

Required § 342(b) & § 527(a) Notice from New York Bankruptcy Lawyers

NOTICE TO INDIVIDUAL CONSUMER DEBTORS UNDER §§ 342(b) & 527(a) OF THE BANKRUPTCY CODE

In accordance with section 342(b) of the Bankruptcy Code, this notice: (1) briefly describes the services available from credit counseling services in New York; (2) describes the purposes, benefits and costs of the four types of bankruptcy proceedings; and (3) informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with any New York bankruptcy case. Be advised that bankruptcy law is complicated and not easily described. Therefore, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you choose to file a bankruptcy petition. Court employees are prohibited from giving you legal advice under federal and New York law.

SERVICES AVAILABLE FROM CREDIT COUNSELING AGENCIES

With limited exceptions, section 109(h) of the Bankruptcy Code requires that all individual debtors who file bankruptcy to receive [credit counseling](#). The credit counseling requirement must be fulfilled within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or over the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. In New York, the bankruptcy court's clerk has a [list](#) of approved credit counseling agencies.

In addition, after filing bankruptcy in New York, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. Again, in New York, the bankruptcy court's clerk has a list of approved financial management instructional courses.

THE FOUR CHAPTERS OF BANKRUPTCY AVAILABLE TO INDIVIDUALS AND FAMILIES IN New York

Chapter 7: Liquidation

In New York, [Chapter 7 bankruptcy](#) is designed for debtors, who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a "Means Test," which is designed to determine whether the bankruptcy case should be permitted to proceed under Chapter 7. If your income is greater than the median income for New York families of your size, creditors have the right to file a motion requesting that the court dismiss your case under section 707(b) of the Code. It is up to the bankruptcy court to decide whether the case should be dismissed.

Under Chapter 7 bankruptcy, you may claim certain of your property as exempt under the limits outlined in New York state law. Any remaining property, which is not exempt, may be sold by the bankruptcy trustee and paid to your creditors.

The purpose of filing a Chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge, and the purpose for which you filed the bankruptcy petition will be defeated.

Even if you receive a general discharge, some particular debts not discharged under the law. Therefore, you may still be responsible to repay:

- Most taxes and student loans;
- Debts incurred to pay non-dischargeable taxes;
- Domestic support and property settlement obligations;
- Most fines, penalties, forfeitures, and criminal restitution obligations;
- Certain debts which are not properly listed in your bankruptcy papers; and

– Debts for death and personal injury caused by your operation of a motor vehicle, vessel or aircraft while under the influence of alcohol or drugs.

Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income

In New York, Chapter 13 bankruptcy is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. You are only eligible for Chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

Under Chapter 13, you must file a plan with the bankruptcy court that explains the way you will repay your creditors all or part of the money that you owe them out of your future earnings. In New York, the period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The bankruptcy court must approve your plan before it can take effect.

After successfully completing your Chapter 13 payments, your debts are discharged except for:

- Domestic support obligations;
- Most student loans;
- Certain taxes;
- Most criminal fines and restitution obligations;
- Certain debts which are not properly listed in your bankruptcy papers;
- Debts for death and personal injury caused by your operation of a motor vehicle, vessel or aircraft while under the influence of alcohol or drugs; and
- Certain long term secured obligations.

Chapter 11: Reorganization

In New York, Chapter 11 bankruptcy is usually used to reorganize businesses, but it is also available to consumer debtors. Its provisions are extremely complicated, and filing a Chapter 11 bankruptcy petition should be reviewed closely with an attorney.

Chapter 12: Family Farmer or Fisherman

In New York, Chapter 12 bankruptcy is designed to permit family farmers and fishermen to repay their debts over a period of time. In this regard, it is similar to Chapter 13 bankruptcy. Chapter 12's eligibility requirements are restrictive and limit its use to individuals and families, whose income arises primarily from a family-owned farm or commercial fishing operation.

BANKRUPTCY CRIMES AND AVAILABILITY OF BANKRUPTCY PAPERS TO LAW ENFORCEMENT OFFICIALS

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General, acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney or Department of Justice.

WARNING: Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the [U.S. Bankruptcy Court for the Western District of New York](#).

In accordance with section 527(a)(2) of the Bankruptcy Code, be advised that all information you are required to provide in your bankruptcy petition and during a bankruptcy case must be complete, accurate and truthful.

Regardless of whether your property is located in New York or elsewhere, all of your assets and all liabilities must be completely and accurately disclosed in the documents filed in your case, and the replacement value of each asset must be stated in those documents where requested after reasonable inquiry to establish such value.

Current monthly income, the amounts specified in the Means Test under section 707(b)(2), and disposable income in Chapter 13 cases must be stated after reasonable inquiry.

Information that you provide during your bankruptcy case may be audited, and the failure to provide such information may result in dismissal of the case or other sanction, including a criminal sanction.