

D. PARKER LAW SIGNING MEETING PACKET

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RETAIN AND PAY

You likely have secured property -- that is, property that the creditor could take back if you stopped making the payment. Cars with loans and houses with mortgages are common examples, but there can be others. Under the bankruptcy code, there are only three options for dealing with secured debts: surrendering the property to the creditor, redeeming the property by paying for it in full at the time you file bankruptcy, or reaffirming the debt to take the debt out of bankruptcy and place it back on you.

In Idaho, however, there is a fourth option if you want to keep the property, are current on the payments at the time you file for bankruptcy, and believe you can remain current on your payments. This option, called "retain and pay," exists because under Idaho law, a secured creditor cannot foreclose or repossess secured property if the payments on the property are current. In the "retain and pay" scenario, your personal liability to pay the debt is wiped away by the bankruptcy. Importantly, however, the loan itself and the creditor's security interest in the property still exist, meaning that so long as you continue making the payments every month, the only thing that has changed is that your payments are voluntary. It does not become a lease or rental; when the loan is paid off (whether through monthly payments or by selling the property for at least the value of the loan and paying the creditor in full,) the security interest (lien) is released. However, if you fail to make payments the creditor will exercise the security interest and repossess/foreclose the property.

"Retain and pay" has several significant benefits, the biggest of which is that you get to keep the property so long as you want to keep paying on it, but your personal obligation to do so is gone. If, at any point, you decide you no longer want to keep the property, you can stop making the payments and give it back to the secured creditor, who cannot come after you for any deficiency if the value of the property is lower than what is still owed on the property.

Retain and pay also has some downside which you need to consider. First, because the payments are entirely voluntary and made only so that you can keep the property, these payments do not build your credit. Second, because you no longer owe the debt, the creditor will not make any attempts to collect it -- automatic payments and monthly statements usually stop, meaning you must take responsibility to ensure that the payment is made each month.

The most important thing to remember is that in order to keep the property, you **must** make the payment in full and on time. Because you no longer owe the debt, the creditor will likely not work with you if you are late, but will immediately exercise the security interest if payments become delinquent. If you keep up on your payments, however, "retain and pay" gives you the opportunity to keep your property while also discharging your obligation on the debt.

THE BANKRUPTCY ESTATE

Once you file your case, something comes into existence called the “Bankruptcy Estate.” This includes everything that you own. From this point until your case closes, you do not “own” your property. Rather, the bankruptcy Trustee assigned to your case owns this property on behalf of your creditors. It is likely (although not assured) that we have been able to protect most or all of it from being sold or taken through exemptions, and that the property will become “yours” again at the end of the case, but it is important that during the case, you remember that you do not have authority over your property. This is a small price to pay for getting your debts discharged.

1. Physical and Real Property – this is all the “stuff” you own, including the things in your household, your land/property, your cars, and any other physical property. During your bankruptcy case, it is important that you not sell, transfer, destroy, or give away any of this property. This includes not using the property as collateral for a loan; do not, for example, take out a title loan on your vehicle or pawn any of your property.
2. Money – all money in your accounts at the time you file bankruptcy, or all money that you would have been entitled to receive at the time you file bankruptcy belongs to the bankruptcy estate. While you are free to spend the money you receive after bankruptcy (your future paycheck, social security, disability, unemployment, etc.) you are not allowed to spend the money that was in your accounts at the time you filed. Furthermore, if you receive money from any other sources, let us know and do not spend it unless you are given permission to do so. This would include tax refunds, refunds for other overpayments, insurance pay-outs, payments of debts that someone owes you, payment of commissions that you earned prior to bankruptcy, lawsuit settlements, etc. In short, if money shows up other than your normal monthly check, you are probably not allowed to spend it. When in doubt, check with D. Parker Law first.
3. All other “interests” you might have – while your case is open, the Trustee is entitled to exercise any other interests you might have. For example, if you are in discussions of settlement on a lawsuit, potential lawsuit, or an insurance claim, you are not allowed to settle this claim on your own; only the Trustee can do that. If you have interests in a business, the Trustee is entitled to exercise those interests during the bankruptcy.

During your bankruptcy case, you need to remember that for this brief time, you do not “own” the things you have; the Trustee does. It is important that during this time that you freeze your finances and property; if you were to waste or spend assets of the bankruptcy estate during your bankruptcy, your case could be dismissed. When in doubt, please call us.

PAYING THE FILING FEE IN INSTALLMENTS

Per your request, you will petition the Court for permission to pay the Court filing fee (\$335.00) in four installments over the next 120 days. Please be aware of the following:

FIRST, to qualify for a payment plan, the Court must agree with your assertion that you cannot afford to make the full payment all at once. It is possible that the Court will deny your request. If this happens, you will be required to immediately pay the full \$335.00 fee, or your case will be dismissed.

SECOND, you are solely responsible for ensuring that the necessary payments are made in a timely fashion. D. Parker Law will not send you reminders that your payment is due, nor is there anything that we can do if you realize that you have missed or cannot make a payment.

THIRD, if you miss or are late on a single payment, the Court will send you a notice requiring you to complete payment of the full \$335.00 filing fee within twenty one (21) days. If you fail to do so, the Court **will dismiss** your case. If this occurs, D. Parker Law will not refund any portion of the legal fee that you have paid to D. Parker Law, and the Court will not refund any portion of the filing fee that you have already paid. In addition, you will NOT receive your discharge. Rather, your case will end at that point and your time and money will have been wasted. There is an opportunity to correct the problem, but in order to do so you must be prepared to (1) pay the full amount the the filing fee still owed; (2) pay an additional \$260.00 to reopen your case; and (3) pay D. Parker Law PLLC a legal fee of \$200.00 for the work involved in reopening your case.

FOURTH, you must pay your entire filing fee before you make any more payments or transfer any more property to any attorney, bankruptcy petition preparer, or anyone else for services in connection with your bankruptcy case. This means that beyond the work D. Parker Law has already contracted to do for you (such as attending your Creditor Meeting with you), D. Parker Law will not be able to undertake any additional legal work for you until you have paid the full filing fee to the Court.

FIFTH, you will need to make each payment in the form of money order or cash. No personal checks or debit/credit cards will be accepted. You will need to make each payment to the office of the United States Bankruptcy Court located at Suite 400, 550 West Fort Street, Boise, Idaho, 83724. Be sure to bring a copy of your case number and the Order allowing payments with you. Hand delivery, rather than mailing, is the best method of ensuring that the payment has been made.

You are requesting that the Court approve the following payment plan. You can complete the payments earlier, if you would like.

First Payment: \$85.00 by _____

Second Payment: \$85.00 by _____

Third Payment: \$85.00 by _____

Final Payment: \$80.00 by _____

IT IS POSSIBLE THAT THE COURT MAY MODIFY THIS SCHEDULE. IF YOUR REQUEST IS APPROVED, YOU WILL BE MAILED AN ORDER FROM THE COURT. FOLLOW THE DATES AND INSTRUCTIONS ON THAT ORDER, RATHER THAN THIS FORM.

What Happens Next?

1. We will file your Bankruptcy Petition. At this point, you will begin receiving notices from the Court, such as when the Creditor's Meeting is scheduled. You will also get periodic letters from us. Please read these. If you have questions or concerns, feel free to call us.
2. We will send you a letter outlining the date and time of the Creditor's Meeting, directions to the location, the documents we still need from you, and a reminder to attend the Debtor's Education Class.
3. You will need to provide us with your bank statements as outlined in our letter to you by the date listed in your letter.
4. If it is tax season and we only have the previous year's return, or if at any point while your case is open you file a new or amended tax return, we will also need a copy of that and any refund checks you receive so that those can be turned over to the Trustee.
5. You must attend the Debtor's Education Class within 60 days of filing, and send us the Certificate of Completion.
6. If we receive any request by one of your creditors to reaffirm a debt, we will forward that request to you and make a recommendation about whether or not to accept it. (It is rare that we would recommend that you reaffirm a debt.)
7. We attend the Creditor's Meeting, which will be set in 3-6 weeks. Be sure to bring your driver's license or other valid ID, and your social security card or original W-2.
8. After the Creditor's Meeting, we supply the Trustee with any information or corrections that the Trustee requested.
9. You should receive your discharge in approximately 60 days after the Creditor's Meeting. Please note that just because you have received a discharge doesn't mean the case is over. The Trustee may hold the case open for some time afterward. You must still obey any orders of the Trustee during this period, including any orders to turn over money or property. If you receive any money (other than normal paychecks) while your case is open, let us know and do not spend it until we receive instructions from the Trustee. This includes tax refunds, lawsuit settlement checks, payments of debts owed to you, commissions for work already done, etc. If you fail to do so, you could lose your discharge and be subject to other penalties.
10. The Court closes the case. This can happen immediately after receiving the discharge, or it can happen months later. You will receive notice from the Court, and from us, when this occurs.
11. If you would like your case file or original documents, please let us know within three months of the case being closed.
12. If your address or contact information changes at any time prior to when your case is closed, please let us know immediately.

THREE THINGS YOU STILL MUST DO

1. Provide Your Bank Statements

By ten days from today, you must provide us your bank statements for every bank account you have, covering the full 30 days before the date that we file your bankruptcy petition. We will send you a letter with the specific accounts and dates we need, but the sooner you get this done, the better. Please either drop these off in our dropbox or email them to kelly@dparkerlaw.pl.

We need the official bank statement from your bank, not a computer print-out. It is possible (and likely) that the 30-day date range will not be covered on one bank statement, but perhaps two. It is also possible that you do not yet have the "official" statement for the latter part of that range because it has not yet been mailed to you by your bank. If that is the case, you will need to go into a branch of your bank and speak to a teller, and ask them to print you a bank statement for your accounts covering those dates, and have the teller stamp that statement as official. The Trustee requires official statements several weeks before the Creditor Meeting. THE LAW REQUIRES THAT YOU PROVIDE THE BANK STATEMENTS FOR THE ENTIRE 30-DAY PERIOD PRIOR TO FILING YOUR BANKRUPTCY. It is extremely important that you provide these statements to our office as soon as possible.

2. Take the Debtor's Education Course

You have already taken a credit counseling class, but after you file for Bankruptcy, you must also take a Debtor's Education Course. Please arrange to do so at your earliest convenience AFTER we file your petition. If you do not complete this course, you will NOT receive a discharge. We must file your Certificate of Completion with the Court. A list of approved agencies can be found on our website: www.dparkerlawidaho.com/resources

3. Attend the Meeting of Creditors

You will be assigned a date and time for the Meeting of Creditors in the next 3-6 weeks. It is generally (although not always) on a Thursday morning or early afternoon. You will receive notification from the Court, as well as a letter from our office. This meeting is MANDATORY and cannot be changed. You MUST arrange to be there.

Please bring your original unaltered social security card (or original W2), and a valid and current identification (such as a driver's license or passport.)

The meeting takes place in the Washington Group Central Plaza, 720 Park Blvd. in Boise. Take the Connector into downtown Boise. The Connector changes to Murtle Street. Drive all the way to and across Broadway. It is just after the Broadway intersection on the left. It is the building with the large fountain in front of it. Please allow time for traffic and construction delays. The meeting takes place on the second floor, in room 210, just across from the elevators. It is marked with a plaque.

Be there 15 minutes early. An attorney will meet you in the second-floor lobby just outside the meeting room. Sometimes the attorney has other clients before you, so please check in the meeting room for your attorney. Please text or call her at (208) 991-0433 if you are lost, running late, or have

had another issue arise. If we have time, we will try to observe some of the meetings scheduled in front of you so you can get comfortable with the process.

The meeting itself typically takes 10-15 minutes. However, your case may be called any time from the exact hour scheduled to an hour and a half after your scheduled time. We have no control over when your case is actually called. Please make arrangements to have several hours available.

If possible, please try to wear at least business casual dress. Plan to turn your cell phone OFF when we enter the meeting room, or leave it in the car.

When your case is called, we will go up to the table at the front of the room. You will sit across from the Trustee; your attorney will sit beside you. You will be sworn in and the Meeting will begin. The Trustee will ask you a number of questions. There is also an opportunity for your Creditors to ask questions, although that happens rarely.

Questions Commonly Asked by the Trustee in the Creditors Meeting

1. Have you read and understood the bankruptcy information sheet provided by the US Trustee Office? (Included with this packet -- please read it so you can truthfully answer "yes" to this question.)
2. Did you read and sign your bankruptcy petition before it was filed? Are you personally familiar with the information contained therein?
3. To the best of your knowledge, is the information you provided true and correct?
4. Are there any changes, errors, or omissions on your petition I should know about?
5. Are all of your assets and property listed? Are all of your debts and creditors listed?
6. Have you filed for bankruptcy before? When?
7. Do you understand the consequences and effects of a bankruptcy discharge? (Described in the US Trustee Information Sheet.)
8. Do you know what it means to reaffirm a debt? (Described in the US Trustee Information Sheet.)
9. Are you paying alimony or child support to anyone?
10. Were you employed on the date of filing? Has your employment changed since then?
11. Are there any other sources of income coming to your household?
12. Have you filed your tax returns up through and including the current tax year? Is the one you provided a true & correct copy of the most recent tax return you filed?
13. Have you received all tax returns you believe you are entitled to receive?
14. When did you file your most recent taxes? What was your refund? What did you spend your tax refund on? How long did it take for you to spend that refund?
15. Have you paid or been garnished by any one creditor \$600 or more in the last three months?
16. Have you borrowed any money from family or friends in the last two years? Paid them back at all? Given them any property in exchange for the money?
17. Have you sold or transferred any of your property or made any gifts over \$600 in the last two years?
18. Is anyone holding any of your property?
19. Have you had any bank accounts or wages garnished in the last three months? Any repossessions?
20. Have you paid any debts or expenses belonging to anyone else in the last year?
21. Are you suing or contemplating suing anyone? Do you believe you have the right to sue anyone?
22. Other than your attorney for bankruptcy, have you spoken to an attorney in the last two years?
23. Do you know anything about an inheritance you may receive?
24. Do you own any jewelry with diamonds or precious stones over one carat?
25. Does anyone owe you money?
26. Do you own any stocks, bonds, or timeshares?
27. Have you made any credit card balance transfers in the last six months?

Rebuilding Your Credit After Bankruptcy

Any individual who has to file for bankruptcy is going to see a negative impact on their credit score. This matters because lenders rely on credit scores to determine whether or not to offer you credit, like a mortgage or car loan and, if they do, at what interest rate. Rebuilding credit is often a chief concern after bankruptcy, although it is only important if you intend to use credit in the future. Your bankruptcy will remain on your credit report for ten years, but a credit score is most concerned with how you've been doing recently, not how you've done in the past. Careful work can help you rebuild this score long before the ten years is over. Here are some tips:

- Take some time to rebuild yourself financially before worrying about your credit score. Make and stick to a budget. Don't spend more than you can afford. Save for big items. Pay all of your bills on time. Build an emergency savings account. You can't file for Chapter 7 bankruptcy for another eight years, so don't get yourself in debt trying to rebuild credit, only to find yourself worse off than where you started.
- Open or maintain a checking and savings account. This demonstrates financial stability. It can also give you a fresh slate to practice good financial habits. If you open a new account, talk to the banker about signing up for automatic online bill pay. This will ensure that your bills are paid on time, which is a major factor in good credit.
- Before you use credit, ensure that it reports to the credit bureaus. Before you apply for and use any credit, check to see if that company reports to the credit bureaus. If they do not, this credit puts you in debt, but is worthless for rebuilding your credit.
- Avoid high-interest credit or too much credit. Creditors are very interested in extending credit to people just out of bankruptcy because they know you can't file again for eight years. Avoid any high-interest credit (anything above 15%) or credit with high penalties and fees. This includes payday loans, high-interest credit cards, and the like. Also, avoid applying for too much credit, such as multiple credit cards, as this negatively impacts your credit score.
- Apply for a secured credit card. You will begin receiving offers for a secured credit card very soon after you file your bankruptcy. A secured credit card is one which is limited to an amount that you have deposited. Compare interest rates of different cards, so you can select a card with the best rate and a low annual fee. A rate around 15% is good and an annual fee less than \$30 is desirable. There are some cards with no annual fee. Each month, spend precisely 33% of the credit limit (no more or less), and then pay it in full on the date that it is due.
- Get a friend or family member to add you as an authorized user to their credit card.
- Purchase household items on credit. In some cases, buying furniture or an appliance on monthly terms can help rebuild your credit, if the creditor reports to the credit bureaus.
- Pay off your credit balances in full every month. While you are reestablishing your credit, it's critical to timely pay off your full balance on your bills every month. Late or missed payments after a bankruptcy will hurt your credit score.
- If you are continuing to make payments on a house or car from before the bankruptcy without having signed a reaffirmation agreement, making payments will only stop repossessions or foreclosures. Since you do not personally owe those debts any more, making these payments will not rebuild your credit score. If, several years after the bankruptcy, you can qualify to refinance at a good rate, this will restore the debt and those payments will start to build your credit score. This is not a necessary step, and so if you are not comfortable with incurring thousands or hundreds of thousands of dollars of debt, do not refinance.
- Continue to monitor your credit score. Check your credit score regularly while you are actively improving your credit. You may be surprised how quickly that number can recover! If you have had trouble with identify theft in the past, consider putting a security freeze on your credit, or hiring a service to protect your credit and identity.

US Trustee Bankruptcy Information Sheet

When You File Bankruptcy

You can choose the kind of bankruptcy that best meets your needs (provided you meet certain qualifications):

Chapter 7 – A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possibly real estate depending on the law of the State where you live and applicable federal laws.

Chapter 13 – You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12 – Like chapter 13, but it is only for family farmers and family fishermen.

Chapter 11 – This is used mostly by businesses. In chapter 11, you may continue to operate your business, but your creditors and the court must approve a plan to repay your debts. There is no trustee unless the judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under chapter 7, you may be able to change your case to another chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

What Is a Bankruptcy Discharge and How Does It Operate?

One of the reasons people file bankruptcy is to get a “discharge.” A discharge is a court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for–

- most taxes;
- child support;
- alimony;
- most student loans;
- court fines and criminal restitution; and
- personal injury caused by driving drunk or under the influence of drugs.

The discharge only applies to debts that arose before the date you filed. Also, if the judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. The judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a court order.

You can only receive a chapter 7 discharge once every eight years. Other rules may apply if you previously received a discharge in a chapter 13 case. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement (see below) or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

What Is a Reaffirmation Agreement?

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law. Reaffirmation agreements—

- must be voluntary;
- must not place too heavy a burden on you or your family;
- must be in your best interest; and
- can be canceled anytime before the court issues your discharge or within 60 days after the agreement is filed with the court, whichever gives you the most time.

If you are an individual and you are not represented by an attorney, the court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

IF YOU WANT MORE INFORMATION OR HAVE ANY QUESTIONS ABOUT HOW THE BANKRUPTCY LAWS AFFECT YOU, YOU MAY NEED LEGAL ADVICE. THE TRUSTEE IN YOUR CASE IS NOT RESPONSIBLE FOR GIVING YOU LEGAL ADVICE.