

HOW DOES THE BANKRUPTCY PROCESS WORK?

INITIAL CONSULTATION (free)

1. Once we have scheduled an appointment with you, we will have you bring in your last filed tax returns, 6 months of payroll stubs, itemization of all current income sources, the last sixty days of bank statements, copies of any contracts and if divorced, a copy of the divorce decree or modification. If we determine that you are only eligible for a Chapter 13, you will need to provide the last 4 years of filed tax returns, as well as the noted documents;
2. During the consultation, we will discuss with you the options that are available to you regarding a Chapter 7 or a Chapter 13 bankruptcy. A Chapter 7 is often referred to as a “straight” discharge of your debts (after liquidation of your non-exempt assets). A Chapter 13 is commonly referred to as a “wage-earner plan” where over a 60 month period of time you will make payments to your creditors through a plan based upon your disposable income;
3. We will also download your credit reports, Idaho Repository posting and any UCC filings at the Secretary of State to ensure that we have a complete overview of creditors, lawsuits and any lien filings and the current status of those liens; and
4. We will assist you in filling out our Questionnaire and discuss with you your assets and the exemptions for those assets, as well as what a reaffirmation or redemption of your debts means to you and your creditors.

ADDITIONAL DATA GATHERING

5. You will need to provide to our office, once we have started the data input, cover sheets for any life insurance (indicating policy number, value, and beneficiary). You will also need to provide a benefit statement of any pension or retirement plan indicating the amount vested. If you are currently paying on a secured debt, you will need to provide a copy of the contract. You will also need to provide us with a copy of any judicial lien that has been recorded against you or your property. This information can be obtained through the County Recorder’s Office where you reside or where you may have property.

ELIMINATING TAX DEBT

6. You will need to provide our office with information regarding any past due Federal and/or State income taxes. It is important that we determine if these past due amounts are unsecured priority debt to the government or if the taxing agency has a tax lien in place securing the debt. In most cases, you will still be liable for the tax debt after your discharge but that will depend on the type of tax, how old the tax debt is, if you filed a return, and the type of bankruptcy you are filing.

7. Federal income taxes in a Chapter 7 are dischargeable if you meet ALL of the following circumstances:

- a. The discharge is for income taxes: *Payroll taxes and penalties for fraud are not eligible for discharge;*
- b. You filed a legitimate tax return: *You filed a tax return for the relevant tax years at least two years before filing for bankruptcy;*
- c. The tax liability is at least three years old: *The tax debt is from a tax return that was originally due at least three years before filing for bankruptcy;*
- d. You are eligible under the 240 day rule: *The IRS assessed the tax debt at least 240 days before you filed for bankruptcy. If the IRS suspended collection activity during negotiation, the applicable date may be extended;*
- e. You did not commit willful tax evasion: *Possible evasive actions including changing your Social Security number, your name, or the spelling of your name, repeated failure to pay taxes; filing a blank or incomplete tax return; and withdrawing cash from a bank account and hiding it; and*
- f. You did not commit tax fraud: *The tax return contains no information that was intended to defraud the IRS.*

FEDERAL TAX LIENS

8. If the IRS placed a federal tax lien on your property prior to the bankruptcy case, it will remain after any discharge of the tax debt. You will need to clear the lien off the title by paying off the lien before selling the property.

TAX DEBT NOT ELIGIBLE FOR DISCHARGE

9. The following type of tax debt are not dischargeable in a Chapter 7 bankruptcy;

- Tax penalties from tax debt that is ineligible to be discharged
- Tax debts from unfiled tax returns
- Trust fund taxes or withholding taxes withheld from an employee's paycheck by the employer

ONCE THE DATA HAS BEEN INPUTTED BY OUR OFFICE

10. We will email you a complete copy of Schedule E (unsecured priority) Schedule F (unsecured creditors) and Schedule D (secured creditors) for your review, comment or amendment prior to finalizing the documents;

11. Once you have had the opportunity to review the schedules and we have finalized all of the documents, we will schedule an appointment with you to come in and review and sign. We schedule around your availability and will accommodate your work schedule;

12. Prior to our filing your case, you will need to obtain a certificate of credit counseling from an approved agency. We have listed the accredited agencies for the District of Idaho in the tab. The certificate of credit counseling must be provided to our office, as it is filed with your bankruptcy Petition; and

13. Plan on the signing process to take at least an hour.

FILING FEES

14. Chapter 7 - \$335.00
Chapter 13 - \$310.00

Fees must be paid at the time of filing, unless you are requesting of the Court an Order to allow you to pay your fees in installments after filing.

READY TO FILE

15. Normally, we will file that day or the next day depending on our schedule;

16. We (like all bankruptcy law firms) file electronically so we will know immediately upon filing your case number, trustee, judge and the date of your first meeting of creditors;

17. Once your case has been filed with the Court, you are immediately protected from all creditor harassments and collection efforts under 11 USC 362, commonly referred to as the “automatic stay.” Your creditors will no longer be allowed to contact you or pursue any means of collection or foreclosure until a further order of the Court. If you are contacted by a creditor, you need to let us know the details immediately;

18. If you have a creditor that has obtained a judgment against you or is currently attempting to garnish your wages or bank account, upon filing we will send notice to the State Court of your filing to stop all further procedures in the matter. If you have a wage garnishment, we will also send an immediate notice to your employer to stop all garnishment attempts on your wages; and

19. A letter of instruction will be sent to you from our office with a complete copy of the bankruptcy filing for your files and records.

FIRST MEETING OF CREDITORS (341 Hearing)

20. Your first meeting of creditors cannot be scheduled prior to 25 days from your filing nor 35 days after your filing. Therefore, the first meeting will be scheduled approximately 30 days from the date you file. The first meeting of creditors is not in front of judge or in a courthouse. Rather, it is a designated place where creditors are given the opportunity to question you regarding your filing. It is in front of your trustee and normally there will be anywhere from 6 to 8 cases heard in an hour. That means you are only given a few minutes to answer the questions the trustee will ask of you. Rarely do creditors attend. On the tab bar, we have provided a sampling of questions. We have also provided a copy of the US Trustee's sheet that you will need to read prior to the 341 hearing;
21. If the trustee has nothing further of you, there will only be only the one 341 hearing; and
22. **MAKE SURE** you bring your social security card and picture ID to the 341 hearing or you case will be rescheduled.

THE WAITING PERIOD

23. Approximately 4 months after a Chapter 7 bankruptcy filing, you should receive a discharge of your debt. It sometimes takes a few weeks longer to have your case closed by the Court. Some of the factors that contribute to a delayed closing would be there are assets and your creditors still have time to file a proof of claim, the trustee has not finalized the accounting, you have not paid your filing fee or completed the Financial Management Course. A Chapter 13 bankruptcy could take up to 5 years before your case is ready for discharge as you are required to pay off certain of your debts according to your Plan;
24. You are required to complete the second course, referred to as the Financial Management Course, prior to your discharge. Again you can refer to the listing of accredited agencies in the tab section;
25. You must also file (if deemed appropriate) the reaffirmation agreement with the Court no later than 60 days after your 341 hearing;
26. You may have options available to you regarding redemption funding for your secured property. All redemption funding must be completed, including an Order Allowing Redemption, prior to the closing of your case; and
27. We will charge an additional fee for the preparation of a Reaffirmation Agreement and/or Motion for Redemption. However, we do not charge an additional fee for adding creditors after your filing. The Court will charge a filing fee of \$30.00 for the additional creditor filing, and that fee needs to be paid upon our filing of your amendment to include additional creditors.