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A program of Elder Law of Michigan, Inc.*

## **SENIOR CITIZENS & BANKRUPTCY**

Many senior citizens live on a fixed income and have difficulty paying their bills. If you are in this situation you may wonder if bankruptcy would help. This brochure discusses Chapter 7 bankruptcy which discharges debts so that you no longer have a legal obligation to pay. The bankruptcy court appoints a trustee who collects your non-exempt property, sells it and distributes the proceeds to your creditors. Some debts usually can not be discharged, for example child support, student loans and certain taxes. Certain debts incurred shortly before a bankruptcy are not dischargeable, such as luxury goods totaling more than \$500 purchased within 60 days prior to filing or cash advances totaling more than \$750 taken within 70 days prior to filing. You have to wait 8 years after filing a Chapter 7 bankruptcy to file again.

One issue to consider before filing for bankruptcy is whether other laws already protect you from creditors' claims. For example, federal law protects Social Security benefits from garnishment except for child support, alimony and debts owed the federal government. So, if your only income is Social Security and you do not own a home, car or other assets, bankruptcy is generally not legally necessary because you have nothing that could be taken by your creditors.

Even if you do not need bankruptcy for protection from creditors, you may want it anyway for peace of mind and a clean start. Another reason people sometimes file for bankruptcy is to take advantage of the "automatic stay". This stops any pending collection action against you such as a lawsuit or garnishment. It

may also temporarily stop eviction and foreclosure actions. A bankruptcy stays on your credit history for 10 years but if you are behind on your bills this has probably already affected your credit report.

Chapter 7 bankruptcy does not guarantee that you will get to keep your home or other property. The law has limits (called exemptions) on the value of the property that you can keep. If the equity in your car, home or other asset is greater than its exemption limit, it must be sold to pay off creditors. Equity means the net value of an asset, the fair market value minus any liens. In Michigan you can use either federal or state exemption limits. The maximum federal exemption limit for a home is currently \$20,200. The state exemption limit for a home is adjusted for inflation every 3 years by the State Treasurer. As of April 2008, the state exemption is \$34,450 (\$51,650 if you are 65 or older or disabled). For example, if you have equity of \$100,000 in your home, it will have to be sold. You would be allowed to keep the applicable exemption amount, and the rest of the sale proceeds would be used to pay off your debts. (A home owned by husband and wife does not have to be sold if only one spouse is declaring bankruptcy.)

**In April 2006 a judge in the bankruptcy court in Grand Rapids held that Michigan's state exemption limits are unconstitutional. If this decision is upheld the highest available homestead exemption would be the federal limit which is currently \$20,200.**

If an asset's equity is under the exemption limit, the bankruptcy trustee will not require that it be sold. However, if the debt is secured (like a home mortgage or car loan) the creditor can still foreclose or repossess the asset to satisfy its lien. You may be able to reaffirm a secured debt if the creditor and court agree. This means you get to keep the property as long as you stay current on the loan payments. Reaffirmed debts are not discharged by the bankruptcy and you continue to be personally liable.

A new federal bankruptcy law effective October 17, 2005, requires some individuals to use Chapter 13 bankruptcy rather than Chapter 7 if their disposable income exceeds certain limits. Chapter 13 bankruptcy requires a repayment schedule of 3 to 5 years before debts are discharged. This new requirement does not apply if your income is below your state's annual median income. The 2009 median income for Michigan is \$43,611 for a single individual and \$52,620 for a couple. Social Security benefits are not counted as income for this purpose.

Bankruptcy is handled by federal district courts. There are 2 districts in Michigan. The western district is headquartered in Grand Rapids and the eastern district in Detroit. The filing fee to the court is currently \$299.00 (for Chapter 7; \$274.00 for Chapter 13) and it is possible to pay it in installments. Chapter 7 bankruptcy usually takes 4 to 6 months to be completed. The 2005 changes to the law also require that debtors must undergo credit counseling within 6 months before they file for bankruptcy. There is usually a charge for the counseling which could amount to \$50.00. Bankruptcy is a complicated legal matter so it is best to hire an attorney to represent you. Attorney fees vary but you should expect to pay \$500 or more. Some attorneys may allow you to pay them in installments. You may have to put off some of your bills for a few months to save enough money to hire an attorney. If you decide to represent yourself there are books you can buy (or review at a library) which explain the procedure and forms. Court staff can give you general information but not legal advice.

If you cannot afford to pay the Court filing fee in full or in installments, you may request a waiver of the filing fee by completing an application and filing it with the Clerk of the Court. The application is 3 pages long and requests fairly detailed information about your financial situation. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee **only if** your income is less than 150 percent of the official poverty line applicable to your family size **and** you are unable to

pay the fee in installments. The clerk's office can provide you with information about the poverty guidelines.

Before making a final decision on bankruptcy you may want to explore other forms of financial help if your income is low. For example, only 30% of seniors who are eligible for the Food Assistance Program apply for this benefit. It may be worthwhile to explore this and other programs. Another option is to work with a credit counselor, but be careful who you chose as there are disreputable credit counseling services who only want to take your money. Be wary of any services that have high fees. One way of locating a reputable nonprofit credit counseling service in your area is to call the National Foundation for Credit Counseling at (800) 388-2227. Another organization, the Association of Independent Consumer Credit Counseling Agencies, (800) 450-1794, also provides referrals to reliable counseling services.

*The Legal Hotline is a program of Elder Law of Michigan, Inc., a non-profit organization. If you would like to support our work, please consider sending a tax deductible donation to the Legal Hotline, 3815 W. St. Joseph Street, Suite C-200, Lansing, MI 48917. Thank You.*