



# Bankruptcy Information *for Consumers*

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## *What Is Bankruptcy?*

Bankruptcy is essentially a procedure whereby individuals (or businesses) can obtain court ordered relief from all of their debts (with certain exceptions) in return for giving up (with certain exceptions) all of their property. If the Pro Bono Clinic is able to provide assistance, you will be filing a Chapter 7 bankruptcy. A Chapter 7 bankruptcy is a proceeding which will probably result in the discharge, or elimination, of your debts without the necessity of paying any money to any of your unsecured creditors or losing any of your property. Chapter 7 refers to the Chapter of the Bankruptcy Code which authorizes this type of bankruptcy.

A second type of bankruptcy is known as a Chapter 13, which is a bankruptcy option for individuals with a regular income, whether from wages, government benefits, or otherwise. Under this type of bankruptcy the debtor develops a plan to make monthly payments on his or her debts, over a three - to five-year period. The amount of the monthly payments depends on the amount of monthly disposable income and the nature of the debts. At the conclusion of this period the debtor is discharged from liability for any unsecured debts and hopefully is no longer delinquent on any secured debts. A few debts which are not dischargeable in a Chapter 7 bankruptcy are dischargeable in a Chapter 13.

The Pro Bono Bankruptcy Clinic does not handle Chapter 13 cases.

Chapter 11 is often used by businesses with debt problems arising from the operation of a business. Chapter 12 applies to family farms. Chapter 15 applies to cross border bankruptcies. The Pro Bono Bankruptcy Clinic does not handle either Chapter 11, 12 or 15 cases.

The Bankruptcy Court for the District of Oregon has a website at [www.orb.uscourts.gov](http://www.orb.uscourts.gov) which contains very useful information about many of the topics in this brochure.

## *Will All of My Obligations Be Discharged?*

On the date your bankruptcy petition is filed, with a few exceptions, all of your creditors, including those who have obtained judgments against you, are generally prohibited from taking any action to collect the debts. This essentially means that your debts have been *discharged*, or that you no longer have a legal obligation to pay these creditors. This rule applies to those creditors which are inadvertently not listed in the petition.

### **A. Debts That May Not Be Discharged**

Certain debts, however, may not be discharged in a Chapter 7 bankruptcy. These include the following:

## 1. Many Tax Liabilities

The most common tax liability is for personal income tax. Personal income tax may be discharged in a Chapter 7 bankruptcy only if: (a) a return was actually filed; (b) the return was not fraudulent; (c) more than 240 days have elapsed since the tax was assessed by the taxing authority; (d) more than two years have elapsed since the return was actually filed; and (e) more than three years have elapsed since the tax return was due.

For instance, assuming all of the other tests listed above in (a), (b), (c), and (d) have been satisfied, and since a tax is generally due on April 15<sup>th</sup> of the year following the tax year, a tax liability for income earned in 2018 would be dischargeable after April 15, 2022.

This is a complicated area and the foregoing is a *very general* explanation. Any question regarding the dischargeability of a tax liability should be discussed with an attorney.

2. Debts incurred as a result of fraudulent conduct (such as some types of non-sufficient fund, "NSF", checks);
3. Domestic support obligations, including child support and alimony obligations, whether owed to a former spouse or a governmental unit;
4. Other obligations owed to a spouse, former spouse or child incurred in the course of a divorce or separation proceeding by order of court or by agreement;
5. Criminal fines (including parking tickets);
6. Damages for death or personal injury resulting from the unlawful operation of a motor vehicle while intoxicated from alcohol or another substance;
7. Damages for injury to a person or property resulting from willful and malicious conduct;
8. Credit card purchases for luxury goods totaling more than \$675 and made on or within 90 days of the date the bankruptcy petition is filed, or cash advances in excess of \$950 taken on or within the prior 70 days;
9. Criminal restitution obligations;
10. Some types of debts which are not listed in the bankruptcy petition along with a correct address for the creditor; and

11. Most educational obligations (e.g., student loans), unless the denial of a discharge of these debts would cause an undue hardship on the debtor and the debtor's dependents. This exception must be raised and argued in a separate judicial proceeding instituted during the course of the bankruptcy. If the issue is not litigated, or if the debtor is not successful in any litigation, the debt will not be discharged. The Pro Bono Bankruptcy Clinic does not handle educational obligation discharge cases.

If any of your debts fall into one of the categories listed above, you should discuss the situation with your attorney.

### **B. Will My Spouse Still Be Liable for My Debts?**

Maybe. This can be a complicated area and one which you should discuss with your attorney. If both you and your spouse are obligated on a certain debt, the fact that you are filing bankruptcy will not relieve your spouse from liability. Similarly, your bankruptcy will not relieve the liability of a person who has co-signed, or is otherwise obligated, on one of your debts.

### **C. Can I Pay Some of My Debts Prior to Filing For Bankruptcy?**

Generally, you can continue to pay those bills which you incur in the ordinary course of your financial affairs. This would include such bills as utility payments and payments on property which you intend to keep, such as mortgage payments on a house or monthly payments on an automobile. Prior to filing bankruptcy, ***you should not repay \$600 or more on any debts to creditors, including friends and relatives.*** Before you make any extraordinary payments on any debt you should consult with your attorney.

### **D. Can I Still Use My Credit Cards?**

Generally, it is not a good idea to continue to use any credit cards which you may have while you are in the process of preparing to file for bankruptcy. A credit card company may argue that your credit card debts were incurred by your fraudulent conduct since you knew that you could not pay for the charges. This advice is applicable to any credit purchases which you might make while you are considering bankruptcy.

## *What Happens to My Property?*

When you file your bankruptcy petition, you must list all of your property and income, and their market value. *Market value* is generally neither what it would cost you to replace an item, nor is it the purchase price. Market value is often considered the price for which you could sell the item if you were under no pressure to sell (such as at a garage sale), and the purchaser was under no pressure to buy the item.

## A. Will I Lose Any of My Property?

On the day that the bankruptcy petition is filed, all of your property is considered part of a bankruptcy "estate" which means that it comes under the control of the Bankruptcy Court. Each person, however, is entitled to keep certain property for his or her personal use. This property is known as **exempt property**, which means that it is taken out of the bankruptcy estate and is protected from any claim of the trustee or the creditors. A Summary of Oregon Bankruptcy and Judgment Exemptions is at the end of this booklet. This is a list of typical property and values which are exempt from the claims of judgment creditors if you do not file bankruptcy. If you have lived in Oregon for at least two years prior to filing bankruptcy, this list also reflects one alternative of the property you may keep in a Chapter 7 bankruptcy. You also have the option to choose exemptions on the list entitled Summary of Federal Bankruptcy Exemptions. Which list is most advantageous will depend on your property and income when and if you decide to file bankruptcy. You cannot mix and match from the two lists. If all of your property is exempt, you will have a "no-asset" case and will not lose any property in the bankruptcy. Note that if you have not lived in Oregon for at least two years prior to filing bankruptcy, you may have to use the list of exempt property for the state where you resided just before the start of the two year period.

Any property which you acquire *after* the date the petition is filed is generally also exempt and not part of your bankruptcy estate. There are some exceptions. If you become entitled to an inheritance, an insurance settlement or property settlement following a divorce decree, within 180 days of filing, the property will become part of the bankruptcy estate.

If any of your debts are for property which you are purchasing as a result of signing a contract providing for periodic payments, or which was purchased with a credit card (e.g. retail merchants such as Sears, and Les Schwab), the property may be *secured*. Property which you already own, but pledge to a creditor to obtain a loan or other credit, is also *secured*. This means that until you pay the debt in full, you do not have clear title to the property. Consequently, even though this property may be of minimal value, you cannot claim it as *exempt*. When you file for bankruptcy, the creditor will have the option to demand the return of the property, unless you and your creditor enter into a *reaffirmation agreement*. This is an agreement which allows you to keep the property provided that you keep making the monthly payments which you agree to make in the reaffirmation agreement. If you sign a reaffirmation agreement, you are re-obligating yourself on the contract. You must continue to comply with the terms of the contract and timely make the payments you agreed to make or the creditor may repossess the property and you may be liable for additional costs (e.g., attorney fees, the difference between the unpaid balance and any money obtained when the creditor sells the property). The reaffirmed debt will not be discharged in the bankruptcy. Any reaffirmation agreement must be filed with the Bankruptcy Court and either approved by the Court at a hearing or certified by your attorney as not imposing a hardship.

## B. Can I Transfer or Give Away Any of My Property Prior to Filing for Bankruptcy?

If you are considering filing for bankruptcy you often should not give away or transfer any of your property or income to another person. You can give ordinary presents, such as for birthdays and Christmas, and you can trade or sell your property for something of equivalent market value. You can make certain charitable contributions, such as to a church. You should not transfer any property to a friend or relative to hold for you until your bankruptcy is concluded.

If any of your property is subject to a security interest, such as a washer or television for which you have not fully paid, or some property you purchased with a credit card, you should not transfer, sell, or give away the item, even as a gift.

### **C. How Do I Qualify to File A Chapter 7 Case**

One of the requirements to file a Chapter 7 bankruptcy is that you satisfy the “means test”. You must complete a “means test” form, which is part of the bankruptcy petition.

The “means test” form requests information regarding your gross monthly income (e.g. all income except for Social Security benefits) for six months prior to filing. Generally, if your average gross annual income is below the median income in Oregon for your household size, you pass the “means test.” Most people that qualify for the Pro Bono Clinic’s services have gross annual income below the median in Oregon (e.g. in late 2020, the median income for a single person household as of 11-1-2020 was \$61,303; for a two person household it was \$73,378). Information concerning the median income in Oregon and other states is available on the United States Trustee’s website at [www.justice.gov/ust](http://www.justice.gov/ust). Click on Means Testing Information.

If your income is above the median income in Oregon for your household size, you will need to complete the expense portion of the “means test” form. Once you complete the expense portion of the “means test” form, if you have \$215 per month or more in disposable monthly income, you may be required to convert your case to Chapter 13. The Pro Bono Clinic does not handle Chapter 13 cases and will not take cases that will not pass the “means test.”

## *Costs and Filing Fees*

The fee for filing Chapter 7 bankruptcy is currently \$338. This fee may be waivable if your income is below 150% of federal poverty guidelines and you are otherwise not able to pay the filing fee in installments (e.g. in 2020, for instance, 150% of the federal income poverty guidelines for a single-person household was \$19,140. For a two-person household, it was \$25,860). The guidelines are generally modified each February. You will have to apply for a fee waiver, and a judge may or may not grant your request. If you cannot pay the fee in full at the time the petition is filed, you have the option to pay the fee in installments.

The filing fee may be paid in a maximum of three installments, as follows: the first payment no more than 30 days from the date of filing; the second installment no more than 60 days from the date of filing; the third (and final) installment no more than 90 days from the date of filing. Each installment must be at least \$50, but otherwise can be in any dollar amount not involving cents. ***The first installment does not have to be paid on the date the petition is filed.***

It is your responsibility to make the filing fee installment payments to the Bankruptcy Court, on or before the respective due dates. This means that the payment must be at the Bankruptcy Court by the due date. Mailing the payment on the due date is not sufficient.

**If you are late with any payment, the Court will automatically dismiss your bankruptcy.** You will be required to file a motion to set aside the dismissal and reopen the bankruptcy, pay a fee of \$260, and pay the remaining unpaid balance of the filing fee in full.

You will receive notice of the potential dismissal and an email reminder 10 days before each payment is due if the you file the LBF 110 Application to pay the filing fee in installments and provide an email address for this purpose.

Payments may be made in person at the Court or mailed to the Bankruptcy Court. The Bankruptcy Court's address may be obtained on the Court's website ([www.orb.uscourts.gov](http://www.orb.uscourts.gov)) or by calling (503) 326-1500. The Court accepts cash, check, or money order for payments made in person or by mail. The Court also accepts [online payments](#) using a credit or debit card for filing fee installment payments and copies of documents.

## *Before the Petition Is Filed*

In order to file a bankruptcy case, you must complete credit counseling from an approved nonprofit budget and credit counseling agency within 180 days before the petition is filed. You may take the course in person, by telephone, or on the internet. Once you complete the course you will receive a certificate of completion which must be filed with the bankruptcy petition. The certificate is valid for 180 days. The United States Trustee maintains a list of approved credit counseling agencies on its website at [www.justice.gov/ust](http://www.justice.gov/ust). Click on the link "Credit Counseling & Debtor Education".

There are limited circumstances in which the Court may extend the time for you to obtain credit counseling or waive the credit counseling requirement. To obtain an extension up to a maximum of 45 days, a motion and affidavit must be filed with and approved by the Court. In order to obtain a waiver of the requirement, a motion must be filed with and approved by the Court after a hearing. The circumstances for obtaining extensions and waivers of the credit counseling requirement are very limited. For instance, in order to obtain an extension of time, you must not only demonstrate to the Court that you were faced with an emergency, such as garnishment or foreclosure, you must also present the Court with proof that you contacted an approved credit counseling agency that could not provide you with services within seven days. In order to obtain a permanent waiver, you must

generally demonstrate to the Court that you are either on active duty in a military combat zone, or so disabled or incapacitated that you cannot participate in credit counseling due to your physical or mental impairment. Also, if the Court does not approve an extension or waiver, the case could be dismissed, and the \$338 filing fee would not be refunded to you.

A credit counseling agency can charge a fee, but fees must be reasonable in amount, and an agency must provide services without regard to your ability to pay. In Oregon, the maximum fee for credit counseling is generally \$50. Many course providers charge a lesser fee, and you should try to compare prices. If you believe that you are financially unable to pay for credit counseling, you should ask the course provider to waive the fee.

Once you complete credit counseling, the credit counseling agency will send you a certificate. You must file this credit counseling certificate with your petition in order to prove that you completed credit counseling. Failure to file the certificate could result in the dismissal of your case.

## *After the Petition Is Filed*

Once you have reviewed and signed the petition and the “means test” form, these documents must be filed with the Bankruptcy Court at the address noted above to start your bankruptcy case. Once the petition is filed, the Bankruptcy Court will mail a notice to all of your creditors listed in the petition notifying them that you have filed for bankruptcy. The Court will also mail a copy of the Notice to you. The notices will be mailed to the creditors at the addresses you list in the petition.

### **A. Will I Have to Go To a Hearing?**

Yes. The Notice which is sent by the Bankruptcy Court will specify a hearing date, called the *Meeting of Creditors* or the *341(a) Meeting*. This is the hearing at which the bankruptcy *trustee*, who is the representative of the bankruptcy estate, will review your petition and ask you questions about your debts and your property. Any of your creditors may also attend this hearing and ask you questions. The meeting typically lasts about five minutes, and usually is the only hearing which you must attend.

***Attendance at this meeting is mandatory. If you do not attend the meeting, the Court will automatically dismiss your bankruptcy.***

The 341(a) Meeting is generally scheduled 21 to 40 days after the petition is filed. For cases filed through the Portland office of the court, the meeting is usually scheduled on Monday, Wednesday, Thursday or Friday. The meeting is held at the Office of the United States Trustee in downtown Portland. During the pandemic meetings are generally by telephone or video.

You must bring government issued photo identification and proof of your social security or tax identification number with you to your 341(a) Meeting and present them to the bankruptcy

trustee. Also, certain documents must be provided to the bankruptcy trustee and United States Trustee in advance of the 341(a) Meeting.

At least 7 days before the 341(a) Meeting you must send the bankruptcy trustee a copy of the federal income tax return that you filed for the most recent tax year ending before you filed your case (e.g. the last federal tax return you filed before you filed bankruptcy). At the 341(a) Meeting, you will have to present the bankruptcy trustee with statements for all bank accounts for the time period that includes the date you filed your petition, and a copy of any pay stub from employment covering the date you filed your petition. Additionally, within 15 days of filing the petition, you must send the United States Trustee copies of all pay stubs from employment received during the 60 days before you filed your case.

## **B. What Happens If I Leave Some of My Creditors Off of My Petition?**

You must list every debt in the petition, including those which are owed to friends or relatives; which you intend to pay; which are not dischargeable; and which are not delinquent.

If a debt is inadvertently not listed on the petition, the debt may nevertheless be discharged. It is possible to amend the petition to add omitted debt(s). The filing fee for an amendment is \$32, provided that it is filed before the Court closes your case. The case will generally be closed by the Court very shortly after 60 days from the date of the 341(a) Meeting. After the case is closed, you must file a motion with the court to obtain permission, and pay at least \$291 (\$260 to reopen, \$31 to amend schedules) to amend the petition to add creditors who were not listed.

However, it may not be necessary to amend the petition to discharge an omitted debt. Many debts will be discharged even if they are not listed in the petition, or the creditor is not listed in the bankruptcy.

## **C. Can I Include and Discharge Debts Which I Incur After the Petition Is Filed?**

No. Only those debts existing on the date the petition is filed will be discharged.

## **D. Can I Dismiss my Petition After it is Filed?**

Maybe. The Bankruptcy Rules provide that a petition may be dismissed only with permission of the Court, after a hearing, and if it is determined that the dismissal is in the best interests of your creditors.

## **E. When Can I File Bankruptcy Again?**

If you have received a discharge in a prior Chapter 7 bankruptcy, you cannot file another Chapter 7 case for 8 years from the filing date of the prior bankruptcy. The 8 year limitation does not apply if you did not receive a discharge (e.g. the case was dismissed) in the prior

Chapter 7 case You may also file a Chapter 13 bankruptcy even if you have already received a Chapter 7 discharge within the last 8 years. However, you may not receive a discharge in a Chapter 13 bankruptcy if you received a discharge in a Chapter 7 case within the last 4 years. If you have received a Chapter 13 discharge, unless you paid 70% or more to your unsecured creditors, you are not eligible for a Chapter 7 discharge until 6 years has elapsed from the date of filing your Chapter 13.

#### **F. How Long Will My Bankruptcy Take?**

Once your bankruptcy petition is filed, the 341(a) Meeting will be held in approximately 21 to 40 days. There is a 60-day waiting period after the meeting, and the Court will close your bankruptcy case shortly after the waiting period. Consequently, your bankruptcy may be pending for as long as three months. Your debts, however, are discharged on the date the petition is filed. Of course, this is a general rule and there may be reasons why your particular bankruptcy will take longer to conclude.

#### **G. Personal Financial Management Course Required Before You Receive Your Discharge.**

You must complete a course in personal financial management from an approved debtor education provider in order to receive a discharge. If you do not complete a personal financial management course and provide proof to the Court within 60 days of your 341(a) Meeting, the Court may close your case without a discharge. After the case is closed, it will require permission from the Court and cost at least \$260 to reopen the case. The United States Trustee maintains a list of approved debtor education providers at [www.justice.gov/ust](http://www.justice.gov/ust).

#### **H. What Will Happen to My Credit?**

It is unclear. Different creditors react in different ways to the fact that a bankruptcy has been filed. The fact that you have filed for bankruptcy can stay on your credit report at a consumer reporting agency for 10 years. A bad debt can be reflected on the report for 7 years.

There are three national credit reporting agencies: TransUnion, Equifax, and Experian. You have the right to obtain a free credit report from each of these agencies once each twelve months. You can access your free credit reports at [annualcreditreport.com](http://annualcreditreport.com). You do not need to access all three reports at the same time. You should print for your records any report that you access.

**NOTE:** The FTC has numerous easy to read educational materials on a variety of credit reporting, credit, and consumer protection issues. Generally go to [ftc.gov](http://ftc.gov). and access the Consumer Protection or Consumer Information tabs.

#### **I. Can I File Bankruptcy in Oregon If I Moved Here 3 Months Ago?**

You may properly file a bankruptcy petition in Oregon only if you have resided in Oregon for

the 180 days immediately preceding filing, or if you lived here for a longer portion of the 180 days than in any other state.

## *Reasons Not to File Bankruptcy Now*

**THE FOLLOWING IS IMPORTANT:** Filing for bankruptcy protection can result in significant benefits for the debtor. However, this option may be used only sparingly, and may have unforeseen adverse consequences. The debtor considering bankruptcy must weigh a number of factors.

When faced with significant unpaid obligations, many individuals consider filing a Chapter 7 bankruptcy as the first and only option. However, factors like a fixed low income, minimal assets and significant obligations often make bankruptcy an inappropriate choice. The best course of action may be neither filing for bankruptcy protection nor making payments on obligations.

- A. A person may receive a Chapter 7 discharge only once every eight years**
- B. Once the bankruptcy is filed, it cannot be dismissed without permission of the Court**
- C. It costs \$338 to file for bankruptcy protection**

The fee to file a Chapter 7 case is \$338. This fee may be waivable because of poverty, but only if a judge decides to waive the fee. A husband and wife may file a joint bankruptcy for one fee. The filing fee may be paid in a maximum of three installments, with the first installment paid within 30 days of the filing date; the second installment paid within 60 days; and the final installment paid within 90 days. You are not required to pay any portion of the filing fee at the time of filing. If any installment is late, your case will automatically be dismissed without prior notice. The filing fee is not refundable if your case is dismissed.

#### **D. Judgment Proof Status**

The commencement of a bankruptcy case creates an estate, which consists of all of the debtor's legal and equitable interests in property. The law provides, however, that each debtor may retain certain property so that a fresh start may be made after bankruptcy. The nature of the property which may be retained is determined by the available *exemptions*. A *Summary of Oregon Bankruptcy and Judgment Exemptions* are at the end of this booklet. This is a list of typical property and values which are exempt from the claims of judgment creditors. If you have lived in Oregon for at least the prior two years, this list also reflects **one alternative** of the property you may keep in a Chapter 7 bankruptcy. You also have the option to choose exemptions on the list entitled *Summary of Federal Bankruptcy Exemptions*. If all of your property and income is exempt, and you do not file bankruptcy, you are *judgment proof*, and creditors cannot take any of your property or income even if they obtain judgments against you. You should seriously consider that bankruptcy may not be appropriate, since it will not

provide you with any additional protection. If you are not going to voluntarily pay your obligations, and if your property and income are such that creditors cannot obtain an involuntary payment, bankruptcy may not provide any financial benefit to you.

### *How to Stop Creditor Communications*

Debtors who are otherwise judgment proof often file for bankruptcy protection simply to stop collection calls and dunning notices from their creditors. The Fair Debt Collection Practices Act, 15 USC § 1692c(c), however, directs that a third party debt collector (*i.e.* a collection agency) must cease communications with the consumer if the consumer notifies the debt collector in writing that the consumer refuses to pay the debt or that the consumer wishes the debt collector to cease further communication.

The debt collector may still communicate with the consumer but only to advise the consumer that (1) the debt collection efforts are terminated or (2) that the debt collector may or will invoke specific remedies which are ordinarily invoked by the collector. The debt collector is prohibited from including a demand for payment in this last communication.

An original creditor is not subject to the provisions of the FDCPA. However, the Oregon Unlawful Debt Collection Practices Act, which applies to original creditors, contains numerous provisions proscribing creditor communications. ORS 646.639 et seq.

## **E. Property Encumbered by Security Interests**

To the extent that you have property which is subject to a security interest, you may be required to return the property to the secured creditor, or if you want to keep the property reaffirm the debt (thereby minimizing the beneficial effect of the bankruptcy), or pay the debt in full (*e.g.* “redeem” the property) which is an impossibility for most low income debtors.

Certain security interests are readily apparent from the nature of the obligation (*e.g.* an automobile purchase obligation). Other security interests may not be readily apparent and may require investigation and further documentation.

Some purchases made with a credit card involve the retention of a security interest by the card issuer. If the debt is not current, card issuers who are local merchants with adequate facilities for storage and resale (*e.g.* Les Schwab) may demand either a reaffirmation of the debt or a return of any significant items purchased with the card (*e.g.* laptops, ipad).

## **F. Nondischargeable Debts**

Certain types of debts are not dischargeable in a Chapter 7 bankruptcy. If a significant portion of your obligations are nondischargeable, the benefits of bankruptcy will be reduced, or even eliminated.

The types of debts which are nondischargeable are discussed above. Several, however, should be specifically mentioned.

### **1. Taxes**

Many debtors have delinquent personal income tax liabilities. An explanation of the circumstances under which taxes are dischargeable is in section [II.A.1, above](#).

### **2. Nonsufficient Funds (NSF) Checks**

Nonsufficient funds (NSF) checks which were written with reckless disregard to whether there were sufficient funds in the account to pay the check, are potentially nondischargeable. If the creditor files an objection, you may be required to appear in court at a trial or other proceeding. If the debt is not discharged, you will owe the creditor additional sums of money.

### **3. Student Loans**

Student loans are generally not dischargeable unless excepting the debt from discharge would impose an undue hardship on you and your dependents. 11 USC § 523(a)(8). If you want to raise the issue of undue hardship, you must file a lawsuit against the student loan creditor, and have the issue decided by a bankruptcy judge after a trial. Federal student loans and some private student loans can be discharged based on disability.

### **4. Domestic Support Obligations**

Debts for alimony, maintenance and child and spousal support, whether owed to a former spouse or a governmental agency, are not dischargeable.

## **G. Fraudulent Transfers**

The trustee may avoid any transfers of property by the debtor that are considered fraudulent. A fraudulent transfer is any transfer of property made within two years (and in some circumstances four years) before the date of the filing of the petition, if the debtor (1) made the transfer with the intent to hinder, delay or defraud any creditor; **or** (2) received less than a reasonably equivalent value in exchange for such transfer or obligation; and was insolvent on the date that such transfer was made. The trustee may recover the property from the recipient.

## **H. Preferential Transfers**

If you paid \$600 or more on a debt within 90 days prior to filing bankruptcy, or paid an insider (e.g. generally a relative or spouse) \$600 or more within one year prior to filing bankruptcy, the trustee may be able to recover all of the payments from the recipient of the payments. You

may wish to delay filing bankruptcy until the 90 day or one year period has expired.

## **I. Automobile Liability Insurance**

An uninsured automobile accident is a virtually instantaneous method for an individual to incur a significant debt. If you are involved in an uninsured accident after the date the bankruptcy petition is filed, the resulting financial liability could erase any benefits flowing from the bankruptcy.

In Oregon, any person who is involved in an automobile accident who does not have liability insurance will lose his or her right to drive for one year, regardless of who was at fault for the accident. Bankruptcy will not relieve you of this suspension, and the results of the license suspension (*i.e.*, citations for driving while suspended; inability to satisfy employment requirements) can result in further financial problems.

A person who obtains a judgment against an uninsured driver arising from an accident may have the person's driver's license suspended until the earlier of the expiration of 7 years from the date of the accident or until the judgment is discharged in bankruptcy. While bankruptcy will discharge any liability on the judgment, and remove the unsatisfied judgment as a basis for a license suspension, this is an option which is not available if a bankruptcy has been commenced and completed within the prior eight years.

Your lack of liability insurance, and the potential adverse results from a post filing uninsured automobile accident, strongly counsel against filing bankruptcy until you obtain liability insurance.

## **J. Medical Insurance**

Medical bills are one of the major reasons why debtors file Chapter 7 cases. Medical insurance is costly, and often cannot be obtained unless the debtor is employed. Some medical insurance has a significant deductible or co-pay requirement. Despite your best intentions, illness and accidents may force you to incur significant medical bills. As with an uninsured automobile accident, however, significant post filing uninsured medical bills can effectively erase the fresh start benefits of bankruptcy. Debtors who incur significant medical bills after bankruptcy may be in worse financial shape than they were before they filed bankruptcy.

The availability to the debtor of a Chapter 7 bankruptcy is a significant tool to deal with medical bills, but it can be used only once every EIGHT years. Consequently, you should consider delaying bankruptcy until you are able to obtain medical insurance.

## **K. Utility Bills**

If you are discharging utility bills from a utility which is currently providing services to you, the utility company may terminate services if you do not pay a reasonable security deposit, in

cash, within 20 days of commencing the bankruptcy.

## **L. The Right to Tax Refunds**

State and federal tax refunds owing to you on the date the petition is filed are considered property of the estate. Consequently, these refunds may be collected by the trustee when you receive them. The Earned Income Tax Credit (EITC) portion of a federal refund is entirely exempt if you use the Oregon exemptions.

The right to a tax refund accrues on a daily basis throughout the year. For instance, if you file bankruptcy on November 1<sup>st</sup>, you will have earned 83.56% of the potential total refund for year. On December 31<sup>st</sup> you will have earned 100% of the potential total refund. (e.g. on January 2<sup>nd</sup>, you will have earned 100% of the refund for the prior year, but only 0.27% of the next year's refund). If on the date you file bankruptcy you will have earned a large enough portion of your ultimate total refund, the trustee may claim the refund, even though you may not actually receive the refund until sometime early the next year. As explained earlier, you may use either the Oregon exemptions or the federal exemptions. Which set of exemptions will be most advantageous will depend on your property and income on the date you file bankruptcy. Again, depending on which set of exemptions you use, a debtor who is going to file bankruptcy on a date when the debtor has already accrued the right to a large portion of the ultimate refund may need to consider filing bankruptcy only after the refund is received and spent.

## **M. Possibility of Inheritance or Property Settlement**

The general rule is that the debtor's estate consists of all the debtor's property as of the date the bankruptcy is filed. But if the debtor acquires the right to property from an inheritance, life insurance policy, or property settlement or divorce decree, within 180 days of the filing date, this property also becomes part of the estate. As an example, if you file bankruptcy on March 1, 2018, and a relative dies within 180 days, and you have the right to acquire some of your relative's property, the bankruptcy trustee may claim the non-exempt portion.

## **N. Ability to Fund A Chapter 13 Plan**

If your monthly income exceeds your monthly expenses by an amount which is sufficient to pay to your unsecured creditors over a 5-year period, the court may dismiss the bankruptcy unless you convert it to a Chapter 13 case. The amount which will be considered as sufficient will vary with each case.

## **O. Unpaid Wages**

If you are owed any accrued but unpaid wages by an employer on the date you file a bankruptcy case, the trustee may assert an interest in the unpaid net wages owing to you as of that date. Of course, you will be able to exempt a portion of those wages. You can always exempt at least 75% of the net unpaid wages. However, depending on the amount of the

wages owed to you, the existence of other assets in the case, and the set of exemptions that you choose, the trustee may require you to pay over the nonexempt portion of the net wages owed to you.

# Summary of Oregon Bankruptcy and Judgment Exemptions (2019)

**WAGES** Disposable (Net) earnings for individuals paid weekly, biweekly, semi-monthly or monthly, may not be garnished unless they are in excess of the following amounts (ORS 18.385):\*

| EFFECTIVE DATE | WEEKLY | BIWEEKLY | SEMI-MONTHLY | MONTHLY |
|----------------|--------|----------|--------------|---------|
| (6/2/11)       | \$218  | \$435    | \$468        | \$936   |
| (1/1/20)       | \$254  | \$509    | \$545        | \$1090  |

If the disposable earnings are more than the foregoing figures, then the *lesser* of (1) the amount by which the disposable earnings exceed the foregoing figures, or (2) 25% of the disposable earnings may be garnished.

\*Not applicable to debts for tax, certain bankruptcy orders, or child support payments deducted pursuant to a court order.

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| <p><b>HOMESTEAD</b> (if the debtor, parents, spouse or child resides in it), including manufactured dwelling and floating home, to the value of \$40,000 (\$50,000 if debtors are married) or proceeds from its sale for one year. (ORS 18.395)</p> <p><b>BURIAL LOTS</b> if non-profit cemetery.(ORS 97.675)</p> <p><b>HOUSEHOLD GOODS</b>, furniture, radios, a television, and utensils to \$3,000, and fuel and provisions for 60 days. (ORS 18.345(1)(f))</p> <p>+<b>AUTOMOBILE</b> to \$3,000. (ORS 18.345(1)(d))</p> <p>+<b>TOOLS</b> and a library necessary for the debtor's occupation to \$5,000. (ORS 18.345(1)(c)) (effective 5/19/11)</p> <p>+<b>BOOKS, PICTURES AND MUSICAL INSTRUMENTS</b> to \$600. (ORS 18.345(1)(a))</p> <p>+<b>WEARING APPAREL, JEWELRY</b> and other personal items to \$1,800. (ORS 18.345(1)(b))</p> <p><b>DOMESTIC ANIMALS</b> and <b>POULTRY</b> for family use to \$1,000, and food for 60 days. (ORS 18.345(1)(e))</p> <p><b>RIFLE</b> or <b>SHOTGUN</b> and <b>PISTOL</b> to combined value of \$1,000. (ORS 18.362)</p> <p><b>PENSIONS</b> except support. (ORS 18.358(2))</p> <p>+<b>\$400 INTEREST</b> in any personal property. <i>Cannot</i> be used to increase the amount of any other exemption. (ORS 18.345(1)(o))</p> <p><b>PREPAID RENT, SECURITY DEPOSITS</b> required on residential lease (ORS 18.395. <i>See In re Casserino</i>, 379 F3d 1069 (9<sup>th</sup> Cir. 2004). <i>But see In re Schuhmann</i>, 2010 WL 5125321 (Bkey D Or 12/19/10) (voluntary prepaid rent not exempt)</p> <p><b>EARNED INCOME TAX CREDIT</b>, and monies traceable thereto. (ORS 18.345(1)(n)). Does NOT include Child or Additional Child Tax Credit, but maybe state EITC.</p> <p><b>ANNUITIES</b>, but only certain types. (ORS 743.049. <i>See In re Thompson</i>, 197 BR 326 (Bankr D Or 1996))</p> | <p><b>HEALTH AIDS</b> professionally prescribed for debtor or dependents. (ORS 18.345(1)(h))</p> <p><b>SPOUSAL</b> or <b>CHILD SUPPORT</b>, or separate maintenance to the extent reasonably necessary for support of debtor and any dependents. (ORS 18.345(1)(i))</p> <p>+<b>CRIME VICTIM AWARD</b> and property traceable thereto. (ORS 18.345(1)(j))</p> <p>+<b>BODILY INJURY</b> payment, and property traceable thereto up to \$10,000. (ORS 18.345(1)(k))</p> <p>+<b>FUTURE EARNINGS</b> loss of future earnings payment, and property traceable thereto, to extent reasonably necessary for the support of the debtor and dependents. (ORS 18.345(1)(L))</p> <p><b>SOCIAL SECURITY</b> - including SSI (42 USC 407); <b>TANF (WELFARE)</b>; <b>UNEMPLOYMENT (657.855)</b>; <b>WORKERS COMPENSATION (656.234)</b>; and most government benefits.</p> <p><b>VETERAN'S BENEFITS and LOANS.</b> (ORS 18.345(1)(m))</p> <p><b>HEALTH &amp; LIFE INSURANCE PROCEEDS</b> (ORS 743.046 - 743.050)</p> <p><b>BANK ACCOUNTS</b> – Certain retirement plans, exempt wages, accounts for higher education, pensions, disability benefits, war veterans fund, public and medical assistance, inmate, workers compensation, child support, society benefits, all exempt to total accumulation of \$7500. First-in, first-out applies. All exempt federal funds if reasonably identifiable. (ORS 18.348). Federal benefit payments (e.g. Social Security), public assistance, black lung benefits, workers comp., are all automatically protected to total of last two months if by direct deposit. (ORS 18.784). \$400 wild card for non-exempt balances. (ORS 18.345(1)(p)). Garnishment for child support can be an exception.</p> <p><b>COLLEGE SAVINGS ACCOUNTS.</b> (ORS 348.863(2))</p> <p><b>IRA, KEOGH or other plans</b> as specified in statute and except for support obligations. (ORS 18.358(2))</p> <p><b>CASH SURRENDER VALUE</b> of life insurance policies not payable to decedent's estate. (ORS 743.046(3))</p> <p><b>STUDENT LOAN</b> proceeds. (20 USC 1095a(d))</p> |
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+ NOTE: If two or more members of a household are judgment debtors, each may claim the exemption.

• NOTE: The foregoing exemptions are available to a debtor *in bankruptcy* only if the debtor has resided in Oregon for a least two years prior to filing bankruptcy. If the debtor does not meet this residency requirement, the debtor must use the exemptions for the state where the debtor resided for the greater part of the 180 days immediately before the two year period.

## Summary of Federal Bankruptcy Exemptions

A debtor who has continuously lived in Oregon for at least two years prior to filing bankruptcy may choose either the Oregon (*see other side*) or the federal bankruptcy exemptions. Dollar amounts are adjusted for inflation every three years. Next adjustment April 1, 2022. Married debtors may double any exemption.

**HOMESTEAD**, real property, including co-op, mobile home, burial plot, and personal property used by debtor or dependent as residence, to \$25,150; **unused portion of homestead to \$12,575 may be applied to any property.** (11 USC 522(d)(1); (d)(5))

**HOUSEHOLD GOODS**, animals, crops, clothing, appliances, books, furnishings, musical instruments to \$625 per item, \$13,400 total. (11 USC 522(d)(3))

**AUTOMOBILE** to \$4,000. (11 USC 522(d)(2))

**TOOLS OF THE TRADE**, implements, and books of debtor or dependents to \$2,525. (11 USC 522(d)(6))

**MUSICAL INSTRUMENTS**, animals, crops, clothing, appliances, books, furnishings, household goods, to \$625 per item, \$13,400 total. (11 USC 522(d)(3))

**BOOKS**, animals, crops, clothing, appliances,, furnishings, household goods, musical instruments to \$625 per item, \$13,400 total. (USC 522(d)(3))

**JEWELRY** of debtor or dependent to \$1,700. (11 USC 522(d)(4))

**ANIMALS**, crops, clothing, appliances, books, furnishings, household goods, musical instruments to \$625 per item, \$12,400 total. (11 USC 522(d)(3))

**\$1,325 INTEREST** in any personal property. (11 USC 522(d)(5))

**\$12,575 OF UNUSED HOMESTEAD** exemption amount, for any property. (11 USC 522(d)(5))

**HEALTH AIDS** professionally prescribed. (11 USC 522(d)(9))

**ALIMONY** or **CHILD SUPPORT.** (11 USC 522(d)(10)(D))

**PERSONAL INJURY RECOVERIES** to \$25,150 (does not include pain and suffering or actual pecuniary loss). (11 USC 522(d)(11)(D))

**WRONGFUL DEATH RECOVERY** for person for whom debtor was a dependent to the extent reasonably necessary for support. (11 USC 522(d)(11)(B))

**FUTURE EARNINGS**, loss of future earnings payment. (11 USC 522(d)(11)(E))

**SOCIAL SECURITY** (the **right** to receive) and unemployment compensation; public assistance benefit; veteran's benefit; disability, illness or unemployment benefit. (11 USC 522(d)(10)). *See, In re Carpenter*, 614 F3d 930 (8<sup>th</sup> Cir 2010) (Social Security is excluded from debtor's estate so the phrase "right to receive" is not an issue for payments already received).

**CRIME VICTIMS** recovery. (11 USC 522(d)(11)(A))

**LIFE INSURANCE POLICY** with loan value, in accrued dividends or interest, to \$13,400. (11 USC 522(d)(8))

**LIFE INSURANCE PAYMENTS** from policy for person for whom debtor was a dependent, to extent reasonably necessary for support. (11 USC 522(d)(11)(C))

**UNMATURED LIFE INSURANCE** contract, except credit insurance policy. (11 USC 522(d)(7))

**TAX EXEMPT RETIREMENT ACCOUNTS** (including 401(k), 403(b), profit sharing and money purchase plans, SEP and SIMPLE IRAs, and defined-benefit plans). (11 U.S.C. 522(b)(3)(c))

**IRAs and ROTH IRAs** to \$1,362,800 per person. (11 USC 522(b)(3)(C)(n))