BASIC BANKRUPTCY CHECKLIST

DISCLAIMER: This checklist is not intended as a comprehensive worksheet, but as an aid to an attorney filing a Chapter 7 or Chapter 13 bankruptcy, and will require the use of additional forms and investigation as judged necessary by the attorney.

- ❑ Chapter 7 - You must comply with LBR 9010-1(e) and ORPC 1.2(b) if you will not represent a Chapter 7 debtor in all matters relating to a bankruptcy case. You must have a written fee agreement that includes a detailed description of what you will perform on behalf of the debtor. The debtor must sign and date the agreement. You should review LBR 9010-1 to make sure you comply with all requirements. The bankruptcy court modifies LBRs on December 1 of each year. To comply with ORPC 1.2(b), the limitation must be reasonable under the circumstances and the client must give informed consent.

- ❑ Chapter 13 - Key initial questions: Only an individual with regular income may be a debtor. An individual must have noncontingent, liquidated debts that aggregate less than $2,750,000.

- ❑ **NOTE**: This checklist does not discuss Chapter 11, sub-Chapter V – or small business bankruptcy cases. The Small Business Reorganization Act of 2019 enacted a new subchapter V of Chapter 11 of the Bankruptcy Code, codified as 11 U.S.C. §§ 1181 – 1195. The Coronavirus Aid, Relief, and Economic Security Act and the Covid-19 Bankruptcy Relief Extension Act of 2021 amended the Small Business Reorganization Act. Sub-Chapter V, or small business bankruptcies. These acts exceed the scope of this checklist.

1. Personal Information

- ❑ Name, mailing address, and other contact information.
- ❑ Former names.
- ❑ Social Security number. Proof of social securing number.
- ❑ Prior addresses for the past 3 years.

2. Jurisdiction, Venue, and Availability of Discharge

- ❑ Resided in district for the majority of the last 180 days before filing.
- ❑ Previous bankruptcy filings discharged within 8 years (Date: _____). Complete PACER search to verify dates. No discharge in Chapter 7 bankruptcy if received Chapter 7 or Chapter 11 discharge in case commenced within 8 years. 11 U.S.C. § 727(a)(8). No discharge in Chapter 13 bankruptcy if received Chapter 7, 11 or 12 discharge in case filed during prior 4 years, or if received Chapter 13 discharge in case filed in prior 2 years. 11 U.S.C. § 1328(f).
- ❑ Previous Chapter 7 or Chapter 13 voluntary dismissal of case by the debtor in which Motion for Relief from Stay filed, dismissal must be more than 180 days prior to filing of new case. Complete PACER search to verify dates.
- ❑ Venue (If the debtor has not lived in Oregon for the past two years, exemptions used for bankruptcy purposes are where the debtor lived the majority of time between two and two-and-a-half years ago.)

- ❑ Automatic stay (If one previous bankruptcy case is dismissed within one year of filing the current case, automatic stay terminates in 30 days. If two or more cases are dismissed within one year of filing current case, no automatic stay goes into effect. The debtor must move to continue stay or reimpose stay).

3. Identify All Debts

- ❑ Non-dischargeable debts (11 U.S.C. § 523(a))
  - ❑ Student loans.
    - ❑ Certain types of student loans are excepted from discharge under 11 U.S.C. § 523(a)(8). Whether a student loan is excepted may require technical analysis. *In re Clouser*, 2016 WL 5864493 (Bankr. D. Or. 2016); *In re Kashinkar*, 567 B.R. 160 (9th Cir. BAP 2017)
    - ❑ Those student that are excepted are nondischargeable unless undue hardship. Hardship is difficult to prove, but partial discharge is possible.
    - ❑ Unless the debtor affirmatively secures a determination, the discharge order does not include a student loan debt.
  - ❑ Tax debts.
    - ❑ Determine date of filing or assessment and tax due date, including extensions, offers in compromise, previous bankruptcy cases. (In some cases, income tax debt (1040) can be discharged if tax debt is over 3 years old and returns were filed timely by the debtor at least 2 years prior to filing bankruptcy. Double check tolling time periods). If there is any question about the amount of tax debt, discharge of tax debt or tolling of discharge period, obtain and review tax transcripts prior to filing a bankruptcy.
    - ❑ Obtain tax transcripts to verify information, rather than rely on a client's recollection.
  - ❑ Fines/penalties/tickets.
  - ❑ Fraud, misrepresentation.
  - ❑ Fiduciary duty, defalcation, larceny, embezzlement.
  - ❑ Intentional tort, willful and malicious injury.
  - ❑ DUII.
  - ❑ Restitution.
  - ❑ Abusive use of credit card.
  - ❑ Domestic support obligations.
  - ❑ Debt incurred in course of divorce or separation. Dischargeable in Chapter 13. Obtain and review judgment entered by court.

- ❑ Business debts
  - ❑ Business still operating. You should be aware of the Small Business Reorganization Act of 2019. This Act creates a mechanism that is more attractive and beneficial for a small business debtor. The process is more akin to Chapter 12 and Chapter 13.
  - ❑ Family farmer. You also should be aware of the Family Farm Relief Act of 2019. This Act increases the debt limit for an individual engaged in farming operation.
  - ❑ Corporation, limited liability company, partnership or sole proprietorship. Obtain corporate, company or entity books and records.

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- ❑ Obtain balance sheet statement, accounts receivable statement, accounts payable statement and other financial statements.
- ❑ Conduct UCC search and other on-line searches to investigate possibility of missing debts and secured claims.
- ❑ Review creditor reports to investigate possible missing debts.

❑ Marital dispute / separation or divorce pending or imminent

- ❑ Spouse/ex-spouse as creditor.
- ❑ Domestic support obligations.
- ❑ Property settlement obligation owed.
- ❑ Equalizing claim or debt.
- ❑ Obtain a copy of general judgment, supplemental judgment and other relevant pleadings.

❑ Unsecured priority creditors (CLIENT TO PROVIDE LIST)

- ❑ Taxes, employee withholdings.
- ❑ Deposits for others.
- ❑ Wages of employees.
- ❑ Child support, spousal support.
- ❑ Other (see 11 U.S.C. § 507).

❑ Unsecured non-priority creditors (CLIENT TO PROVIDE LIST)

- ❑ Names/addresses/amount owed.
- ❑ Judgments/lawsuits pending. Verify when judgement was entered. Review judgment.
- ❑ Preference payments to any creditors. The Small Business Reorganization Act of 2019 amends § 547(b) to include a due diligence requirement.
- ❑ Joint debtors identified.
- ❑ Business or consumer debt.
- ❑ Liquidated or unliquidated debt.
- ❑ Disputed or nondisputed debt.
- ❑ Contingent and noncontingent debt. Make sure to list all debts.
- ❑ Guarantees.
- ❑ Loans owed to closely held business or insiders.
- ❑ Obligations to pay debt owed to ex-spouse(s) pursuant to judgment.
- ❑ Conduct OJIN and other searches to identify claims a debtor may not have known about or remembered.

❑ Secured creditors (CLIENT TO PROVIDE LIST)

- ❑ Names/addresses.
- ❑ Value of collateral.
- ❑ Amount of secured claim. Any unsecured portion?
- ❑ Perfected security interest. Obtain recorded documents. Conduct UCC search.
- ❑ Debtor's intent regarding secured property.
- ❑ Business or consumer property secured.
- ❑ Judgments. Obtain and review judgment.
- ❑ Garnishments.

- ❑ Recent purchase of automobile (Check title work to ensure done properly to prevent avoidance of lien by trustee).

4. Assets

- ❑ All assets identified by client. Remind client that the client will be signing under penalty of perjury. Discuss obligations and relationship to discharge.
- ❑ Joint or common property identified.
  - ❑ Real property. Residence? Obtain copy of deeds.
  - ❑ Personal property (all property owned).
    - ❑ Any property or items held for the debtor by third party.
    - ❑ Items held by the debtor for third party.
    - ❑ Property settlement, spousal support, child support.
    - ❑ Cash.
    - ❑ Bank/brokerage/credit union accounts.
    - ❑ Crypto currency.
    - ❑ Deposits.
    - ❑ Household items.
    - ❑ Electronics.
    - ❑ Books, pictures, art, antiques.
    - ❑ Collections.
    - ❑ Clothes.
    - ❑ Jewelry.
    - ❑ Firearms.
    - ❑ Stocks/bonds/investments.
    - ❑ Life insurance/annuity.
    - ❑ Security deposits/prepayments.
    - ❑ Interest in closely held business/corporation/partnership. Complete business search to verify all businesses and entities have been listed.
    - ❑ Interest in partnership.
    - ❑ Pension/retirement/stock options.
    - ❑ Vehicles (Cars, vans, trucks, tractors, sport utility vehicles, motorcycles).

  - ❑ Intangible property.
    - ❑ Tax refunds.
    - ❑ Earned but unpaid wages due to debtor from employer.
    - ❑ Claims against another person. See below.
    - ❑ Personal injury claims by debtor against third parties.
    - ❑ Property settlement owed.
    - ❑ Insurance claims and policies.
    - ❑ Hold promissory note.
    - ❑ Inheritance pending or likely in the future (Decedent has passed prior to or within 6 months after filing).
    - ❑ Any assets not yet acquired, but acquisition imminent -– dates established.
    - ❑ Executory contracts.
    - ❑ Sales, transfers, or gifts of property within one year.

- ❑ Loans owed by closely held business.
- ❑ Intellectual property, copyright, trademark, etc.
- ❑ Licenses, franchises.
- ❑ Any claims against any person. Does anyone owe your client money?
- ❑ Account receivable?
- ❑ Any other property.

NOTE: The debtor must disclose a claim that exists prior to the filing of the petition, regardless of whether a claim is pending in a court proceeding or has yet to be pursued in any way, and regardless of whether the debtor is even aware of the claim. 11 U.S.C. § 521.

Failure to list an actual or potential claim may preclude the debtor from pursuing the claim later in a non-bankruptcy action. You may want to ask a debtor:

- Have you been in an automobile accident in the last two years?
- Have you ever suffered an injury at work? Elsewhere?
- Have you ever been terminated from your employment?
- Do you think you could sue anyone for any reason?
- Have you ever filed a claim against an insurance company that you think was wrongfully denied?
- Are you involved in a probate matter or expecting to inherit something shortly?
- Have you ever consulted any other lawyer for any other purpose?
- Any chance of a disability settlement or social security settlement?
- Does anyone owe you any money?
- Can you sue anyone?

5. Exemptions (ORS Chapter 18 or 11 U.S.C. § 522)

NOTE: A debtor domiciled in Oregon may opt to use Oregon state exemptions (generally ORS Ch. 18) or federal exemptions under the Bankruptcy Code (11 U.S.C. § 522(d)). A debtor's circumstances will determine whether state or federal exemptions are best for a particular debtor. Deciding which assets are exempt may be one of the most important decisions for a debtor. For a debtor to claim an exemption under Oregon law, a debtor must be domiciled in Oregon for the 730-day period immediately preceding the commencement of the bankruptcy case. If Oregon law does not apply, the state where the debtor was domiciled during that time period will apply.

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A. **Oregon Exemptions**: Under Oregon law, a joint debtor may claim the full amount of an exemption in each of the following (a) books, pictures and musical instruments; (b) wearing apparel, jewelry and other personal property; (c) tools and instruments necessary to carry on a debtor's trade; (d) motor vehicle; and (e) $400 wild card in other property. Joint debtors may not be able to double exemptions in any other property.

- ❑ Homestead home. ORS 18.395. Homestead exemption applies to floating home and "manufactured dwelling." ORS 18.395(10).
- ❑ Household goods. ORS 18.345(1)(f).
- ❑ Books, pictures, musical instruments. ORS 18.345(1)(a). There is no federal exemption for this property.
- ❑ Wearing apparel, jewelry. ORS 18.345(1)(b).
- ❑ Tools of trade. ORS 18.345(1)(c).
- ❑ Firearms (1 pistol and 1 rifle). ORS 18.362. There is no federal exemption.
- ❑ Motor vehicles. ORS 18.345(1)(d).
- ❑ Animals. ORS 18.345(1)(e). There is no federal exemption.
- ❑ Health aids (prescribed). ORS 18.345(1)(h).
- ❑ Spousal/child support. ORS 18.345(1)(i).
- ❑ Right to compensation for injury and lost earnings. ORS 18.345(1)(j) (crime victim), ORS 18.345(1)(k) (bodily injury) and ORS 18.345(1)(l) (loss of future earnings of debtor or dependent).
- ❑ Public benefits, *i.e.*, Social Security, workers' compensation, welfare. 42 U.S.C. § 407 (Social Security, ORS 411.760 (public assistance), ORS 657.855 (unemployment), ORS 344.580 (vocational rehabilitation). ORS 656.234 (worker's compensation).
- ❑ Certain proceeds deposited in bank up to $7,500. ORS 238.445 and ORS 18.348(2).
- ❑ Earned Income Tax Refund. ORS 18.345(1)(n). There is no federal exemption.
- ❑ Wages (75%). ORS 18.385.
- ❑ College savings plan. ORS 348.863.
- ❑ Retirement plans/pensions/stock options. ORS 18.358 and ORS 238.445.
- ❑ Medical savings and health savings accounts. ORS 18.345(o).
- ❑ Veterans' benefits and loans. ORS 18.345(m).
- ❑ Life insurance. ORS 743.047, ORS 743.046 and ORS 743.050.
- ❑ Annuity benefits. ORS 743.049.
- ❑ Health and disability benefits. ORS 743.050.
- ❑ Burial lots. ORS 97.675 and ORS 97.660.
- ❑ Wildcard of $400 (Oregon). ORS 18.345(1)(p).

B. **Federal Exemptions**: Under Federal law, each joint debtor may claim the full amount of the permitted exemption. The dollar amount of many of the exemptions is adjusted by the Judicial Conference. 11 U.S.C. § 104.

- ❑ Homestead home. The debtor's aggregate interest, not to exceed $25,150 (amount adjusted, see 11 U.S.C. 104)) in value, in real property or personal property that a debtor or a dependent of a debtor uses as a residence11 U.S.C. § 522(d)(1).
- ❑ Household goods. 11 U.S.C. § 522(d)(3).
- ❑ Wearing apparel. 11 U.S.C. 522(d)(3).
- ❑ Jewelry. 11 U.S.C. § 522(d)(4).
- ❑ Tools of trade. 11 U.S.C. § 522(d)(6).

- ❑ Motor vehicles. 11 U.S.C. § 522(d)(2).
- ❑ Health aids. 11 U.S.C. § 522(d)(9) (professionally prescribed).
- ❑ Spousal/child support. 11 U.S.C. § 522(d)(10)(D).
- ❑ Right to compensation for injury and lost earnings. 11 U.S.C. § 522(d)(11).
- ❑ Public benefits, *i.e.*, Social Security, workers' compensation, welfare. 11 U.S.C. § 522(d)(10) and 42 U.S.C. § 407 (Social Security).
- ❑ Right to compensation for injury and lost earnings. 11 U.S.C. § 522(d)(11) (*e.g.*, crime victim, wrongful death of individual who the debtor was dependent, life insurance that insured individual whom the debtor was a dependent, personal bodily injury, and future earnings).
- ❑ Retirement plans/pensions/stock options. 11 U.S.C. § 522(d)(10) and (12).
- ❑ Life insurance. 11 U.S.C. § 522(d)(7) (unmatured life insurance) and 11 U.S.C. § 522(d)(8) (loan value of unmatured life insurance contract).
- ❑ Wildcard (Federal). 11 U.S.C. § 522(d)(5). The wildcard exemption is more generous than the one under Oregon law. A debtor may claim $1,475 (amount is adjusted), plus up to $13,950 (amount is adjusted) of any unused homestead exemption. Joint debtors may not double this exemption. A debtor does not need to claim a homestead to claim the additional amount of the wildcard.

6. Income and Expenses

- ❑ Monthly income for prior six months. Obtain and review wage stubs and other underlying documents regarding income.
- ❑ Future monthly income. See Schedule I.
- ❑ Future monthly expenses. See Schedule J.
- ❑ Calculate disposable income for applicable commitment period.

7. Attorney Disclosures

- ❑ Attorney fees that have been paid and due must be disclosed.
- ❑ Attorney fees shared must be disclosed.
- ❑ Funds in attorney trust accounts must be disclosed and listed in the schedules.
- ❑ Attorney requirements met.
- ❑ Initial retainer agreement within 5 days of first meeting with potential client.
- ❑ Notify client(s) of debt relief agency disclosure within 3 days of offering services (11 U.S.C. § 527 (a)(2)).
- ❑ Obtain copies of tax returns for at least prior 2 years.
- ❑ Obtain last 6 months of pay stubs from client(s) to calculate CMI (current monthly income)
- ❑ Provide last 60 days of pay stubs with trustee.
- ❑ Obtain Credit Counseling Certificate from client(s) prior to filing and file with court.
- ❑ Client(s) to sign 342(b) notice prior to filing.

8. Status of Debtor

- ❑ Income (must have amount income from all sources for the last 6 months). Ask for pay stubs, bank statements, and all other documents that may reflect or reveal any income.
- ❑ Specific expenses/disposable income established.

- ❑ Consider and evaluate whether a debtor is judgment proof.

9. Lien Avoidance

- ❑ Non purchase money security interest in household goods. (Note: Creditors rarely go after the household goods, so lien avoidance may not be necessary). 11 U.S.C. § 522(f).
- ❑ Judgment lien that impairs homestead exemption (Always void out these liens). 11 U.S.C. § 522(f).

10. Other Issues

- ❑ Income past 3 years (including gifts, gambling winnings, personal property sales).
- ❑ Identify all law suits during prior year.
- ❑ List garnishments during prior year.
- ❑ List payments made by your client or on behalf of your client regarding bankruptcy or dealing with creditors within 1 year before filing for bankruptcy.
- ❑ List transfers within last 4 years and transfers to self-settled trust within past 10 years.
- ❑ Identify payments to all creditors within 90 days.
- ❑ Identify all payments to insiders within 1 year (i.e., relatives, business associates, affiliates, etc.).
- ❑ List repossessions and foreclosures pending.
- ❑ Identify charitable contributions within last year.
- ❑ Losses, fire, theft, and other casualty during prior year.
- ❑ Property held for another.
- ❑ Secured transactions perfected properly (*i.e.*, car title). Conduct searches.
- ❑ Obtain all documents to provide United States Trustee prior to filing bankruptcy (pay advices and proof of income).
- ❑ Obtain documents for Trustee prior to filing bankruptcy (tax returns, bank statements, investment accounts, insurance policies, etc.).
- ❑ Verify that client has proof of social security number and acceptable picture identification.
- ❑ Consider timing of filing. When to file for bankruptcy may be a critical decision. There are all kinds of variables that may determine the best date to commence a bankruptcy (*e.g.*, status of litigation, transfers, payment of wages, etc.).
- ❑ Discharge for Chapter 13 similar to Chapter 7 with exceptions under 11 U.S.C. § 1328.
- ❑ Void judicial liens (judgments) that impair debtor's homestead exemption.

11. Effects of Bankruptcy

- ❑ Credit and credit report.
- ❑ Automatic stay.
- ❑ Discharge injunction. Discharge as to pre-bankruptcy debts.
- ❑ Avoidance of transfers and liens.
- ❑ Executory contracts and unexpired leases.
- ❑ Other _____

12. Closing Letter

- ❑ Send closing letter to the debtor confirming that your representation is concluded.
- ❑ File motion to withdraw if completed representation and following LBR 9010-1(f).
- ❑ Return debtor's original documents (keep a complete copy for your file).
- ❑ Inform debtor how long you will keep your file and when it will be destroyed.
- ❑ Include warning about claims discovered after discharge: "If you later determine that you have a claim against someone regarding events that happened before your bankruptcy, even if you learn of your claim after your bankruptcy, contact me immediately. The claim may not belong to you, and it may be necessary to reopen your bankruptcy case."

ELECTRONIC CASE FILING:

The United States District Court for the District of Oregon uses NextGen CM/ECF. NextGen allows you to maintain a single login and password for efiling and PACER access. For information about NextGen, you can visit the home page for the Oregon Bankruptcy Court (see link below). Click the tab "Electronic Filings." You must have a full version of Adobe Acrobat (not just the free "reader"). There is online training available.

INTERNET RESOURCES FOR BANKRUPTCY RULES, FEES, AND FORMS:

US Bankruptcy Court for the District of Oregon:
1. Home page: www.orb.uscourts.gov/
2. Rules/Orders/Forms: http://www.orb.uscourts.gov/rules. Click on Local Bankruptcy Forms (LBF). The bankruptcy court updates forms throughout the year. Changes to local rule become effective on December 1st.
3. Also see the federal judiciary website, www.uscourts.gov/forms/bankruptcy-forms official form.
4. For opinions for the US Bankruptcy Court of the District of Oregon, see https://www.orb.uscourts.gov/judges/opinions.

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