



Mandatory Bankruptcy Disclosures



**Bankruptcy
Law Professionals
of Colorado**

Declare Your Freedom

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Mandatory Disclosures Regarding Bankruptcy

The following six (6) disclosures and advisements are required by law to be given to all potential bankruptcy clients whether or not you actually file.

You are required to read them before your case is filed.

Please contact our office if you have any questions about the disclosures.

We are more than happy to help.

Thank you.

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**IMPORTANT INFORMATION ABOUT BANKRUPTCY
AND ALTERNATIVES TO BANKRUPTCY**

**11 U.S.C. § 527(b)
Guide ¶ 3.7**

**Important Information about Bankruptcy Assistance Services from an Attorney or Bankruptcy
Petition Preparer**

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.

1. 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.
2. 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.
3. 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.
4. If you choose 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.
5. If you choose 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.
6. 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.
7. 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.

PURPOSES, BENEFITS AND COSTS OF BANKRUPTCY
Code § 527(a)(1) & § 342(b)(1)

The United States Constitution provides a method whereby individuals, burdened by excessive debt, can obtain a fresh financial start and pursue newly productive lives unimpaired by past financial problems. It is an important alternative for persons mired deep in financial difficulty.

The Federal Bankruptcy Laws were enacted to provide Debtors with a fresh start and to establish a ranking and equity among all the creditors who are clamoring for the Debtor's limited resources. Bankruptcy helps people avoid the kind of permanent discouragement that can prevent them from ever re-establishing themselves as hard-working members of society. Also, creditors are ranked so that the Debtor's non-exempt property can be fairly distributed according to established rules guaranteeing identical treatment to all creditors of the same rank.

This discussion is intended only as a brief overview of the types of bankruptcy filings and of what a bankruptcy filing can and cannot do. Anyone considering this course of action is encouraged to seek the advice and assistance of an attorney specializing in Bankruptcy Law.

Types of Bankruptcy

The Bankruptcy Code is divided into chapters. The chapters which usually apply to consumer Debtors are Chapter 7, known as a Liquidation, and Chapter 13, known as an Adjustment of the Debts of an Individual with Regular Income.

An important feature applicable to all types of bankruptcy filings is the automatic stay. The automatic stay means that the mere request for bankruptcy protection automatically "stays" or forces an abrupt halt to repossessions, foreclosures, evictions, garnishments, attachments, utility shut-offs, and debt collection harassment. It offers Debtors a breathing spell by giving the Debtor and the Trustee assigned to the case time to review the situation and develop an appropriate plan. Creditors cannot take any further action against the Debtor or the property without permission from the Bankruptcy Court.

The following is taken from the official Public Information Series Bankruptcy Judges Division brochure on "Bankruptcy Basics" prepared by the Administrative Office of the United States Courts, October 2005.

Chapter 7, entitled Liquidation, contemplates an orderly, court-supervised procedure by which a Trustee takes over the assets of the Debtor's estate, reduces them to cash, and makes distributions to creditors, subject to the Debtor's right to retain certain exempt property and the rights of secured creditors. Because there is usually little or no non-exempt property in most Chapter 7 cases, there may not be an actual liquidation of the Debtor's assets. These cases are called "no-asset cases." A creditor holding an unsecured claim will get a distribution from the bankruptcy estate only if the case is an asset case and the creditor files a proof of claim with the Bankruptcy Court. In most Chapter 7 cases, if the Debtor is an individual, he or she receives a discharge that releases him or her from personal liability for certain dischargeable debts. The Debtor normally receives a discharge just a few months after the Petition is filed. Amendments to the Bankruptcy Code enacted in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 require the application of a "means test" to determine whether individual consumer

debtors qualify for relief under Chapter 7. If such a Debtor's income is in excess of certain thresholds, the Debtor may not be eligible for Chapter 7 relief.

Chapter 13, entitled Adjustment of Debts of an Individual With Regular Income, is designed for an individual Debtor who has a regular source of income. Chapter 13 is often preferable to Chapter 7 because it enables the Debtor to keep a valuable asset, such as a house, and because it allows the Debtor to propose a "Plan" to repay creditors over time – usually three to five years. Chapter 13 is also used by consumer Debtors who do not qualify for Chapter 7 relief under the means test. At a confirmation hearing, the Court either approves or disapproves the Debtor's repayment plan, depending on whether it meets the Bankruptcy Code's requirements for confirmation. Chapter 13 is very different from Chapter 7 since the Chapter 13 Debtor usually remains in possession of the property of the estate and makes payments to creditors, through the Trustee, based on the Debtor's anticipated income over the life of the Plan. Unlike Chapter 7, the Debtor does not receive an immediate discharge of debts. The Debtor must complete the payments required under the Plan before the discharge is received. The Debtor is protected from lawsuits, garnishments, and other creditor actions while the Plan is in effect. The discharge is also somewhat broader (*i.e.*, more debts are eliminated) under Chapter 13 than the discharge under Chapter 7.

Chapter 11, entitled Reorganization, ordinarily is used by commercial enterprises that desire to continue operating a business and repay creditors concurrently through a Court-approved plan of reorganization. The Chapter 11 Debtor usually has the exclusive right to file a plan of reorganization for the first 120 days after it files the case and must provide creditors with a disclosure statement containing information adequate to enable creditors to evaluate the Plan. The Court ultimately approves (confirms) or disapproves the plan of reorganization. Under the confirmed Plan, the Debtor can reduce its debts by repaying a portion of its obligations and discharging others. The Debtor can also terminate burdensome contracts and leases, recover assets, and rescale its operations in order to return to profitability. Under Chapter 11, the Debtor normally goes through a period of consolidation and emerges with a reduced debt load and a reorganized business.

Chapter 12, entitled Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income, provides debt relief to family farmers and fishermen with regular income. The process under Chapter 12 is very similar to that of Chapter 13, under which the Debtor proposes a Plan to repay debts over a period of time – no more than three years unless the Court approves a longer period, not exceeding five years. There is also a Trustee in every Chapter 12 case whose duties are very similar to those of a Chapter 13 Trustee. The Chapter 12 Trustee's disbursement of payments to creditors under a confirmed Plan parallels the procedure under Chapter 13. Chapter 12 allows a family farmer or fisherman to continue to operate the business while the Plan is being carried out.

The bankruptcy process is complex and relies on legal concepts like the "automatic stay," "discharge," and "exemptions."

What Bankruptcy Can and Cannot Do

Bankruptcy may make it possible for financially distressed individuals to:

1. Discharge liability for most or all of their debts and get a fresh start. When the debt is discharged, the Debtor has no further legal obligation to pay the debt.
2. Stop foreclosure actions on their home and allow them an opportunity to catch up on missed payments.
3. Prevent repossession of a car or other property, or force the creditor to return property even after it has been repossessed.
4. Stop wage garnishment and other debt collection harassment, and give the individual some breathing room.
5. Restore or prevent termination of utility service.
6. Lower the monthly payments on debts, including secured debts such as car loans.
7. Allow Debtors an opportunity to challenge the claims of certain creditors who have committed fraud or who are otherwise seeking to collect more than they are legally entitled to.

Bankruptcy, however, cannot cure every financial problem. It is usually not possible to:

1. Eliminate certain rights of secured creditors. Although a Debtor can force secured creditors to take payments over time in the bankruptcy process, a Debtor generally cannot keep the collateral unless the Debtor continues to pay the debt.
2. Discharge types of debts singled out by the Federal Bankruptcy Statutes for special treatment, such as child support, alimony, some student loans, certain Court ordered payments, criminal fines, and some taxes.
3. Protect all co-signers on their debts. If a relative or friend co-signed a loan which the Debtor discharged in bankruptcy, the co-signer may still be obligated to repay the loan.
4. Discharge debts that are incurred after bankruptcy has been filed.

Bankruptcy's Effect on Your Credit

By Federal law, a bankruptcy can remain part of a Debtor's credit history for 10 years. Whether or not the Debtor will be granted credit in the future is unpredictable. In some cases it may actually be easier to obtain future credit, because new creditors may feel that since the old obligations have been discharged, they will be first in line. They also recognize that the Debtor cannot again file bankruptcy for at least the next 6 years.

Debtors have the option after bankruptcy of voluntarily paying some creditors, such as a doctor or hospital, with whom they wish to maintain credit. The payments are voluntary and do not reaffirm the past obligation.

About Credit Counseling Agencies

11 U.S.C § 342(b)(1)(B)

The following information is taken verbatim from the web site of the Federal Trade Commission.
www.ftc.gov

Credit Counseling

Living paycheck to paycheck? Worried about debt collectors? Can't seem to develop a workable budget, let alone save money for retirement? If this sounds familiar, you may want to consider the services of a credit counselor. Many credit counseling organizations are non-profit and work with you to solve your financial problems. But beware — just because an organization says it is "non-profit" doesn't guarantee that its services are free or affordable, or that its services are legitimate. In fact, some credit counseling organizations charge high fees, some of which may be hidden, or urge consumers to make "voluntary" contributions that cause them to fall deeper into debt.

Most credit counselors offer services through local offices, the Internet, or on the telephone. If possible, find an organization that offers in-person counseling. Many universities, military bases, credit unions, housing authorities, and branches of the U.S. Cooperative Extension Service operate non-profit credit counseling programs. Your financial institution, local consumer protection agency, and friends and family also may be good sources of information and referrals.

Reputable credit counseling organizations advise you on managing your money and debts, help you develop a budget, and usually offer free educational materials and workshops. Their counselors are certified and trained in the areas of consumer credit, money and debt management and budgeting. Counselors discuss your entire financial situation with you, and help you develop a personalized plan to solve your money problems. An initial counseling session typically lasts an hour, with an offer of follow-up sessions.

Debt Management Plans

If your financial problems stem from too much debt or your inability to repay your debts, a credit counseling agency may recommend that you enroll in a Debt Management Plan. A DMP alone is not credit counseling, and DMPs are not for everyone. Consider signing on for one of these plans only after a certified credit counselor has spent time thoroughly reviewing your financial situation, and has offered you customized advice on managing your money. Even if a DMP is appropriate for you, a reputable credit counseling organization still will help you create a budget and teach you money management skills.

How a DMP Works

You deposit money each month with the credit counseling organization. The organization uses your deposits to pay your unsecured debts, like credit card bills, student loans, and medical bills, according to a payment schedule the counselor develops with you and your creditors. Your creditors may agree to lower your interest rates and waive certain fees, but check with all your creditors to be sure that they offer the concessions that a credit counseling organization describes

to you. A successful DMP requires you to make regular, timely payments, and could take 48 months or longer to complete. Ask the credit counselor to estimate how long it will take for you to complete the plan. You also may have to agree not to apply for — or use — any additional credit while you're participating in the plan.

FULL DISCLOSURE & ACCURACY
11 U.S.C. § 527(A)

If you file bankruptcy:

A. The information that you provide to your attorney, the bankruptcy Trustee, and the Court in the course of your bankruptcy, both before and after you file your Bankruptcy Petition, must be complete, accurate and truthful.

B. All of your assets (everything you own that has value, such as real estate, personal items, vehicles, money, etc.) and all of your liabilities (all of your debts) are required to be completely and accurately disclosed in the documents filed to start your case. The replacement value of each asset must be stated in those documents where requested after reasonable research to establish their value. The value should be your best understanding of how much it would cost you to replace the item in the same or similar condition.

C. You must provide your attorney with a monthly budget, including your current monthly income, all of your regular expenses, and the amount of your income that is left over after deduction of expenses. In listing your income and expenses, avoid guessing or estimating, and do your best effort to be accurate and truthful.

For income, you are required to provide information about all sources of your income, including your employment, any government assistance you may receive, social security, pension or other retirement income, income from side jobs, investment income, and similar sources.

D. The information that you provide to your bankruptcy attorney, the bankruptcy Trustee, or the bankruptcy Judge may be audited and will be available for inspection by the office of the United States Trustee, which is a branch of the U.S. Department of Justice.

If you fail to honestly and fully provide information about your property, income, expenses, and other financial circumstances, your case could be dismissed, and you could be subject to criminal sanctions.

**INSTRUCTIONS REQUIRED TO BE PROVIDED TO THE DEBTOR PURSUANT TO
11 U.S.C. § 527(c)**

1. How to Place a Value on Your Property

11 U.S.C. § 506(a): Fair Valuation of Collateral.

The value of your personal property that is collateral for debt (a debt where the creditor could repossess the item if you stop making payments, such as a car, furniture or computer equipment being purchased on installment) is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs. If the item was acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for an item of that kind, considering the age and condition of the property at the time its value is determined. So, the value of the car, the furniture, the computer or anything else that you won't own until it's paid off, is not what you paid for it, and it is not what you could sell it for at the flea-market. The value is what you would have to pay a retail store selling similar items in a similar age and condition. Most retail stores do not sell used items. However, there are usually stores in the area selling used furniture, musical instruments, cars, and similar products. You might be able to provide a good estimate of the value of one or your items by inquiring at such a store. If you can't find a store that sells similar items in similar condition, the next best source for an objective appraisal is probably eBay or a similar online market.

2. How to Determine Current Monthly Income

To arrive at your current monthly income, you do the following:

- a. Total up all of your income for the last 6 months (and if your spouse is filing bankruptcy, his or her income as well). Include the contributions from any member of the household who is contributing regularly to the household expenses.

Income includes:

1. Wages and salaries
2. Money earned from side jobs
3. Investment income
4. Interest income
5. Income for self-employed individuals

Income does not include:

1. Benefits received under the Social Security Act;
2. Payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes; and
3. Payments to victims of international terrorism (as defined in section 2331 of Title 18) or domestic terrorism (as defined in section 2331 of Title 18) on account of their status as victims of such terrorism.

- b. Divide this figure by 6 to arrive at an average monthly income.

3. How to Figure Your Necessary Living Expenses

Go through the same exercise for your expenses. Total up all expenses for the last 6 months, then divide by 6 to obtain a monthly average. Expenses include all of your reasonable necessary costs of living, such as rent or mortgage, utilities, food, transportation, etc. Do not include in your expenses payments any credit cards, repayments of personal loans, delinquent medical bills, taxes, store charge accounts, business debts, or other non-regular expenses not included as necessary living expenses.

Use the worksheet below as a guide.

Rent or home mortgage payment (include lot rented for mobile home)			\$
Are real estate taxes included?	Yes	No	\$
Is property insurance included?	Yes	No	\$
Utilities Electricity and Heating Fuel			\$
Water and Sewer			\$
Telephone			\$
Other			\$
Home Maintenance (repairs and upkeep)			\$
Food			\$
Clothing			\$
Laundry and Dry Cleaning			\$
Medical and Dental Expenses			\$
Transportation (not including car payments)			\$
Recreation, Clubs and Entertainment, Newspapers, Magazines, etc.			\$
Charitable Contributions			\$
Insurance (not deducted from wages or included in home mortgage payments)			\$
Homeowner's or Renter's			
Life			
Health			
Auto			
Other			
Taxes (not deducted from wages or included in home mortgage payments)			\$
(Specify)			\$
Installment Payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)			\$
Auto			\$
Other			\$
Other			\$
Alimony, Maintenance, and Support Paid to Others			\$
Payments for support of additional dependents not living at your home			\$
Regular expenses from operation of business, profession,			\$

or farm (attach detailed statement)			\$
Other			\$
TOTAL MONTHLY EXPENSES			\$

Divide the total by 6, which gives you your average monthly living expenses.

4. How to Calculate Your Disposable Income, if any.

If your average monthly income exceeds your reasonably necessary living expenses, subtract expenses from income; the surplus is your disposable income.

5. How to List Your Creditors (your debts)

For each person or entity (such as credit card, store, medical bill, IRS, mortgage, and etc.) for which you owe money, provide the following information:

1. Name and address of the creditor
2. The account number (if any)
3. The amount currently owed
4. The amount of the regular monthly payment (if any)
5. When was the debt created (if a credit card, give a range)?
6. Was the debt -
 - financing of a purchase (such as a home, car, furniture, etc.), or
 - a loan or debt for which you put up an item as collateral
7. If either part of question 6 is yes, describe the item purchased
8. What was the original retail price of the item?
9. What is its current value?
10. Are you current with the monthly payments?
11. If the answer to 10 is no, has the claim been turned over to a collection agency or lawyer?
12. If 11 is yes, provide the name and address of the collection agency or lawyer.
13. Has the creditor sued you or obtained a judgment against you?
14. If 13 is yes, provide the name of the plaintiff, the case number, the court and court location, and the amount of the judgment.

6. How to Determine Which of Your Assets Are Exempt

Exempt assets are assets that the bankruptcy Trustee is not allowed to take away from you to pay debts. Most kinds of property owned by typical people who file bankruptcy are exempt, meaning you don't lose them if you file bankruptcy. But whether an item is exempt or not depends not only on what category of property it is, but also the value of your equity in the property (how much of the item do you own, over and above any balance owed on it). The permissible exemptions usually have dollar limits to the amount of equity you can claim as exempt. In order to identify which of your assets are exempt, you must know the exemptions allowed in your particular state, or whether your state uses the federal exemptions.

Colorado Exemptions

- \$45,000 in equity in your home or sale proceeds if sold within the year prior to bankruptcy;
- \$25,000 - Farm machinery, tools, livestock
- \$3,000 - Household goods;
- \$1,000 - jewelry and watches;
- \$50,000 - Cash surrender value of a whole life insurance policy;
- \$3,000 in equity in motor vehicle or a bicycle; \$6,000 if elderly or disabled;
- \$1,500 - Personal books, family pictures;
- \$3,000 - Professional library;
- \$600 - Provisions and fuel;
- \$10,000 in things you need for your job (tools, books, etc.);
- \$1,500 - Wearing apparel;
- any amount in an IRA, 401(k), or pension plan;
- Your right to receive certain benefits such as social security, unemployment compensation, veteran's benefits, public assistant, and pensions regardless of the amount.

Homesteads:

In Colorado, the homestead exemption for your residence is limited to \$45,000.00.

Note: The value of the Colorado homestead exemption will be reduced by any addition to the value brought about on account of a disposition of non-exempt property made by the Debtor (made with the intent to hinder, delay, or defraud creditors) during the 10 years prior to the bankruptcy filing.

FRAUD & CONCEALMENT PROHIBITED
11 U.S.C. § 342(b)(2)(A) and (B)

Debtor's Duties in Bankruptcy

If you decide to file bankruptcy, it is important that you understand the following:

1. Some or all of the information you provide in connection with your bankruptcy will be filed with the Bankruptcy Court on forms or documents that you will be required to sign and declare as true under penalty of perjury.

2. A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both.

11 U.S.C. § 342(b)(2)(A)

3. All information you provide in connection with your bankruptcy case is subject to examination by the Attorney General.

11 U.S.C. § 342(b)(2)(B)

DECLARATIONS FOR REAFFIRMATION REQUIRED BY CODE § 524(k)

(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

(3) The disclosure statement required under this paragraph shall consist of the following:

Creditor's Disclosures

Part A: Before agreeing to reaffirm a debt, review these important disclosures';

Summary of Reaffirmation Agreement

This Summary is made pursuant to the requirements of the Bankruptcy Code;

The Amount Reaffirmed

(i) the total amount of debt that the Debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and (ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

(i) 'The amount of debt you have agreed to reaffirm'; and

(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'

(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

(i) if, at the time the Petition is filed, the debt is an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in Section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate determined under paragraphs (5) and (6) of Section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the Debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the Debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the Debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the Debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under sub-clause (I) and the simple interest rate under sub-clause (II); or (ii) if, at the time the Petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in Section 103 of the Truth in Lending Act, then—

(I) the annual percentage rate under Section 128(a)(4) of the Truth in Lending Act, as disclosed to the Debtor in the most recent disclosure statement given to the Debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the Debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the Debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the Debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'

(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the Court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the Debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

(i) by making the statement: 'Your first payment in the amount of \$ XXX is due on XXX but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or (iii) by describing the Debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

(I) The following statement: 'Note: When this disclosure refers to what a creditor "may" do, it does not use the word "may" to give the creditor specific permission. The word "may" is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the Judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.'

(J)(i) The following additional statements:

"Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

"1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

"2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

"3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

"4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

"5. The original of this disclosure must be filed with the Court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

"7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The Court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in Bankruptcy Court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home. "Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

"What are your obligations if you reaffirm the debt?

A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the

reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

"Are you required to enter into a reaffirmation agreement by any law?"

No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"What if your creditor has a security interest or lien?"

Your bankruptcy discharge does not eliminate any lien on your property. A 'lien' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court."

(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

"6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court."

(4) The form of such agreement required under this paragraph shall consist of the following:

'Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

"Brief description of credit agreement:

"Description of any changes to the credit agreement made as part of this reaffirmation agreement:

"Signature: Date:

"Borrower:

"Co-borrower, if also reaffirming these debts:

"Accepted by creditor:

"Date of creditor acceptance:'.

The declaration shall consist of the following:

Certification by Debtor's Attorney (if any)

"I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

"Signature of Debtor's Attorney: Date:".

" (B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

" (C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

Debtor's Declaration in Support of Reaffirmation Agreement

" (6)(A) The statement in support of such agreement, which the Debtor shall sign and date prior to filing with the Court, shall consist of the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

"1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is \$ XXX, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total \$ XXX, leaving \$ XXX to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the Court how I can afford to make the payments here: XXX.

"2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement."

Debtor's Declaration Where Reaffirming Debt Defined Under Federal Reserve Act

(B) Where the Debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in Section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the Debtor shall sign and date prior to filing with the Court, shall consist of the following:'

I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'

(7) The motion that may be used if approval of such agreement by the Court is required in order for it to be effective shall be signed and dated by the movant and shall consist of the following:

Debtor's Declaration if Not Represented By an Attorney

"Part E: Motion for Court Approval (To be completed only if the Debtor is not represented by an attorney.).

I (we), the Debtor(s), affirm the following to be true and correct: 'I am not represented by an attorney in connection with this reaffirmation agreement.

I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

Therefore, I ask the Court for an order approving this reaffirmation agreement. "

(8) The Court Order, which may be used to approve such agreement, shall consist of the following:

"Court Order: The Court grants the Debtor's motion and approves the reaffirmation agreement described above."

(1) Notwithstanding any other provision of this title the following shall apply:

Preliminary draft of March 20, 2005. Subject to change.

(1) A creditor may accept payments from a Debtor before and after the filing of an agreement of the kind specified in subsection (c) with the Court.

(2) A creditor may accept payments from a Debtor under such agreement that the creditor believes in good faith to be effective.

(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the Court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the Debtor if the Debtor's monthly income less the Debtor's monthly expenses as shown on the Debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the Court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the Court, the Court may disapprove such agreement.

No agreement shall be disapproved without notice and a hearing to the Debtor and creditor and such hearing shall be concluded before the entry of the Debtor's discharge.

(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.