

**Community Seminar Series "Bankruptcy" City  
Bar Justice Center**

**May 26, 2010**

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MR. JOHN T. McMANUS, ESQ: Good afternoon, thank you all for being here. My name is John McManus and I'm the Director of the Consumer Bankruptcy Project at the City Bar Justice Center and our project provides free legal assistance to low income people who are overwhelmed with debt and thinking about filing bankruptcy.

Uh, what I'd like to do today is give a brief overview of the bankruptcy process, try to demystify some of the, uh, information surrounding it and, uh, provide you with useful information so that anybody thinking about filing bankruptcy can make an informed decision as to whether or not this is in their best interest.

Uh, we know that making a decision to file bankruptcy is very difficult and very personal, very

emotional. Uh, people that are in debt and being harassed and chased by their creditors are feeling overwhelmed by the process, and, uh, most people do not want to file bankruptcy and it's considered to be a last resort, but le--bankruptcy is a very positive step forward in working out a financial plan to straighten out your situation should that be appropriate.

Uh, many people who are filing bankruptcy feel that, uh, they're embarrassed by the process, that there's some kind of a failure for having to file bankruptcy at all, but in point of fact, most people that have to file bankruptcy have to do it because of circumstances beyond their control. Uh, more than three-quarters of the people that file have to do it for one of three reasons. The primary cause is usually overwhelming medical bills, somebody gets sick in the family, there's not enough insurance, the

thousands of dollars of bills come in on top of everything else, and you can't cope. Uh, that is the most common cause for a person filing bankruptcy.

The second most common one would be unemployment, and certainly over the last couple of years with the unemployment situation the way it's been, uh, tens of thousands of people have been out of work for long periods of time, have exhausted their benefits, have used up their resources and maxed out their credit cards, and cannot meet the obligations and are overwhelmed by the process.

The third most common cause of bankruptcy would be something like divorce, where there had been a family with two incomes and now there's only one and the inability to, um, keep up with the obligations.

There are many other reasons that people have to file, but in most cases

it's due to circumstances beyond your control. So most people should not feel that they're doing something wrong by considering filing bankruptcy.

A lot of people think that filing bankruptcy is wrong or immoral in some reason, but in point of fact, bankruptcy was established in the United States Constitution and is perfectly legal and proper if it's done for the right purposes.

A few years ago, Congress changed a lot of the bankruptcy laws to try and make it more complicated and difficult for people to file, a lot of people thought, "I can no longer file a Chapter 7 bankruptcy." In point of fact, they did make it more difficult, but it is still very doable and, uh, in fact the clients that we assist and send out, virtually everybody we send out will successfully get a discharge in bankruptcy. So it is a

remedy that is available to people.

A lot of people feel that if they file a bankruptcy, they'll never get credit again and, uh, there will be all kinds of adverse consequences. In point of fact, yes, it has negative consequences and it goes on a credit report, which I'll discuss, but people can get credit again, um, within several years usually of getting bankruptcy. Whether it's a good idea to do it or not or what the conditions are is another story, but it does not prohibit somebody from getting credit ever again.

How does bankruptcy work. Well bankruptcy is a request of the United States Bankruptcy Court by a person, a, a debtor or somebody who's overwhelmed with debt asking that their debts be discharged in bankruptcy, and if that relief is granted, then some or all of their debts will be, uh, discharged and they will not

have to repay them and it'll get the creditors to stop, leaving you alone, not suing, calling, and, uh, bothering you.

The two most common types of bankruptcy. Uh, the most common one is Chapter 7, which is also known as a liquidation plan, this is by far the most common one, and, uh, it is a request to the court to wipe out the most common types of bankruptcy debt, such as credit cards, utility, medical bills, personal loans, things of that nature. Uh, as I'll discuss later, not all debts are dischargeable in bankruptcy, but the most common ones usually are and, um, this can be a very helpful process. It's also known as the liquidation plan because if you do own certain types of property where there's significant value, there is a possibility the bankruptcy court could take that property and sell it and use the proceeds for the benefit of the creditors.

But, again, if you have proper legal advice and assistance, you'll either know this going in or you may find out that you're not in danger of losing anything.

The second most common type of bankruptcy is called a Chapter 13 proceeding and, uh, this is also called a wage earner or reorganization plan and it's where it's commonly used by people that do own property such as a house. The classic example would be somebody who's faced with a foreclosure proceeding and wants to try and save their house and they can file what's called a Chapter 13 and in it you propose a plan to the court saying how you're going to repay some or all of your debt over a period of time, generally three to five years. It's a difficult plan to comply with, but if you're successful with it, it can allow you to stop a foreclosure and keep your house or other property that you're trying to

protect.

Um, who can file a bankruptcy.

Virtually anyone can file a bankruptcy--single person, married couple can file a joint bankruptcy or even one spouse out of a married couple can file a bankruptcy.

Many people fear if they file a bankruptcy, will it affect my spouse's credit if they don't file; the answer is no, it will not, as long as they--your spouse has their own debts and keeps up with their obligations, uh, one spouse filing and the other one not will not have an adverse impact on the other spouse's credit report or credit rating.

Uh, many people ask whether or not you have to be a citizen to be able to file for bankruptcy and the answer is no, um, a permanent legal resident can file, um, even an undocumented immigrant can file, there's no prohibition against them filing, however, uh, it probably would be

a good idea if somebody is moving towards citizenship to consult with a--an immigration attorney before they file to make sure the filing would not have some form of a negative impact on their application for citizenship, but they certainly can file.

Now what are some of the advantages of filing for a bankruptcy. The most common one, usually when people come in to us, they're saying the creditors are calling me night and day, I'm getting these phone calls, letters, I'm being sued, my salary is being garnished, my bank accounts frozen. Um, the first thing that happens when you file bankruptcy is an automatic stay is entered against all of the creditors that are listed in the bankruptcy and that stops all collection activity such as garnishments and frozen bank accounts and the phone calls and letters and this stay,

uh, extends to the life of the bankruptcy and becomes made permanent at the end if a discharge is granted.

It also allows everybo--usually you're allowed to keep all of your income going on into the future so that you would not have to divert your income if you're granted a discharge into paying off your--the, uh, obligations that had been there and you can keep all of your future income. Uh, as a matter of fact, after you file bankruptcy, uh, and a discharge is granted, if you hit the lottery, you can keep the whole amount of money.

Um, bankruptcy also will usually allow you to keep all or most of your property. Under New York State and federal law, uh, most personal property, your household goods and furnishings, clothing, um, savings up to \$2,500, and other items of property are exempt by law and I'll explain what exemptions are

later, but they're protected so that you, you will--creditors cannot come in, -- in the bankruptcy court and take everything that you own as a condition for filing bankruptcy. And our cases usually our clients are able to keep virtually everything.

Um, the other advantage of course at the end of the line, if you're successful, all or most of your debts will be discharged, and that means that you're obligation to repay those debts is gone and the creditors have to leave you alone and cease any collection activity.

Uh, I'll explain later, not all debts are dischargeable in bankruptcy, some will survive and ride through, but most common debts, such as credit cards, loans, medical bills, other outstanding obligations will be discharged. And at the end, after your discharge is granted, you get what's called a fresh start which

basically means you can move on with your life in a normal manner, you can resume things like direct deposit of, uh, your check into a bank account, your bank account will be safe, your property will be safe.

Bankruptcy does come with some disadvantages and some baggage. Um, among other things, it goes on your credit report for up to 10 years. This means that anybody looks at your credit report will know that you filed bankruptcy and they can use that information to deny you other types of credit, uh, sometimes prospective, uh, employers will look at a credit report and they may use that information to deny you employment; uh, if you're moving in New York City in particular, many landlords will look at a credit report and they might use the fact that you filed bankruptcy to refuse to rent you an apartment. These are all

possibilities where it could come up and, as I said, it says on the credit report for up to 10 years.

It also reduces your credit score by as much as 100 points so, again, this is going to make you, uh, a bigger credit risk than - - that you file for credit.

Uh, as I mentioned earlier, also you could end up losing some property if you file bankruptcy. If you file a Chapter 7, a liquidation plan, and you own certain property and it's value exceeds certain limits, there's a possibility that the bankruptcy court could take that property and sell it for the benefit of your creditors and, and disburse the assets. Um, but again, if you have the assistance counsel can advise you what the risks are and whether or not you're in danger of losing any particular property, you'll know about that ahead of time.

Not all debts are dischargeable

in bankruptcy, as I mention, there is some debts that will survive, things like domestic support obligations. So if you owe somebody alimony maintenance or child support, that is a debt that's going to survive and ride through a bankruptcy.

Uh, student loans are the other big category of non-dischargeable debts, they will generally survive unless somebody meets a very difficult standard called undue hardship which would allow for, uh, a discharge of those debts, but it's very difficult to get.

Most taxes owed to the government would survive and carry through and things like fines, violations, parking tickets, or other debts that could survive a bankruptcy and ride through. Uh, many people have combinations of different debts, some which are dischargeable and some which are not, but all debts have to be listed on a bankruptcy at the time that

you file.

Another problem is that if you have a co-signer on a debt, somebody who signed with you as a backup on a particular debt, if you're granted a bankruptcy, your obligation may be relieved, but the co-signer's is not and the creditor can turn and go after the co-signer, and they have to know that.

Filing bankruptcy is complicated and does definitely require the advice and assistance of counsel. Many people ask can I file a bankruptcy by myself, the short answer is yes, you can, there's no requirement that you have a lawyer, however, it is a complicated process and, um, at the very least you should have the advice and assistance of counsel or representation. Um, there are many technical requirements to a bankruptcy and if you miss any of them, then your case could be dismissed and while you could

file a case again if you correct the error, it is difficult and expensive to file a second bankruptcy.

A lot of people will say well how can I get an attorney if I'm filing bankruptcy, I'm broke, I don't have any money and I fully understand the dilemma that people are in with this, however, I can only point out that if you're facing 20, 30, \$40,000 worth of debt, whatever it may be, and by hiring, uh, an attorney and paying the, uh, legal fees and the cost for 2 or \$3,000, if you can get 20 or \$30,000 worth of debt discharged in bankruptcy, it's a good return on your money and well worth the investment and the effort to do that.

There are legal services plans such as ours which provide free legal assistance, however, we do have, uh, very lengthy waiting lists and it can take weeks or months to get an appointment, uh,

to see one of the few attorneys that provide the free legal services. Um, some of the requirements for bankruptcy, just so you understand the complexity involved, uh, when the laws were changed a few years ago, Congress added various requirements, one of them was called the Means Test and, uh, under the Means Test, it's basically a financial eligibility guideline that, uh, people have to pass in order to be found eligible to file, and many people thought this would prevent most people from filing. In point of fact, it hasn't and statistically, over 95% of the people nationwide that have to file bankruptcy would pass the Means Test and be able to do it. So it is something that has to be complied with, but it is not a major problem.

Everybody that files also has to do mandatory credit counseling. This is a two-stage process, one stage called credit

counseling has to be done prior to filing the bankruptcy and the second stage known as debtor education has to be done after the filing of the bankruptcy. These are both required, they're not difficult, the purpose is to provide some information and education so that by the time you finish the bankruptcy process, you have more education too and hopefully would not fall into problems in the future.

And, uh, these credit counseling sessions can be done on the phone or online and, again, they don't--they take more time and effort, there is some expense if you have to do it, uh, on your own and usually it costs about \$50 per session to do the credit counseling.

About, uh, a month after you file for a bankruptcy, um, everybody has to meet with a person called a trustee, a trustee is a lawyer assigned by the court to, uh, review and process a case and to

meet with the debtors. And, uh, generally, if everything is done properly, this meeting takes 5 to 10 minutes, it's fairly pro forma and straightforward, but if the--there are mistakes in the papers, um, or there's misinformation, uh, given, then it become a more difficult process. The trustee's job is to review the papers and also to make sure that if there is property to be gathered for the benefit of the creditors, that's his job.

Uh, if all is done well and the trustee closes the meeting after he's met with, uh, the debtor, then, um, actually he will recommend that a discharge be issued and the judge will sign the paper. Uh, generally the debtor will not have to meet with the judge unless a problem has developed which requires the judge's approval, but more often than not, the only person that you're going to see is going to be the trustee.

At the conclusion of the case you will be issued what's called a discharge, a discharge is the order of the court granting the bankruptcy relief and saying that those--that's what you're dischargeable, uh, are discharged and this was your magic bullet basically to stop the creditors who were listed in the bankruptcy from coming after you in the future. And, uh, but as I said, it would not relieve your obligation to, uh, repay the debts that would survive a bankruptcy that we talked about earlier.

This is a very fast overview, um, of the bankruptcy process, um, there is more to it or not. The best thing I can say is make sure that if you are considering doing a bankruptcy, please try to get appropriate legal assistance, there are many organizations in neighborhoods that offer to do bankruptcy for very low fees, frequently these are non-lawyer

petition preparation services and, while they can produce a very attractive set of papers for a relatively low cost, they do not provide legal advice or information, which is really what you need in order to appropriately do a bankruptcy, so you have to be very careful about who you go to to get the appropriate advice. If you do, you will be successful and you can get a fresh start on your economic life and move forward.

Thank you very much for coming and, uh, good luck.

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