

BANKRUPTCY CODE SEC. 527(B) DISCLOSURES

DISCLOSURES TO BANKRUPTCY CLIENTS PURSUANT TO BANKRUPTCY CODE SEC. 527(B)

In compliance with the disclosure requirements imposed on attorneys and "debt relief agencies" under the new Bankruptcy Law, The OSCAR M. LEUS LAW CORPORATION makes the following information available to you:

DISCLOSURES CONCERNING HIRING AN ATTORNEY OR REPRESENTING YOURSELF IN BANKRUPTCY

A debtor filing bankruptcy has a right to choose to represent him- or herself in the bankruptcy case. Debtors representing themselves without a bankruptcy attorney are referred to as "pro se" petitioners. A debtor may also choose to hire a "bankruptcy petition preparer" who is not an attorney if that debtor intends to represent him- or herself. However, a bankruptcy petition preparer is not an attorney and is not qualified to offer any legal advice to the debtor and is prohibited from doing so. A bankruptcy petition preparer also cannot appear with the debtor at his or her required 341 creditors meeting and cannot appear with the debtor in court. Further, there are strict rules concerning how much a bankruptcy petition preparer can charge to help fill out the bankruptcy petition forms.

Bankruptcy law requires that anyone assisting a debtor, whether a bankruptcy attorney or a document preparer, must provide the debtor with a written contract that explains what the cost will be for the bankruptcy services being provided and what the attorney or document preparer will do for the debtor. Of course, California law already requires that an attorney have a written agreement with his or her clients in nearly all cases, and these laws are both aimed at protecting the client and ensuring mutual understanding between the client and the attorney. Any debtor seeking bankruptcy relief should ask the attorney or document preparer to see a written contract outlining the services offered and the cost before hiring the attorney or document preparer. At the OSCAR M. LEUS LAW CORPORATION, we always provide our clients with a comprehensive written contract, and we take our time to explain that contract to our clients before asking them to sign it.

DISCLOSURES CONCERNING THE CORRECT PREPARATION OF A BANKRUPTCY PETITION AND ANALYSIS OF ASSET VALUES

If a debtor represents him- or herself "pro se" then that debtor must be able to analyze his or her eligibility for bankruptcy relief and understand which form of relief (e.g., Chapter 7, Chapter 13) will be beneficial to the debtor. An attorney should of course be competent to perform this analysis for the client. We at the OSCAR M. LEUS LAW CORPORATION always assist our clients in deciding which form of bankruptcy relief may be available to them, and we carefully analyze the eligibility criteria of each type of bankruptcy with the client. The decision of which type of bankruptcy to file, and indeed whether or not to even seek bankruptcy relief must be made based on a true and complete

picture of the client's financial situation, including his or her assets, income and expenses.

A bankruptcy petition **MUST** in any case be prepared correctly. This includes all schedules containing the debtor's assets, expenses, etc. which are attached to the petition. In some Chapters, a debtor must also complete a properly prepared "Statement of Financial Affairs." All of these documents must be signed by the debtor, who by signing them, affirms under penalty of perjury the truthfulness and accuracy of all the information contained in these court documents. Knowingly filing any bankruptcy document that contains untrue information can result in severe criminal penalties. These are just a few more reasons why a debtor should hire a competent bankruptcy attorney to represent them and to prepare all filings that must be made with the Bankruptcy Court. Using a non-lawyer document preparer leaves the debtor without legal advice and representation and poses significant risk to the debtor if the court filings are not prepared correctly.

DISCLOSURES CONCERNING THE DEBTOR'S MANDATORY ATTENDANCE AT THE MEETING OF CREDITORS

Every debtor filing bankruptcy must personally appear before the Bankruptcy Trustee to answer questions under oath at the required Meeting of Creditors, or Sec. 341 Meeting. In the Los Angeles Division of the US Bankruptcy Court for the Central District of California, these 341 Meetings are held at 725 S. Figueroa St., Room 101, Los Angeles, CA 90017. Only an attorney is permitted to appear with a debtor. A non-lawyer is prohibited from doing so. At the Meeting of Creditors, the trustee, and potentially, the debtor's creditors may ask the debtor questions about his or her finances, income, expenses, property and other assets, etc. These questions must be answered by the debtor under oath just as is the case with any court proceeding. At the OSCAR M. LEUS LAW CORPORATION, one of our specially designated experienced bankruptcy lawyers will always accompany our clients to the Meeting of Creditors, and will likewise always take the time to meet again with our clients before the Meeting of Creditors in order to explain the types of questions that the trustee will ask of the client. If the trustee requests additional information or documentation of the client, we work with the trustee and the client to ensure that such documents are provided and that the trustee's questions are responded to satisfactorily.

DISCLOSURES CONCERNING THE REAFFIRMATION OF DEBTS

Certain creditors may ask a debtor in a bankruptcy case to "reaffirm" a particular secured debt. A secured debt is a debt for which the debtor promised or pledged some type of collateral in order to obtain the loan at the time it was made. A common example of a secured debt is a car loan. When buying a car, the buyer signs a "secured promissory note" and a "security agreement" as part of the loan process. These contracts give the lender (frequently the car manufacturer's financing branch, or even the dealer or the dealer's financing department) a security interest in the vehicle. This means that if the borrower defaults in making payments on the car, the lender can repossess the car. Repossession of goods purchased can only be done legally if the purchaser signed a

contract giving the lender such a security interest. The vast majority of credit cards, on the other hand, represent unsecured debts, and do not include security or collateral for the goods purchased with the credit card. Note, however, that there are a few store-issued credit cards that are exceptions. Best Buy, for example, is notorious for their cardholder agreement, which has included a security agreement whereby the cardholder agrees to grant them a security interest in whatever the cardholder buys from that store. We frequently receive demands from Best Buy demanding that the goods purchased from them by a bankruptcy client either be returned to them or “redeemed” (paid off). Whether they actually want to receive a debtor’s five year old appliance is doubtful, of course.

Where a debtor has signed a security agreement granting the lender collateral for a loan, that lender will frequently ask the debtor in bankruptcy to sign a "reaffirmation agreement". The bankruptcy attorneys at our firm have found that in recent years, secured creditors on car loans, especially, are increasingly demanding that such a reaffirmation agreement be signed by the debtor or else they will threaten to repossess the vehicle whether or not the debtor is current in making payments. Here again, a pro se debtor representing himself may misunderstand this point and mistakenly believe that in order to keep a car he or she must reaffirm the debt. It is rare that the lender will obtain proceeds from an auto auction on a repossessed vehicle that amount to anything near the amount still owed on the note, and this poses a real risk to the bankruptcy client who signs a reaffirmation agreement. If he or she does agree to do so, and then defaults in making payments after the bankruptcy case is closed, the lender can not only repossess the vehicle but can also sue for the difference between the amount they obtain at auction and the amount still owed on the note (the contract that the debtor “reaffirmed”). A reaffirmation agreement in effect causes that debt to be unaffected by the debtor's bankruptcy. Unlike other debts that may be discharged, the reaffirmed debt will survive the discharge, and the debtor will still be required to pay the reaffirmed debt, despite his or her bankruptcy discharge.

However, there are other ways to keep a car secured by a secured loan WITHOUT signing a reaffirmation agreement. The debtor may either elect to pay off the balance of the car if that balance is low and he or she can use exempt assets to do so, or he or she may simply elect to continue making the regular payments on the vehicle during and after the bankruptcy case until the car is paid off. Although there is some risk that the lender will repossess despite receiving payments, because of the debtor’s refusal to sign a reaffirmation agreement, this has proven to be exceedingly unlikely in our experience. There are compelling legal advantages to choosing the latter route, and we at OSCAR M. LEUS LAW CORPORATION will always help our clients understand the issue involved in choosing whether or not to reaffirm a particular debt.

DISCLOSURE CONCERNING THE POSSIBILITY THAT A BANKRUPTCY CASE CAN ALSO INVOLVE LITIGATION IN BANKRUPTCY COURT

Any bankruptcy case can involve litigation. Although creditors are barred by the Automatic Stay from bringing a lawsuit against a debtor in state court, they can sue the debtor in US Bankruptcy Court in connection with the debtor's bankruptcy case. Most

commonly such suits occur in Chapter 7 cases (although the 2005 revisions to bankruptcy law provided for the expansion of these adversary actions in Chapter 13 cases as well) and are brought against debtors by creditors under Bankruptcy Code Sec. 523 (a). These suits claim in effect that the debtor committed fraud with respect to a particular credit card transaction or a series of transactions. In these cases, the creditor sues to ask the court to declare that the debt for these particular transactions are non-dischargeable based on fraud. Fraud in this context means that at the time the debtor made the charges complained of, the debtor did not have any intention to repay those charges. Another common type of litigation that can arise in a Chapter 7 case is where the trustee sues a third party (not the debtor) claiming that the debtor transferred some asset to the third party prior to the debtor's bankruptcy case and that the debtor did not receive the fair value for the transferred asset. These cases can arise if the debtor attempts to place an asset, such as real estate into someone else's name in order to hide it from the bankruptcy trustee. The latter type of case often does involve fraud, and it should be obvious why the trustee can take back that property through litigation.

A debtor can always represent him- or herself in bankruptcy litigation. However, only a lawyer, and not a document preparer may represent a debtor in court or offer a debtor any legal advice. Bankruptcy litigation is another example of why a debtor seeking bankruptcy relief should hire a qualified bankruptcy attorney and not rely on non-lawyers in assisting him or her with the bankruptcy case. Bankruptcy litigation can result, especially in Chapter 7 cases, with the debtor's friends or family losing property to the trustee, with the debtor being denied a discharge, and even in criminal penalties for the debtor.

DISCLOSURE CONCERNING THE FACT THAT IN CHAPTER 13, A DEBTOR MUST REPAY SOME DEBT

As we explain elsewhere on our site, a Chapter 13 bankruptcy is not a liquidation of assets and total discharge of a debtor's debts. A Chapter 13 bankruptcy requires that the debtor enter into a repayment plan supervised by the Chapter 13 Trustee. Such a Chapter 13 repayment plan requires that the debtor make payments with his or her disposable income for at least three years, but more typically up to five years, in order to complete the plan. These repayments are used to pay some of the Chapter 13 debtor's debts.

DISCLOSURE CONCERNING INSTRUCTIONS ON HOW TO PROVIDE REQUIRED ASSET VALUATION, CALCULATIONS OF DISPOSABLE INCOME, LISTS OF CREDITORS, AND DETERMINATIONS OF EXEMPT PROPERTY

Bankruptcy Code Sec. 527(c) requires that a "debt relief agency" supply a debtor seeking bankruptcy relief with sufficient information for the debtor to properly and accurately provide all information necessary to complete the debtor's bankruptcy petition, schedules, and statement of information. Such information must include instructions on how to accurately assess the value of the debtor's assets, how to complete a list of creditors, how to calculate the debtor's monthly disposable income, and how to determine whether a

given asset may be exempt under federal or state law. At the OSCAR M. LEUS LAW CORPORATION, our bankruptcy lawyers always provide this information as a part of our services to debtors filing bankruptcy concurrently with being retained by the client to represent him or her in bankruptcy. We assist with all of these determinations, and required that each client supply us with all requested information in order to arrive at accurate determinations of property exemptions, disposable income, asset values, and the list of creditors. For the latter, we always require that the client authorized us to obtain a credit report in order to assist with the accurate listing of all creditors of the client.

DISCLOSURE CONCERNING THE OBLIGATION OF DEBT RELIEF AGENCIES TO MAINTAIN COPIES OF NOTICES GIVEN TO ASSISTED PERSONS FOR TWO YEARS

Bankruptcy Code Sec. 527(d) requires that all "debt relief agencies" maintain copies for at least two years of all notices given to their clients in compliance with these and other required bankruptcy disclosures. The OSCAR M. LEUS LAW CORPORATION takes great care to see that we not only meet these minimum requirements, but further that we do our utmost to educate our clients about bankruptcy law and the law's implications for their particular situations. We firmly believe that a knowledgeable client will always be better protected and more satisfied with the legal representation that we render for him or her.

If there is anything about any of these required disclosures and notices that you do not understand, please do not hesitate to contact us.

Please sign at the space below to acknowledge that you received and understand these disclosures. Thank you and good luck!

OSCAR M. LEUS LAW CORPORATION