

## NOTICE TO CLIENTS WHO CONTEMPLATE FILING BANKRUPTCY

The purpose of this Notice and The Statement Mandated by Section 527(b) of the Bankruptcy Code, which you have been provided as a separate document are to make you aware of some of your obligations should you file bankruptcy.

*Note: This Notice and the Statement are required by legislation adopted by Congress in 2005, after intense lobbying by the credit industry. In our opinion, they are designed to intimidate people who need debt relief under the Bankruptcy Code, and are based on the erroneous assumption that debtors are dishonest. So long as you are honest and meet the requirements set out under the law, you are entitled to debt relief. We can guide you through all the requirements of filing bankruptcy, so long as you provide us accurate and complete information.*

You are notified as follows:

- \_\_\_\_\_ 1. All information that you are required to provide with your bankruptcy petition and thereafter in your case is required to be complete, accurate, and truthful.
- \_\_\_\_\_ 2. All your assets and all your liabilities are required to be completely and accurately disclosed in the documents filed to commence your case.
- \_\_\_\_\_ 3. The value of each asset which is secured by a lien on such asset must be stated as the replacement value of such asset after reasonable inquiry to establish such value. The replacement value means the replacement value as of the date of the filing of the bankruptcy petition without deduction for repair, reconditioning, costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value means the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.
- \_\_\_\_\_ 4. After reasonable inquiry, you are required to state your current monthly income. Current monthly income is described on the attached Terms and Definitions Addendum.
- \_\_\_\_\_ 5. After reasonable inquiry, you are required to state the amounts set out in section 707(b)(2) of the Bankruptcy Code. Those amounts are explained in the attached Terms and Definitions Addendum.
- \_\_\_\_\_ 6. In a case under Chapter 13, after reasonable inquiry, you are required to state your disposable income determined in accordance with section 707(b)(2) of the Bankruptcy Code. Disposable income is explained in the attached Terms and Definitions Addendum.
- \_\_\_\_\_ 7. Information that you provide during your case may be audited pursuant to the provisions of the Bankruptcy Code. Your failure to provide information may result in dismissal of your case or other sanctions, including criminal

sanctions.

\_\_\_\_\_ 8. Chapter 7 is the liquidation chapter of the Bankruptcy Code. Under chapter 7, a trustee is appointed to collect and sell, if economically feasible, all property you own that is not exempt from the claims of your creditors and the trustee. The filing fees are \$274.00.

Chapter 11 is the reorganization chapter most commonly used by businesses, particularly corporations because they are ineligible for relief under chapter 13. It is also available to individuals and is the only available chapter for those wishing to reorganize if their debts exceed the eligibility limits of chapter 13. The filing fees are \$1,039.00.

Chapter 12 is the reorganization chapter for those persons qualifying as family farmers. Eligible debtors propose a plan to repay debts over a period of 3-5 years. The plan must be confirmed by the court. A trustee is appointed to oversee the case and monitor the debtor's finances. Plan payments are made to the trustee. The filing fees are \$239.00.

Chapter 13 is the reorganization chapter for individuals. It provides debtors an opportunity to retain possession of their property and pay their allowed debts out of future income. The debtor's chapter 13 plan must be approved by the court. The plan payments are made to a trustee appointed by the court. The debtor receives a discharge upon successful completion of the plan. To be eligible the debtor's noncontingent, liquidated unsecured debts cannot exceed \$307,624.99 and the noncontingent, liquidated secured debts cannot exceed \$922,974.99. The filing fees are \$189.00.

\_\_\_\_\_ 9. Credit counseling agencies advertise that they will analyze a debtor's financial information to develop a budget. They may be able to persuade creditors to reduce interest rates but this is probably restricted to unsecured debts. There are several types of debts which they may decline to deal consequently their solution may be less than all-encompassing. Whether a credit counseling agency is a non-profit corporation should not persuade a debtor that the agency is not funded by creditors. Many credit counseling agencies are for-profit businesses. Many are funded by creditors.

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

## TERMS AND DEFINITIONS ADDENDUM

**Current Monthly Income:** The average monthly Income received by the Debtor and/or applied to the expenses of the debtor's household during the previous six calendar months. The complete statutory definition of this term is found at 11 USC §101(10A) and is incorporated herein by reference as though fully set forth herein. .

### **Amounts Set Out Pursuant to Section 707(b)(2)**

(A) (i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of –

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or \$6,000, whichever is greater; or

(II) \$10,000.

(ii) (I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards and the debtor's actual monthly expenses for the categories specified as Other Necessary expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include a reasonably necessary health insurance, disability insurance and health savings account expenses for the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependants of the debtor, and the spouse of the debtor, in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary

expenses.

**(III)** In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

**(IV)** In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed \$1,500 per year per child to attend a private or public school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

**(V)** In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

**(iii)** The debtor's average monthly payments on account of secured debts shall be calculated as the sum of--

**(I)** the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

**(II)** any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts; divided by 60.

**(iv)** The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

**(B)** **(i)** In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

**(ii)** In order to establish special circumstances, the debtor shall be required to itemize

each additional expense or adjustment of income and to provide –

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (I) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of –

(I) 25 percent of the debtor's nonpriority unsecured claims, or \$6,000, whichever is greater; or

(II) \$10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(I), that show how each such amount is calculated.

(D) Subparagraphs (A through C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was –

(i) on active duty (as defined in section 101(d)(1) of title 10); or

(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

**Disposable Income:** The amount remaining after subtracting all income exceptions and allowed expenses from the current monthly income. The allowed expenses are found at 11 USC §707 which is incorporated herein by reference as though fully set forth herein.

### **Instructions on Providing Information Required By Bankruptcy Law**

You are required to provide certain information to the court when you file bankruptcy. It is our obligation to make a diligent inquiry of you so as to obtain information to include in your bankruptcy petition. Attached are forms designed to obtain the necessary information. Please carefully read and follow these instructions. Put your initials next to each instruction.

1. Read and fill out the forms completely, accurately, and neatly.
2. Do not leave blanks. If a particular blank does not apply to you, put "N/A" in the blank. By doing so, we will know that you did not mistakenly overlook it.
3. List ALL your property.
4. List ALL your debts.
  - a. You must list debts that will not be discharged, such as student loans and child support.
  - b. You must list debts that you intend to pay.
  - c. You must list debts that you co-signed for someone else or that someone else co-signed for you.
  - d. You must list debts to family members.
  - e. You must list judgments.
5. Attach additional sheets if you do not have sufficient space to include all the information.
6. In determining the amount you owe each creditor, list the amount on your most current statement or correspondence from the creditor. In rare cases, your ability to file chapter 7 may depend on how much debt you owe. In those cases, we will assist you in determining how much you owe each creditor.
7. If a creditor is still communicating with you, use the address supplied by the creditor in at least 2 communications over the last 90 days. Do not use the address to which you send payments. Use the correspondence address. Keep all mailings from your creditor, so we can keep up with any changes in the creditors' addresses and prove, if necessary, that we used the appropriate address.
8. List the account number, if any, for each debt.

**Debt Counseling Requirement.** You are not eligible to file a bankruptcy unless you receive an individual or group briefing from an approved nonprofit budget and counseling agency. That briefing must outline your opportunities for available credit counseling and assist you in performing a related budget analysis. It must occur within 180 days prior to filing the bankruptcy. It can take place on the internet or by telephone. If you have not yet received the counseling and you want our assistance, we will help you make the arrangements for it.

In addition to the information set out in these forms, you must file the following documents of information with your petition, or when specified, while your case is pending.

1. Copies of all pay stubs, payment advices, or other evidence of payment received within 60 days before the date of filing of the petition by you from any employer.
2. A statement of the amount of monthly net income itemized to show how the amount is calculated.

3. A statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition.
4.
  - a. A certificate from an approved nonprofit budget and credit counseling agency describing the individual or group briefing received by you.
  - b. If you developed a debt repayment plan as a result of the briefing, a copy of the plan.
5. A record of any interest you have in an educational individual retirement account or under a qualified state tuition program.
6. A copy of your federal income tax return, or a transcript of the return, for the most recent year ending immediately before we file your case and for which you filed the return.
7. If the court, Bankruptcy Administrator, the United States Trustee, or any other party to your case request it, you must file with the court:
  - a. A copy of each federal income tax return, or transcript of the return, required for each year while your case is pending at the same time filed with the IRS.
  - b. A copy of each required federal income tax return that had not been filed with the IRS when your case is filed and that you subsequently file for any tax year for the three years preceding the date we file your case.
  - c. A copy of each amendment to any federal income tax return or a transcript of each amendment filed with the court pursuant to paragraphs (a) and (b).
8.
  - a. In a Chapter 13 case at certain intervals in your case, you must provide a statement, under penalty of perjury, of your income and expenditures during the previous tax year, and of your current monthly income, the statement must show how income, expenditures, and current monthly income are calculated.
  - b. The statement set out above must disclose the amount and services of your income, the identity of any person responsible with you for the support of your dependents, and the identity of any person who contributes to the household in which you reside.
9. A document that establishes your identity, including a driver's license, passport, or such other document containing your photograph, or such other personal identification establishing your identity.

**STATEMENT MANDATED BY SECTION 527(B) OF THE BANKRUPTCY CODE**

**IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES**

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 helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

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 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 called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to 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 will have to attend the required first meeting of creditors where you may be questioned by a court official called a "trustee" and by creditors.

If you chose 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 chose 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 with 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 will want to find out what should be done from 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 attorneys, not bankruptcy petition preparers, can give you legal advice.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Client

DATE: \_\_\_\_\_

\_\_\_\_\_  
Client

CONSULTATION AGREEMENT  
AND  
ACKNOWLEDGMENT OF RECEIPT OF DISCLOSURES AND INSTRUCTIONS

This agreement is entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2005, by and between \_\_\_\_\_, (hereinafter referred to as the "Client" whether one or more) and Richard D. Sparkman & Associates, P.A. (hereinafter the "Attorney").

Client has requested the opportunity to consult with and obtain information and advice from the Attorney obtaining relief from debts, including relief from debts by filing bankruptcy under the United States Bankruptcy Code. This agreement is for purposes of that consultation only. If at the end of the initial consultation, the parties agree that the Attorney is to provide any additional services short of being retained to file a bankruptcy, the parties shall attach an addendum to this contract setting forth the additional services the Attorney is to provide to the Client, the obligations of the Client, and the Attorney's fees for such services. If the Client retains the Attorney to file a bankruptcy, the parties shall execute a separate contract setting forth the fees and other terms of such representations. With respect to the consultation, the parties agree as follows:

Client's Initials:

1. The fee for the consultation is \$ \_\_\_\_\_ . \_\_\_\_\_
  
2. Attorney shall provide the client the following services:
  - a. Analyze the client's financial circumstances based upon information provided by the Client.
  - b. To the extent possible, based upon information provided by the Client, advise the Client of the Client's bankruptcy options and non-bankruptcy options.
  - c. If the Client has not provided the Attorney with sufficient information upon which to fully advise the Client on the Client's options, inform the Client what information the Client needs to provide to enable the Attorney to provide such advice and information.
  - d. Advise the Client of the requirements placed upon the Client to file a Chapter 7 or 13 bankruptcy.
  - e. To the extent possible, quote the Client an estimated fee for the Attorney's services to provide bankruptcy assistance or other legal services to the Client.
  
3. The client acknowledges that the first date upon which the Attorney has first offered to provide any bankruptcy assistance services is this date, and that the Attorney provided

the Client with the Notice to Client Who Contemplates Filing Bankruptcy, the Statement Mandated by Section 527(b) of the Bankruptcy Code,

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and the Instructions on Providing Information Required to File Bankruptcy, copies of which are attached to this Consultation Agreement.

Richard D. Sparkman & Associates, P.A.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Richard D. Sparkman, Attorney

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

ADDENDUM TO CONSULTATION AGREEMENT

The undersigned Client has consulted with the Attorney concerning bankruptcy assistance. Additional information is needed for the Attorney to more completely counsel the Client on the Client's options. The parties agree as follows:

\_\_\_\_\_ 1. Client shall provide the Attorney with the information set out on the attached Schedule A.

\_\_\_\_\_ 2. Upon obtaining all of the requested information the Attorney will consult with the Client and provide additional information and advice to the Client concerning the Client's bankruptcy and non-bankruptcy options. Specific services to be provided by the Attorney are as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The fee for such additional services is:

\$ \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
Richard D. Sparkman

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

Date: \_\_\_\_\_

\_\_\_\_\_  
Client

