

Bankruptcy Information for Consumers

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I. 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 assist you, you will be filing a Chapter 7 bankruptcy. A Chapter 7 bankruptcy is a proceeding which will probably result in the discharge 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. Some 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. The final type of bankruptcy is a *Chapter 12*, which applies to family farms. The Pro Bono Bankruptcy Clinic does not handle either Chapter 11 or 12 cases.

II. Will All of My Obligations Be Discharged?

Once your bankruptcy petition is filed, all of your creditors listed in the petition, or who otherwise have actual knowledge of your bankruptcy, 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.

(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; and (d) more than three years have elapsed since the tax was due.

For instance, assuming all of the other tests listed above in (a), (b) and (c) have been satisfied, and since a tax is generally due on April 15th of the year following the tax year, a tax liability for income earned in 2008 would be dischargeable after April 15, 2012. A tax liability for 2009 would be dischargeable after April 15, 2013.

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) Governmental fines (such as 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 \$550 and made within 90 days of the date the bankruptcy petition is filed, or cash advances in excess of \$825 taken 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) 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 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 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 assets 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 any loans to friends or relatives, either in whole or in part.*** Before you make any extraordinary payments on any debts 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.

III. What Happens to My Assets?

When you file your bankruptcy petition, you must list all of your assets, and their market value. *Market value* is not what it would cost you to replace an item, and it is not the purchase price. Market value is 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 bankrupt, 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 cannot be sold by the trustee for the benefit of creditors. A partial list of exempt property is attached to this information.

Any property which you acquire *after* the date the petition is filed is also exempt. There are some exceptions. If you receive an inheritance, an insurance settlement or property settlement following a divorce decree within 180 days of filing, such property will become part of the bankruptcy estate. If all of your property is exempt, you will not lose any of it in the bankruptcy.

If any of your debts represent property which you are purchasing as a result of signing a contract providing for periodic payments, or which was purchased with a credit card (such as VISA or Mastercard and retail merchants such as Sears, Meier and Frank, and Les Schwab), the property may be *secured*. Property which you already own, but pledge to a creditor to obtain a loan, 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 right 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 reobligating yourself on the contract, and you must make the payments you agreed to make or you will lose the property and you may be liable for any deficiency. The reaffirmed debt will not be discharged in the bankruptcy.

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

If you are considering filing for bankruptcy you should not give away or transfer any of your assets to another person. You can give ordinary presents, such as for birthdays and Christmas, and you can trade or sell your assets for something of equivalent market value. However, you should not transfer any assets 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 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 Under the New Bankruptcy Law?

One of the requirements of the Bankruptcy Abuse and Consumer Protection Act of 2005 is that you satisfy the “means test” in order to remain in a Chapter 7 case. In order to file a Chapter 7 case, you must complete a “means test” form.

The “means test” form requests information regarding your gross monthly income for six months prior to filing. Generally, if your average gross monthly 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 monthly income below the median in Oregon. Information concerning the median income in Oregon and other states is available on the United States Trustee’s website at www.usdoj.gov/ust.

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 \$195 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.”

IV. Costs And Filing Fees

The fee for filing Chapter 7 bankruptcy is \$299.00. This fee may be waivable if your income is below 150% of federal poverty guidelines. 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, the Court will allow you 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 28 days from the date of filing; the second installment no more than 56 days from the date of filing; the third (and final) installment no more than 84 days from the date of filing. Each installment must be to the nearest \$5.00. ***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 not be notified of the potential dismissal, or given an opportunity to make the payment at a later date.

Payments may be made in person at the Court, or mailed to the Bankruptcy Court, 1001 S.W. 5th Ave., #700, Portland, Oregon 97204. **The Court does not accept third party personal checks.**

NOTE: The Bankruptcy Court for the District of Oregon has a website at www.orb.uscourts.gov which contains useful information.

V. Before the Petition Is Filed

In order to file a bankruptcy case, you must obtain credit counseling from an approved nonprofit budget and credit counseling agency within 180 days before the petition is filed. The United States Trustee maintains a list of approved credit counselors on its website at www.usdoj.gov/ust.

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 five days. In order to obtain a permanent waiver, you

must generally demonstrate to the Court that you are 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 \$299 filing fee would not be refunded to you.

In Oregon, the maximum fees for credit counseling are \$85 for an in-person session and \$50 for a telephone or internet session. If you are unable to pay for credit counseling, you may be able to obtain credit counseling without paying a fee or by paying a reduced fee if you satisfy the income criteria of the credit counseling agency you contact.

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.

VI. 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.

(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 assets. 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 30 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, 620 S.W. Main Street,

#223, Portland, Oregon 97205.

You must bring original 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 Meeting.

At least 7 days before the 341 Meeting you must send the bankruptcy trustee copies of the federal income tax return that you filed for the most recent tax year ending before you filed your case. At the 341 Meeting, you will have to present the bankruptcy trustee with statements for all bank accounts for the time period that includes the date of filing and a copy of your most recent pay stub. Additionally, within 15 days of filing the petition, you are required to send the United States Trustee copies of all pay stubs 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, even those which are owed to friends or relatives, and those which you intend to pay. 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 \$26, provided that it is filed before the Court closes your case. The case will generally be closed by the Court anytime after 60 days from the date of the 341(a) Meeting. After the case is closed, it will require permission from the Court and cost at least \$286 (\$260 to reopen, \$26 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 at the time 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?

A Chapter 7 discharge may be obtained only once every eight years. The eight-year period begins on the date the petition is filed. 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 30 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. 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 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.usdoj.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.

NOTE: The FTC has some interesting educational material on the internet about credit:

\$ For credit reporting disputes, see:
www.ftc.gov/bcp/online/pubs/credit/fcra.htm

\$ To reestablish credit, see:

www.ftc.gov/bcp/online/edcams/repair/index.html

\$ Associated Credit Bureaus have a website: www.acb.credit.com, as do the credit reporting agencies: www.equifax.com, etc.

(8) 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 that 180 days than in any other state.

VII. 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 \$299 to file for bankruptcy protection

The fee to file a Chapter 7 case is \$299. 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 28 days of the filing date; the second installment paid within 56 days; and the final installment paid within 84 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*. The exemptions which are available to a debtor in bankruptcy are generally the same as those which may be used by a debtor against an execution issued by a judgment creditor.

If all of your property is exempt, you are *judgment proof*, and creditors cannot take any of your property. You should seriously consider that bankruptcy may not be appropriate, since it will not provide any additional protection for your assets.

If you are not going to voluntarily pay your obligations, and if your assets are such that creditors cannot obtain an involuntary payment, bankruptcy will 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 your property is subject to a security interest, you may be required to return the property to the secured creditor, reaffirm the debt (thereby minimizing the beneficial effect of the bankruptcy), or redeem the property (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.

Most 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. Sears, JC Penney, Les Schwab) may demand either a reaffirmation of the debt or a return of any significant items purchased with the card.

(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 stated 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 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.

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 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 a relative more than \$600 as repayment of a loan within one year of filing bankruptcy, the trustee may be able to recover all of the payments from your relative. You may wish to delay filing bankruptcy until the statutory 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. 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 Afresh 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 (VERY IMPORTANT)

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. You may generally exempt the first \$400 of any such refunds.

The right to a tax refund accrues on the January 1st following the year in which the income was earned. However, some trustees assert that the right to a refund accrues throughout the year as wages are earned. A debtor who will be entitled to a large refund should seriously consider filing bankruptcy after the refund is received and spent or early in the year.

(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, 2009, 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 it.

(N) Ability to Fund A Chapter 13 Plan

If your monthly income exceeds monthly expenses by an amount which is sufficient to pay \$195 or more per month to your unsecured creditors over a 5-year period, the court may dismiss the bankruptcy unless you convert it to a Chapter 13 case.

(O) Unpaid Wages

If you file a bankruptcy case at the end of a pay period, the trustee may assert an interest in the unpaid wages owing to you. Of course, you will be able to exempt a portion of those wages. However, depending on the amount of the wages owed to you, and the existence of other assets in the case, the trustee may require you to pay over the nonexempt portion of the wages owed to you. You may wish to delay filing until after you have received and spent your wages.

SUMMARY OF BANKRUPTCY AND JUDGMENT EXEMPTIONS

Pursuant to Oregon law 2011•

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 18.375):*

EFFECTIVE DATE	WEEKLY	BIWEEKLY	SEMI-MONTHLY	MONTHLY
(1/1/09)	\$196	\$392	\$420	\$840
<i>But see</i> 15 USC §1673 (30 x fed min wage of \$7.25/hr)	\$217.50	\$435	\$471.25	\$942.50

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.

HOMESTEAD (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)

HOUSEHOLD GOODS, furniture, radios, a television, and utensils to \$3,000. (ORS 18.345(1)(f))

+**AUTOMOBILE** to \$3,000. (ORS 18.345(1)(d))

+**TOOLS** and a library necessary for the debtor's occupation to \$3,000, and fuel and provisions for 60 days. (ORS 18.345(1)(c))

+**BOOKS, PICTURES AND MUSICAL INSTRUMENTS** to \$600. (ORS 18.345(1)(a))

+**WEARING APPAREL, JEWELRY** and other personal items to \$1,800. (ORS 18.345(1)(b))

DOMESTIC ANIMALS and **POULTRY** for family use to \$1,000, and food for 60 days. (ORS 18.345(1)(e))

RIFLE or **SHOTGUN** and **PISTOL** to combined value of \$1,000. (ORS 18.362)

PENSIONS except support. (ORS 18.358)

+**\$400 INTEREST** in any personal property. *Cannot* be used to increase the amount of any other exemption. (ORS 18.345(1)(o))

PREPAID RENT, SECURITY DEPOSITS required on residential lease (ORS 18.395. *See In re Casserino*, 379 F3d 1069 (9th Cir. 2004). *But see In re Schuhmann*, 2010 WL 5125321 (Bkcy D Or 12/19/10) (voluntary prepaid rent not exempt)

EARNED INCOME TAX CREDIT, and monies traceable thereto. (ORS 18.345(1)(n)). Does NOT include Additional Child Tax Credit, or state version of Earned Income Tax Credit

ANNUITIES, but only certain types. (ORS 743.049. *See In re Thompson*, 197 BR 326 (Bkcy D Or 2006)), available on website of Oregon Bankruptcy Court)

+ **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.

HEALTH AIDS professionally prescribed for debtor or dependents. (ORS 18.345(1)(h))

SPOUSAL or **CHILD SUPPORT**, or separate maintenance to the extent reasonably necessary for support of debtor and any dependents. (ORS 18.345(1)(i))

+**CRIME VICTIM AWARD** and property traceable thereto. (ORS 18.345(1)(j))

+**BODILY INJURY** payment, and property traceable thereto up to \$10,000. (ORS 18.345(1)(k))

+**FUTURE EARNINGS** loss payment, and property traceable thereto, to extent reasonably necessary for the support of the debtor and dependents. (ORS 18.345(1)(L))

SOCIAL SECURITY (including SSI); **WELFARE**; **UNEMPLOYMENT**; **WORKERS COMPENSATION**; and most government benefits.

VETERAN'S BENEFITS and LOANS. (ORS 18.345(1)(m))

HEALTH & LIFE INSURANCE PROCEEDS (ORS 743.046 - 743.050)

BANK ACCOUNTS to \$7,500 for exempt wages, retirement, welfare, College Savings accounts, unemployment, disability and worker's compensation benefits. (ORS 18.348). Funds exempt under federal law are exempt if traceable to exempt source, without limit. \$400 *wild card* can be used for non-exempt deposits.

IRA, KEOGH or other plans as specified in statute and except for support obligations. (ORS 18.358)

CASH SURRENDER VALUE of life insurance policies not payable to decedent's estate. (ORS 743.046(3))

STUDENT LOAN proceeds. (20 USC 1095a(d))