

## CREDIT COUNSELING REQUIREMENT

In order to file bankruptcy, an individual must “receive from an approved nonprofit budget and credit counseling agency . . . an individual or group briefing . . . that outlines the opportunities for available credit counseling and assists you in performing a related budget analysis.” A list of the approved agencies is available at <http://www.usdoj.gov/ust/>.

This counseling must be completed within 180 days of the date of filing for bankruptcy unless there is an emergency, such as a foreclosure. It is unlikely that an emergency will justify filing without credit counseling since credit counseling is available and can usually be completed in a few hours. It is important that all debts, income, and expenses are accurately depicted when completing credit counseling, as you will be denied a certificate if the counseling agency feels that a repayment plan is preferable to a bankruptcy. Therefore, it is advisable to wait to complete counseling until after you have met with a bankruptcy professional.

Once credit counseling is successfully completed, the agency will give you a certificate describing the services provided and indicating that you have met this requirement. The agency may also give you a debt repayment plan that indicates whether you have sufficient income to pay your permissible expenses and have funds remaining with which to pay creditors. The analysis may also show that you could not fund a repayment plan as described in section 521(b)(2) of the Bankruptcy Code. If you complete counseling before meeting with a bankruptcy attorney, you should bring the certificate and the debt repayment plan, to our office for your consultation. Please note that a credit counseling certificate is only valid for 180 days.

## **Debt Relief Agency Disclosures to an Assisted Person**

Section 527 of the Bankruptcy Code requires a Debt Relief Agency to provide an assisted person with the following:

1. A copy of the notice prepared by the clerk of the Bankruptcy Court, in accordance with the requirements of § 342(b), which is attached hereto and which contains:
  - (1) a brief description of
    - (A) Chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and
    - (B) the types of services available from credit counseling agencies; and
  - (2) statements specifying that
    - (A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and
    - (B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.
2. The following disclosures are required by § 527(a)(2), which advises an assisted person that:
  - (A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;
  - (B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in § 506 must be stated in those documents where requested after reasonable inquiry to establish such value;
  - (C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under Chapter 13 of this title, disposable income (determined in accordance with § 707(b)(2)) are required to be stated after reasonable inquiry; and
  - (D) information that an assisted person provides during his or her case may be audited pursuant to this title, and failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.If you have any questions about any of these disclosures, we will be happy to provide further explanation when we meet for a consultation.

We also call your attention to Exhibits A and B attached hereto and made a part thereof.

## EXHIBIT A

### Separate Disclosure Required by Section 527 of the Bankruptcy Code as Amended

#### IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY

(Note: This form is mandated by statute. It may or may not correctly explain the law.)

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 explains what must be done in a routine bankruptcy case to help you evaluate how much service you need. 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 decide 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 (Petition, Schedules, Statement of Financial Affairs, and in some cases a Statement of Intention) must 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 must attend the required first meeting of 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 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 should consult 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 lawyers, not bankruptcy petition preparers, can give you legal advice.

## EXHIBIT B

### Information to the Assisted Person (Debtor) on

#### How to Provide All Information Required by Section 521

Section 521 of the Code sets out the Debtor's duties related to the filing of a bankruptcy case. A copy of the section is attached to this writing.

As you fill out these schedules and statement of affairs, you should keep the following in mind:

1. Completing the income and expense pages accurately and completely is critical.
  - (a) To compile your income, refer to recent pay stubs and last year's income tax returns. Accounting for overtime, investment dividends, and other earnings is necessary.
  - (b) People usually pay cash for many items, such as groceries. Review your monthly expense payments and make a best estimate on cash expenditures. If you pay insurance annually, calculate the monthly cost. Attached are IRS expense allowances for the area in which you live. If your expenses exceed these, we will have to review them and perhaps make adjustments.
  - (c) When you value property you own, consider prices in the neighborhood for housing, in newspapers and car lots for automobiles, and what you would pay for furniture and clothes at a business selling such goods.
  - (d) If you have an item of special value, an appraisal may be necessary.
  - (e) When listing creditors, collect current bills and use that information for mailing addresses and balances due.
  - (f) Under the law of this state, or federal bankruptcy law, certain property may be exempt and may be retained. Attached is a copy of the state list of exemptions and also a list of property that may be exempt under federal law. Neither list is all-inclusive. If a seller has a lien on exempt property, the lien may be avoidable or you may have to pay for the property in order to keep it. After you have prepared these lists, we can review them and decide what property qualifies as exempt.

## SECTION 526 DISCLOSURE

The Rules of Professional Conduct requires disclosure of any limitations on the attorneys's ability to provide advice or representation to a client. If a client is seeking advice concerning a bankruptcy, or in preparation for or in contemplation of a bankruptcy, the Bankruptcy Code prohibits this firm from advising you to incur any additional debt. Therefore, the Firm will not be able to provide advice to you regarding any additional debt in contemplation of bankruptcy. Any debt incurred after receiving information about a bankruptcy filing could be construed as a fraud against such creditors, and you could be precluded from any discharge of that debt, or your discharge in its entirety could be challenged, or your case could be dismissed as substantial abuse.

Please note, there are presently legal challenges to this restriction on a bankruptcy lawyer's ability to provide advice concerning the desirability or legal ability to incur debt in connection with a discussion of bankruptcy. Our firm will continue to monitor this law and provide you with the most complete advice permitted by law.