseling Certificate will be electronically filed with the Bankruptcy Court via the Court's Electronic Case Filing (ECF) system. As soon as the case is filed an [automatic stay](#) is created, which stops virtually all creditor activity. If the client is subject to an active [wage garnishment or bank account restraint](#) we will fax to all necessary parties proof of the case filing so that the garnishment or restraint stops in "real" time, since it can take up to a week for the Court to advise the necessary parties via the mails.

Step No. 6 The Debtor Education Course

After your case has been filed you must complete a Debtor Education Course in Personal Financial Management. We recommend that you use the same company that provided your pre-filing Credit Counseling. This course usually lasts longer than the Credit Counseling session, and costs about the same. You will be issued a Certificate by the provider at the conclusion of the course. Please have the Certificate faxed or emailed to us, as it must be uploaded onto your docket on the Court's ECF system. As the name suggests, this course is devoted to budgeting and financial management considerations. Some clients find it helpful while others find it to be a waste of time. The important thing to recognize is that it is mandatory that you take and complete this course. If you fail to do so the Court will not issue you a Discharge, which means that all of your other efforts will have been for nothing.

Step No. 7 The Section 341 Meeting

Shortly after the case is filed the Court will mail you a Notice setting forth the date, time and place for your [Section 341 Meeting](#). We will forward you another copy of this Notice, highlighting the important information contained thereon, and provide you with directions to the hearing room.

If you filed a [Chapter 7 Bankruptcy](#) your [Chapter 7 Section 341 Meeting](#) will be conducted by your [Chapter 7 Trustee](#). If you filed a [Chapter 13 Bankruptcy](#) your [Chapter 13 Section 341 Meeting](#) will be conducted by your [Chapter 13 Trustee](#). The Judge will not be at this hearing, as Judges are barred from attending. Be sure to bring to this hearing your original Social Security Card and official photo identification. If you do not have proper proof of identification the Trustee will not hold the hearing. The hearing will usually last not more than five (5) minutes, and one of the attorneys from our firm will be there with you. The Trustee has a duty to swear you in and ask a series of questions, many of them pro forma, which you will respond to under penalties of perjury. You will be treated respectfully by your Trustee. Your responses to questions should be brief, honest and to the point. This is not a time to be “chatty”. If your Trustee asks you a “Yes” or “No” question, your response should be either “Yes” or “No”. If your Trustee asks a question that you do not understand, they will be happy to re-phrase or clarify the question. Your creditors are invited to attend this hearing, but very few do. Although this hearing may sound terrifying it really is not, and you will live through it. As long as you answer all questions honestly and to the best of your ability, you will have no problems.

At the conclusion of this hearing your attorney will briefly meet with you and address any matters or concerns that may require attention. In virtually every Chapter 7 case this is the only time you will meet with your Trustee or give testimony. In most Chapter 13 cases the only other time that you will see your Trustee is at the Confirmation Hearing, conducted by the Judge.

Step No. 8 The Chapter 7 Objection Period

Creditors are afforded a period of 60 days after the [Chapter 7 Section 341 Meeting](#) to object to (1) their particular debt being discharged, or (2) all of your debts being discharged. Creditors rarely exercise this right, unless there is fraud involved or they have a vendetta against you (ie., think

angry former spouse, etc.). “Loading up” on a credit card in the short period prior to the bankruptcy filing is the most common scenario leading to the filing of an objection.

The [Chapter 7 Trustee](#) can only object to you receiving a Discharge of all of your debts, and this must be done within the 60 day period after the [Chapter 7 Section 341 Meeting](#). This right is rarely exercised, unless there is wholesale fraud tainting your case.

The United States Trustee’s Office also has 60 days after the [Chapter 7 Section 341 Meeting](#) to seek a dismissal of your case for “abuse”. This is done if the US Trustee feels that the figures on your budget or Means Test are inaccurate, and that you actually have sufficient disposable income in your budget to fund a Chapter 13 Plan that would yield a meaningful pay out to your unsecured creditors.

If an objection is filed by a creditor or the Chapter 7 Trustee, you will be served through the mails with an Adversary Proceeding in the form of a Summons and Complaint. If an objection is filed by the U.S. Trustee’s Office it will usually be in the form of a motion, served via the mails. In all instances your attorney will be served with the same papers, and you have the opportunity to oppose or dispute any objection and have your day in Court in connection therewith.

The reason our law firm has so many fact gathering sessions with a client prior to filing the case is to determine if there is vulnerability to any of the objections discussed above. If your budget suggests that you have the means to repay significant money to creditors we will recommend a Chapter 13 filing. If your budget is like most, and you have no funds to repay anyone, we will recommend a Chapter 7 filing. If an asset transfer appears suspicious, we will determine the appropriate steps to minimize its impact on your case. Our job is to advise you of any potential problems that might arise and take the necessary steps to smooth things out so that your case proceeds without any surprises.

Step No. 9

The Chapter 13 Confirmation Hearing

The hearing to confirm your [Chapter 13 Bankruptcy](#) is scheduled for 45 days after the [Chapter 13 Section 341 Meeting](#). Confirmation rarely occurs at this first scheduled hearing. Creditors have 90 days after The Section 341 Meeting to file their claims with the Court, so Confirmation is frequently adjourned until after (1) all claims have been filed, and (2) all appropriate objections to claims have been made and decided. If the client is trying to modify a mortgage via the Bankruptcy Court's [Loss Mitigation Program](#), the Court will generally adjourn Confirmation until after the modification process has run its course.

Your Chapter 13 Plan will be confirmed if the Court determines that (1) it was filed in good faith, (2) all monthly disposable income is being contributed to the Plan, (3) all priority creditors are being paid in full, (4) appropriate treatment is being given to all secured creditors, (5) the Plan is “feasible”, meaning that the debtor is able to make the required payments, (6) all required income tax returns have been filed, (7) all post-filing alimony and child support payments have been made, and (8) the unsecured creditors will be paid at least as much money as they would have received in a [Chapter 7](#) liquidation.

You will have to appear at your Chapter 13 Confirmation Hearing before the Judge. Your attorney from our office will be there with you, along with the Chapter 13 Trustee. The Judge will give you a “pep talk” reminding you of (1) the hard work that it took to get to the Confirmation Hearing, and (2) the extraordinary “second chance” afforded to you by bankruptcy. A client will be well served if they listen.

Step No. 10

The Chapter 7 Discharge

A Chapter 7 Discharge is entered by the Court if (1) no objections have been filed by interested parties during the 60 day period after the [Chapter 7 Section 341 Meeting](#), and (2) the Certificate evidencing completion of the Debtor's Education Course has been filed on your docket.

An Order of Final Decree evidencing the closing of your case will be issued as soon as your [Chapter 7 Trustee](#) has completed his administration of your case. Certain assets take a long time to administer, such as personal injury (“PI”) lawsuits. However, the case remaining open to allow

for asset administration in no way impedes the entry of a timely Chapter 7 Discharge. In the case of a PI lawsuit, the Discharge can be entered years before the case is closed and the Order of Final Decree entered.

A [Chapter 7 Bankruptcy](#) will remain on your [Credit Report](#) for a period of ten (10) years from the date of filing. After the passage of some time (ie., 6 months or so) you should examine your Credit Report to insure that it accurately reflects the debts that were discharged in bankruptcy.

Congratulations! You are now on the road to financial recovery. However, if the factors (whatever they were) that caused you to fall in debt have not been addressed and resolved, they could come back to haunt you again. If you keep playing the same hand the same way, don't be surprised if you end up with the same result. The Chapter 7 Discharge is a wonderful thing, but it does not insulate you from the "vagaries of life", such as future illness or job loss, nor does it protect you from yourself and your future bad decisions. However, through the exercise of good judgment and behavior modification, most people flourish after receiving a Chapter 7 Discharge, making good use of the "fresh start" afforded to them.

Step No. 11 The Chapter 13 Discharge

A Chapter 13 Discharge is entered by the Court if (1) all required payments under the Chapter 13 Plan were made, (2) the Certificate evidencing completion of the Debtor Education Course has been filed on your docket, and (3) all required, post-filing alimony and child support payments have been made. The Order of Final Decree is usually entered simultaneously with the Discharge, thereby closing the case.

A [Chapter 13 Bankruptcy](#) will stay on your Credit Report for seven (7) years from the date of filing. The same cautionary advise contained at the end of [Step No. 10](#) applies as well to those receiving a Chapter 13 Discharge.

Step No. 12 Follow the “Golden Rule”

It is hard to overstate how important it is for there to be appropriate communication between the lawyer and client during the case, and particularly if unforeseen events occur. If life throws you a “curve ball” while your case is pending there are many instances where the lawyer can “fix” the resulting problem, but only if he knows about it. For example, if a client receives a salary reduction during a Chapter 13 case the required Plan payment can be modified in some circumstances. However, it is tougher for the lawyer to fix this problem if he does not find out about it until he reads the Trustee’s motion to dismiss based upon your failure to make the required payments. If you think something might affect your case, be sure you tell your lawyer about it immediately. If you call us, we will return the call. If we call you or send you written requests for documents or information, please respond in a timely fashion. Proper communication between lawyer and client is a “two-way street”, and it is the “Golden Rule” of successfully navigating your way through the bankruptcy process to get your Discharge.