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Initial Retainer Letter

Dear _____:

Thank you for choosing the law office of Henze & Associates, P.C. to help you with your possible bankruptcy filing. It is clients such as yourself that keep us in business as a majority of our clients are the result of referrals from past satisfied clients. Our goal is to give you the best possible representation in your case.

This letter will first set forth information, hints and suggestions concerning your representation by this firm. We have found that it is important to have this information in written form so that everyone knows what is expected. After all, we are here to help you...but we can do nothing without your help! The following are some pointers, some things you will need to know about your case, some "Do's" and "Don'ts" about bankruptcy, and some tips on how we can work together effectively.

Requirements for Filing a Bankruptcy Case

Enclosed with this letter are a number of documents.

A. First, there is a "**Documents Needed**" form that checks off the documents that you will need to provide us with. If you can't locate any of the documents we require, be sure to call or e-mail us to discuss what we might be able to do to substitute for those documents. For example, if you can't locate tax returns, you can always ask IRS or the State of Colorado to provide you with a transcript. You can get information about how to do this (along with a slew of other articles and copies of forms on our website. (See Use Our Website, below).

These documents include the following. However see the **Documents Needed** sheet for a complete list:

- a) Copies of your past **six months** of paycheck stubs for both you and your spouse (if applicable). Be aware that even if your spouse is not filing, we will need his/her paycheck stubs as well. These are required to complete the "means test" and prove to the Court whether you can do a Chapter 7 case, or what your payments would be in a Chapter 13 case.

b) Copies of your last three years' filed tax return. If you have not filed returns over the past three years, please let us know and be prepared to file at least the current year prior to filing.

c) Copies of any and all lawsuits that have been filed against you. This is especially important if the creditor has received a judgment against you or is garnishing. If possible, bring any foreclosure or repossession notices.

B. **Bankruptcy Worksheet.** Please fill this document out to the best of your ability. There is a reason for each question asked. If you don't understand what is being asked, either e-mail us or leave it blank and we'll discuss it with you after we receive the worksheet. You should give special ATTENTION to the information concerning what property you own and any lenders (auto or mortgage lenders) who have property as collateral. When it asks for values for property such as clothing, jewelry and household goods, remember that we are not looking for what it would cost to replace the item. We are looking for its current value if you were to sell the property at an auction or flea market. In these cases, often all you can do is give your best estimate. However, for example, if you have a baseball card or collectable that you know is worth \$10,000, don't try to hide its value. This worksheet is confidential and is only used by us in preparing your case.

C. **Credit Report Authorization.** This two page form is required to run a Bankruptcy Credit Report. This report accumulates the reporting from all 3 major credit reporting companies and provides us with the proper bankruptcy address for these companies. **Sign where indicated on the 1st page** and return your signature page to us. Once we receive the signed form, we'll run the credit report. Note that in some cases we may need to speak with you on the phone when the report is run as the credit report company often asks for the answer to a couple personal questions about you that we may not be able to answer in your absence.

D. **Creditor Sheets (colored).** Once we run your credit report, we will forward you a copy. This will show many of your creditors, but usually not all of them. There are often many people that you owe money to that do not report to the credit agencies. The colored creditor sheets are a place where you can list the information about any person or company you may owe that is not listed on the credit report. We suggest taking the time to "brainstorm" for a few minutes and see who you can think of that you owe who are not listed on the credit report. We want to list everyone that you owe money to, including relatives, friends and companies that you plan to continue to pay (such as auto loans, mortgages, and rent-to-own agreements). You should give special attention to the name, address (and if possible) the account number for each creditor and any collection companies for that debt that you have received correspondence from. The exact amount owed on the debt is not as important!

E. **Fee Agreement.** When you came into the office the first time, you received an informational copy of our fee agreement. If you have not already done so, you'll now need to sign the bottom of that form (enclosed) indicating that you have retained the firm to work on your behalf.

F. **Getting the Information to Us!** When you gather together these documents, you can get them to us in several ways. First, if you have the capability, the documents can be sent to us electronically by e-mail (markh@bkattny.com). Second, you can fax them to us at (303) 830-2811. Third, you can mail them to us at the address above. Finally, you can always physically bring them by the office between 8:00 a.m. and 6:00 p.m. If, for some reason, we are not at the office, you can always leave them in the secure provided drop box found in the back hallway next to the office. If you physically drop by the office, it is best if you leave copies and keep the originals for your records. If this is not feasible, we'll make copies of the originals and return the originals to you the next time you are in the office.

When Will My Case Be Filed?

You are really in control regarding when your case is filed. How quickly we can file your case will depend upon whether you have filled out the worksheets, provided us with all of the necessary documentation, and have paid all of the required attorney fees and costs. On some occasions, with your understanding and permission, we may purposefully "time" the filing due to special strategic circumstances in your case. There are many reasons why filing at one time may be beneficial as opposed to filing at a different time. *Please be aware that creditors are not stopped from taking further actions such as foreclosure, repossession or garnishment simply because you have retained an attorney. These things will stop ONLY WHEN YOUR CASE HAS BEEN FILED.*

Remember that after you have provided us with the Worksheet and the other required documents, you will need to have a "Review" meeting either by phone or at the office to go over your filled out paperwork and the documents that you provide. Once we have the majority of your information, we will call you and schedule this meeting. At this meeting, we will let you know if additional information or documentation is still needed and jointly come up with a plan concerning when the case should be filed. If your case is not proceeding as quickly as you would like, chances are that this means that we are waiting for you to get additional required paperwork to us. Don't hesitate to get this paperwork or information in to us as this will stimulate the office to move forward. When the case is ready to go, you will need to physically come in the office to review and sign the final paperwork.

Communication with the Law Office

It is important that you be able to reach us when needed. It is also important that you be kept abreast of developments in your case. At Henze & Associates, P.C., we pride ourselves on maintaining good communication with our clients. Sadly, we cannot be physically available for you at every moment as we are typically quite busy, however, you may find that the following will help us to remain in contact with you during your case:

1. **Make sure we always have your current address and phone number.**
2. **Use e-mail when possible.** We tend to answer our e-mail quickly. Telephone calls typically get returned in batches when we have the opportunity.
3. **Make a list of your questions and thoughts before we meet or talk by phone.**

4. Above all, do not hesitate to ask questions. Our objective is to provide quality representation and to give you peace of mind during this time. If you are unsure of anything, please don't hesitate to ask.

Some General Suggestions in All Cases!

1. Discontinue making any further payments to any creditors that you intend to include in the bankruptcy. However, you should remember that if the creditor is secured and you stop making payments, the creditor will eventually be permitted to recover the secured property and take it away. If you intend to continue to pay a debt after the bankruptcy and retain the secured collateral (e.g. house or a car), please continue making the regular payments. This is true even if you are in arrears on your payments to that creditor.
2. Stop using all of your credit cards and charge accounts. Creditors object when they see credit purchases made shortly before filing a bankruptcy. Do not make **any** further cash withdrawals!
3. Direct your bank, credit union and payroll office to stop all automatic withdrawals being taken out of your paycheck for the benefit of creditors. If possible, set up your bank's online "Bill Pay" feature as this will be the best way for you to make future payments to ongoing creditors.
4. You may sell assets at any time prior to filing the bankruptcy if you obtain a fair sales price **and** can account for where the funds have gone. Please let this office know if you have or intend to do so. However, you do not want to have large amounts of cash hanging around at the time your case is filed.
5. Within the 90 day period prior to bankruptcy, you **may not** prefer one creditor over another by paying off large sums in excess of \$600.00 to that one creditor while ignoring the others. Please note that this time period is 1 year when paying off relatives or friends that know you intend to file a bankruptcy.
6. When you come in to sign your paperwork, be sure to keep the balance in all of your bank, financial or credit union accounts low. The trustee may want to see copies of your account statements to see how much money you had in the bank on the date your case is filed. Cash is a non-exempt asset that the court can take. If you show \$1,000 in your bank account on the date of filing (regardless of whether or not there are \$1,000 or more in checks that have not yet come through), the trustee **will** want you to pay the money over to the court. We suggest keeping your account balance below \$50.00. Several days after the case is filed, you may again use the account in the normal manner.
7. If you owe money (including overdraft loans) to your bank and will be bankrupting that debt, the bank will be unlikely to allow you to continue using your account (whether checking or savings) after you file. Upon filing, they will also immediately seize any funds left in that account. In this case, prior to filing you should locate and open a new account at another bank. After the new account is opened, be sure that your balance is below \$50.00 on the date of filing. After you file, you may have trouble getting a bank to open a new account for you.
8. Make sure that your income taxes (both IRS and State of Colorado) have been prepared. If you have returns that have not been filed, DO NOT mail them to the IRS or the State of Colorado. Instead, bring the original returns in to this office so that we may have them delivered to their "Special Procedures" office. They will process the return quicker than the normal filing address. The IRS and State of Colorado will want all unfiled tax returns prepared and filed within 30 days after your case is commenced.

SPECIAL INFORMATION REGARDING FORECLOSURES:

Be sure to let us know if you have received notices that your residence is in foreclosure. This is particularly important if it is your desire to either delay the foreclosure or keep the house by paying back the back amounts owed in a Chapter 13 plan. A Chapter 7 case will not stop a foreclosure, but it may, in certain circumstances, delay the sale and allow you more time to make other arrangements. Note that if a foreclosure sale occurs before you file a bankruptcy case, there is nothing further that can be done to stop or delay the sale. The purchaser at the sale can normally force you to vacate the property within 10 to 30 days after the sale.

If you do not plan to retain the residence, it generally makes sense for you to stay in the home as long as possible until the foreclosure sale occurs. This may allow you to save money while you continue to live in the property rent and mortgage free. In addition, the creditor may appreciate the fact that you are keeping the property in good shape during the time you reside in it. Finally, regardless of whether or not you file a bankruptcy, you are still obligated for the monthly utilities, homeowner's association dues, yard maintenance, and negligence liabilities until the home is sold and the title is taken out of your name.

IF A CREDITOR CONTACTS YOU:

A. If a Creditor calls after you have retained Henze & Associates, P.C., but before the bankruptcy is filed, you should tell the creditor that you have retained an attorney and then give the creditor our name and telephone number and ask them to contact us. However, if you do not actually file a case within a reasonable time after retaining us, the creditor may disregard us and recommence calling you directly.

B. Once your case is filed, it sometimes takes a while before the creditor gets the information to the appropriate department or listed on the appropriate computer. If a Creditor calls after the bankruptcy has been filed, give the creditor our name and telephone number together with the case number (it will be similar to this: 15-12345 SBB) and the date of filing. If the creditor has been listed in your papers, the creditor must then contact this office to obtain further information. If the creditor refuses to leave you alone, let us know immediately as the creditor may be in contempt of court. Remember that if the creditor is not listed, he will have no knowledge of the bankruptcy and he **will** contact you first.

C. If a Creditor contacts you by mail **after the bankruptcy is filed**, relax and throw the papers out! Most large creditors require a month or two to reorganize their computer files to delete you from their list.

D. If you are served with a Garnishment or Court Papers after the bankruptcy has been filed, do not panic, but contact this office immediately. We will contact the creditor or his attorney and remind them of the bankruptcy filing. Do not ignore them as the court will continue with its efforts unless it is informed of the bankruptcy filing.

IF YOU HAVE A SECURED DEBT:

If a debt is secured by an auto or home, there are several options available to you.

- 1) Option 1: Surrender the Property: The Creditor will be entitled to come pick up the property within a reasonable time (i.e. 45 days) of the date that you file the bankruptcy.
- 2) Option 2: Continue Paying the Debt: If you desire to keep the property, you may catch up on any arrears (if any) immediately and continue to make the regular payment. In this case, you will be permitted to retain the collateral so long as you remain up to date on your Plan Payments and the regular debt payments.
- 3) Option 3: Avoid the Lien: Certain debts claim to be secured, but are in reality unsecured debts. For example, if the debt is secured by property that would otherwise be exempt (such as household goods or in some cases a non-mortgage residence lien), the court may avoid (nullify) the lien. Note that this may not be done where the money was lent for the express purpose of purchasing the collateral.
- 4) Option 4: Pay the Arrears (and only the arrears) through a Chapter 13 Plan: You may elect to keep the collateral by proposing a Chapter 13 Plan where the Plan pays off the arrears that are owed as of the date of filing, **however** you must immediately recommence making the regular payments from that point on as they become due so that you do not become further behind. These regular payments are in addition to the Chapter 13 Plan payments.
- 5) Option 5: Pay the value of the collateral through a Chapter 13 Plan: Your Plan may (in some cases) also offer to pay the creditor the fair market value of their collateral through the monthly Plan payments. This may allow you to pay off a smaller amount than the remaining principal balance owed on the debt. For example, if you owe \$10,000 on an automobile valued at only \$5,000, the Plan may allow you to pay only \$5,000.

COURT HEARINGS:

In the normal Chapter 7 or 13 case, you will only be required to attend one hearing. That hearing, known as a **First Meeting of Creditors** (or to attorneys as the “§341 hearing”), is brief and unremarkable. It is really NOT a Court Hearing and you will NOT be in a Courtroom or in front of a Judge. The purpose is for the appointed Trustee to review your case and ask questions concerning any assets that are not exempt or any answers that indicates untruthfulness or hidden assets. Creditors may appear and ask questions concerning your assets if they wish, however they have long ago learned that it is not worth their time to show up, so creditors rarely appear. Still, the hearing is mandatory and will result in the dismissal of your case if you do not appear. You will receive a notice from the Court of the hearing date and further instructions from us after your case is filed.

Prior to filing your case, you will have taken a Credit Counseling Class (either online, by telephone or in person). **IMPORTANT: PLEASE REMEMBER** that after your Meeting of Creditors you will also have to do a follow up Financial Management Class that **must** be completed within a few weeks thereafter. We'll remind you at the Meeting of Creditors, but understand that failure to complete this final class will result in your final Discharge being denied. **DON'T LET THIS HAPPEN!**

AUTO INSURANCE

If you have a car payment that you will continue to make (either directly to the creditor or through a Chapter 13 plan, it is important to have both a valid driver's license **and** valid auto insurance covering that vehicle (including collision and comprehensive coverage). Please bring this information with you or deliver it to this office within one week after your case is filed so that we may forward the proof on to

your creditor. The Bankruptcy Court routinely allows creditors to repossess vehicles if the court is made aware that insurance does not exist or has lapsed.

USE OUR WEBSITE

Of course, don't hesitate to use our Website (www.bkattny.com). It is one of the best and most informational bankruptcy websites available anywhere in the country. When you first get on the website, there is a slew of general information about bankruptcy available to the general public on the "Additional Information" page. However, as a client, you have access to a special "Client Login" page that provides a large number of documents, forms, articles and resources that are ONLY made available to CLIENTS. When you click on this page, you'll be asked to enter a password. That password is **bkinfo**. Once you enter that password, you'll be taken to a page that lets you choose from 4 other pages with indexes of additional resources available to you. On the "Before Filing" pages you'll find copies of many of our office forms (in case you need or lose one that has been provided to you) together with resources to help you gather the information necessary prepare for and to file your case. On the "After Filing" pages, you'll find additional resources that answer most of the questions that people have after their case has been filed and how to deal with a myriad of issues that may come up during or after your case. Feel free to consult these resources at any time.

Hopefully you will find this information enlightening and reassuring. While filing a bankruptcy is certainly not a fun experience, most people are surprised about how painless the process really is. The intent of the law is to recognize that financial mistakes or things beyond your control should not constantly haunt you or ruin the rest of your life. It provides you with the opportunity for a fresh start should you decide to give it a try. If you have any further questions, please do not hesitate to contact us.

Henze & Associates, P.C.

Mark E. Henze

Enclosures