Bankruptcy Answers and Issues

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SUMMARY TABLE OF CONTENTS

DETAILED TABLE OF CONTENTS

CHAPTER 2: CHAPTER 13 BANKRUPTCY, A BIRD'S EYE VIEW

I. Is Chapter 13 Right for You?

II. Key Events in a Typical Chapter 13 Bankruptcy

III. Filing for Chapter 13 Bankruptcy

IV. Exemptions

A. The Basics

B. Types of Exemptions

V. Valuing Your Assets

CHAPTER 5: PREPARING TO FILE

I. Is the Timing Right?

A. Are Your Finances in Bad Enough Shape?

B. Do You Have Reasons to Wait?

Introduction: Why File Bankruptcy?

Most people who file for bankruptcy are completely overwhelmed by their debts.

You may have lost your job and the new one you found doesn't pay nearly as well. Your family may be facing large medical expenses not covered by insurance. Perhaps a divorce or business failure has devastated your finances. Or maybe you got caught up in the foreclosure crisis.

Creditors and collectors are hounding you. Your paycheck may have been garnished and you are now unable to live on what remains. Your marriage might be buckling under the financial strain.

You might be ready to tap your IRA or 401k to pay creditors. That would put the short term before the long term, and would be a major mistake. Maybe you are thinking about paying off the unsecured debts, like medical bills and credit cards, rather than focusing on secured debts like mortgag-

es and car loans. That would also be a mistake. Bankruptcy may offer you a far better alternative that can preserve your retirement, protect your assets, and get you out of debt.

THE AUTOMATIC STAY WILL IMMEDIATELY STOP CREDITOR HARRASSMENT

One of the best benefits of bankruptcy is delivered by the automatic stay.

Within days after you file, your creditors and debt collectors receive a notice from the court about your filing. This notice, the automatic stay, tells them to halt all contact and collection actions. The harassing telephone calls, incessant letters, court proceedings, and garnishments will cease.

If anyone calls, simply tell them you filed bankruptcy, give them your case number, and politely instruct them to call you no more. Substantial penalties await violators, so everyone usually complies.

THE STIGMA OF BANKRUPTCY IS DIMINISHING

Admittedly, bankruptcy still carries some stigma of financial failure, but not nearly as much as it once did. The U.S. is a forgiving place that loves to see people rebound from setbacks. Bankruptcy is but a temporary setback that can soon be replaced by a track record of financial responsibility.

Bankruptcy is smart public policy. It has been shown to (1) keep families together that might otherwise be torn apart by financial stress, (2) reduce homelessness, (3) prevent suicides, (4) free up income and resources for children, and (5) enable debtors to again become consumers contributing to a healthy economy.

Based on forgiveness rather than retribution, bankruptcy helps people whose expenses have been ravaged by causes that are frequently out of their control. The primary causes of bankruptcy are job loss, medical expenses, divorce, and business failure.

Many famous people have resorted to bankruptcy before they were able to achieve success, including Abraham Lincoln, Ulysses Grant, Henry Ford, Milton Hershey, Mark Twain, and Walt Disney.

Most people today understand the principle of failing fast, which means that if adversity strikes, it is better to move through it and into the recovery phase as quickly as possible. You, your family, and your country are better off having you moving ahead instead of being crushed for years by an insurmountable debt load.

YOU CAN REBUILD YOUR CREDIT

Without a doubt, bankruptcy brings temporary financial burdens. For several years after your filing, many financial transactions will be affected. Whether you are renting or buying a home, leasing or buying a car, borrowing for a business, or obtaining a credit card, your bankruptcy will make those transactions more difficult to complete.

There is no denying that bankruptcy will harm your credit standing. Your filing will be placed on your credit report and may stay there for up to 10 years.

However, your credit score can bounce back to a decent number as soon as 18 months after you file, and can be in strong territory 24 months after filing. As your bankruptcy recedes into the past, it will have less impact on your current credit score.

The first step for protecting your credit score is to file bankruptcy before your reputation is damaged by repeated late pays, delinquencies, collections, and charge-offs. The more damage you do before filing, the longer it will take for your score to rebound. Avoid the common mistake of compounding the effect of bankruptcy with repeated late pays and collections.

After filing, you can begin rebuilding your score by obtaining small amounts of credit and making timely payments. Obtain a gas card and pay in on time every month. Sign up with a secured credit card (meaning you deposit upfront the amount of your credit limit), use it lightly and only for necessities so you don't get into trouble again, and religiously pay it off every month.

If you reaffirmed your car loan and have been making timely payments, you will have three credit sources reporting to the bureaus. If you keep a clean record with all three, your FICO score should climb to the low of mid 600s within 18 months and the high 600s within 24 months after your bankruptcy discharge.

Perhaps most important, during those 18 to 24 months, you will be making forward progress instead of sliding backwards financially and emotionally under a crushing debt load.

As a result of a bankruptcy, you will learn to be more financially self-sufficient. You will learn to live without much credit, which is better than being up to your ears in debt. After a few years of financial problems, lenders will again be ready to offer you credit.

YOUR CAREER WILL NOT BE DAMAGED

Fear that bankruptcy will lead to loss of a job or job opportunities is one of the main reasons people avoid filing. This fear is largely a misconception. Bankruptcy does not mean the end of employment or good paying jobs.

The law prohibits your current employer from retaliating against you because of your bankruptcy filing. Retaliation includes termination, demotion, reduction in pay, and denial of raises and promotions. (However, filing for bankruptcy will not prevent your employer from firing or disciplining you for other valid reasons, such as incompetence, dishonesty, or breaking company rules).

If you are looking for a new job, your bankruptcy filing will not preclude you from getting hired for most government jobs. No government agency, whether federal, state, or local, can refuse to hire you just because of your bankruptcy.

If your job requires a security clearance, filing bankruptcy will usually put you in a better position than not filing. Continuing to carry debt you cannot repay makes you more vulnerable to bribery, blackmail, and selling secrets.

Although a private employer may legally decline to hire you because of a bankruptcy, for many positions, a future employer will not care about, or even be aware of your personal

bankruptcy. But for certain jobs (primarily those involving money and financial responsibilities), private industry employers may care about your bankruptcy. In this case, there are some steps you can take to lessen the effect of the bankruptcy on your future employment opportunities, including candidly explaining your bankruptcy and providing references to vouch for your trustworthiness.

YOU WILL ELIMINATE MOST OF YOUR DEBTS

Most people are pushed into bankruptcy by their unsecured debts. The good news is that bankruptcy can eliminate most of these including credit card debt, medical bills, personal loans, collection accounts, money judgments not arising from fraud, older income tax debts, and deficiency balances.

If you choose to file bankruptcy, you will probably want to keep some of your secured debts. For example, you will probably reaffirm and then keep paying your car loan so that your car is not repossessed. If you own a home, you may also want to keep paying your mortgage and property taxes so that your home is not foreclosed on.

Debts that you cannot discharge in bankruptcy include alimony, child support, and income taxes incurred in the last three years. Student loans can be discharged, but only under circumstances that are difficult to meet.

YOU WILL KEEP ALL OR MOST OF YOUR PROPERTY

People often fear that filing for bankruptcy will leave them destitute. That fear is unfounded. You will not lose everything you own. In Chapter 7, the most common type of bankruptcy,

the bankruptcy trustee will sell your non-exempt property to pay your creditors. You get to keep all your exempt property. Most people who go through Chapter 7 have no non-exempt property and get to keep everything they own.

All states have exemption laws that allow you to keep a significant amount of property. The specific type and value of property that is exempt varies from state to state. As a general rule, you will be able to keep such necessities as clothing, furniture, appliances, and other household goods. Most pensions and retirement accounts are also exempt.

Exemption amounts for cars and homes differ from state to state. Typically, you can keep a car of modest value. Homestead exemptions range from zero, to virtually unlimited amounts. To keep a car or home, your equity in the property must not exceed the available exemption. And you must keep up with the loan or mortgage payments. Otherwise, the lender could repossess your car or foreclose on your home.

In Chapter 13 bankruptcy, none of your property is required to be liquidated to pay your creditors. Your creditors are paid (at least partially) with the payments you make under your payment plan rather than with the proceeds from the sale of your assets.

In Chapter 13 bankruptcy, you can keep your home and your car, regardless of how much equity you have in them. However, you will still need to stay current with the payments to prevent foreclosure or repossession. If you are behind, you may be able to get caught up by adding the arrearages into your payment plan and paying them off within a reasonable time.

IF YOU CANNOT PAY YOUR DEBTS, THIS WILL HAPPEN

Most bankruptcy filers go through a period of mounting distress before recognizing they cannot get out from under their crushing debts on their own. If you are at the beginning of this period and have so far only received dunning letters and calls, here is what may follow:

- Unpaid rent. You will be evicted if you do not pay your rent, so this should be a high-priority debt. In addition, tenant-screening agencies collect eviction information from court records and report it to subscribing landlords. Being evicted will make it more difficult for you to rent another place.

- Missed car payments. Most auto lenders will move quickly to repossess your car if you miss more than one payment. Hiding your car from the repossession service is difficult when you are regularly driving it. The lender will resell the car at auction, which often will not bring in enough to fully offset your outstanding balance. You remain responsible for the difference, which is called the deficiency balance. It will likely be turned over to a collection agency, who you will hear from shortly. And you no longer have a car to drive.

- Judgments, garnishments, and liens. If you owe several thousand dollars or more, an unpaid creditor may decide it is worth suing you for the unpaid balance. On obtaining a judgment, the creditor will seek to garnish 25% of your wages if you have a job, seize your bank account, or put a lien on any real estate you own. If you have kept money in a bank to which you owe money, the bank may simply remove the money it is owed from your account.

- Student loan defaults. If you are in default on student loan payments, the collecting agency can have the IRS intercept any federal income tax refund you are owed. The IRS will notify you beforehand, so you will have a chance to argue the intercept is inappropriate.

- Delinquent utility bills. Unpaid utilities will quickly result in a cutoff of services. And you will not be able to reinstate those services until the unpaid sum has been cleared.

You will usually be better off filing bankruptcy before any of the above steps are taken.

IS IT TIME TO ACT?

The first step towards resolving your debt issues is assessing your situation. Your answers to the following questions are a quick way to gauge how bad your debt situation is:

- Do you not pay one or more bills each month?
- Are any of your credit cards charged to their limits?
- Do you make only the minimum payment on any of your credit cards?
- Do you use one credit card to pay another?
- Have you taken out a debt consolidation loan?
- Have you borrowed money to pay for daily living expenses?
- Has a creditor closed an account on you?
- Have you bounced any checks?

If you answered yes to any of these questions, you are on a path to financial trouble. If you answered yes to three or more questions, you should begin learning about bankruptcy.

As a general rule, you are better off filing before your credit score hits bottom because of nonpayment, late payment, debts sent to collection, judgments and liens on your property.

Chapter 1: Chapter 7 Bankruptcy, A Bird's Eye View

I. Is Chapter 7 Right for You?

Once you decide that bankruptcy is the best way to deal with your debt problems, you will have to decide which Chapter of the Bankruptcy Code to file under. Chapter 7 is by far the most common type of bankruptcy filed by individuals. Chapter 13 is the next most common type of individual bankruptcy. Chapter 11 can also be used by individuals, but rarely is because it's very expensive and complex.

For the vast majority of people, the choice is between Chapter 7 and Chapter 13. The two types of bankruptcy have some similarities, but many differences.

§1:01 How Chapter 7 Bankruptcy Works

In Chapter 7 bankruptcy, you file papers with the court disclosing all your income, assets, debts, and financial activities for the past several years. The bankruptcy trustee sells your non-exempt assets (if you have any), then uses the money to repay your unsecured creditors a portion of the amount that you owe. If you have secured debts (like a car loan, for example), you can let the creditor repossess the property; keep up your payments and keep the property; or "buy" the property from the creditor for its current replacement value. See §1:32.

You get to keep any property that is classified as exempt (items like your clothes, household furnishings, and perhaps a modest car). State laws determine which of your assets are exempt. See §1:31. Many people who file for Chapter 7 bankruptcy are able to keep all of their property because it is all exempt.

Most or all of your unsecured debts will be eliminated. Typically included are medical bills and credit card balances. See §§1:36-1:40. However, some debts, like child support, student loans, and some tax liabilities cannot be discharged. See §§1:41-1:47. The typical Chapter 7 bankruptcy is completed in about 5 months.

§1:02 How Chapter 13 Differs

In a Chapter 13 bankruptcy, you develop a plan to repay at least some percentage of your debts over three to five years. You then make monthly payments to the trustee for the du-

ration of the plan. If you comply with the plan, you get to keep all your property and most your debts are eliminated. See Chapter 2.

§1:03 Are You Eligible for Chapter 7? The Means Test

Not everyone can file a Chapter 7 bankruptcy. If over half of your debts are consumer debts, you must pass a "means test" to qualify. Consumer debts are debts incurred primarily for a personal, family, or household purpose. The means test does not apply if more than half of your debts are from your unincorporated business.

You will pass the means test and be eligible for Chapter 7 if (a) your average annual income is equal to or less than the median income for households your size in your state; or (b) you don't have sufficient income (after deductions for living expenses) to repay at least a minimum amount of your debt (as specified in the bankruptcy laws) over five years.

The median is the point at which there is the same number of families with a higher income as there is with a lower income. You can find a chart with the median income of each state on the US Trustee's website. https://www.justice.gov/ust/means-testing.

Household size is determined by how many relatives live under your roof. However, if any of those relatives earns an income (including a spouse who is not filing with you), that income must be added to yours to determine household income.

If your income is above the state median, the means test takes your average monthly income over the previous six months and deducts certain allowable expenses set by the IRS, as well as some of your actual expenses and actual payments for certain debts. For instance, you can deduct the actual amount of your medical insurance premium, but monthly food cost is based on a regional average. The result determines how much disposable income you have left each month that could be used to pay your debts. The lower your monthly disposable income, the more likely you are to qualify for Chapter 7 bankruptcy.

If you are not eligible for Chapter 7 bankruptcy, you may still be able to file under Chapter 13 or Chapter 11.

Although most filers are required to take the means test, some are exempt by law. These include:

- Filers with primarily business-related (non-consumer) debt.
- Veterans with a disability rating of at least 30%, or who were discharged because of a disability that occurred in the line of duty, and who incurred most of their debt while on active duty.
- Filers who are in the military reserves or the National Guard and are called to active duty before they file their bankruptcy case.
- Those who file a Chapter 11 case.

The means test can be challenging to complete without help. Your bankruptcy lawyer can explain the details, tell you what financial records you need to gather, and perform the calculations for you.

§1:04 Are You Eligible for Chapter 7? Previous Bankruptcy Discharge or Dismissal

You cannot file for Chapter 7 bankruptcy if you had your debts discharged in a Chapter 7 bankruptcy filed within the preceding eight years or a Chapter 13 bankruptcy filed within the preceding six years.

You cannot file for Chapter 7 bankruptcy if your previous bankruptcy case was dismissed within the past 180 days because:

- You asked for the dismissal after a creditor asked the court to file the automatic stay.
- You violated a court order.
- The court found that your bankruptcy was an abuse of the bankruptcy system or fraudulent.

See §§5:17-5:24.

§1:05 Choosing Between Chapter 7 and Chapter 13

Most qualifying individuals choose Chapter 7 over Chapter 13 because Chapter 7 is cheaper, faster, and less of a burden. Some people will choose Chapter 13, even if Chapter 7 is available, because it provides certain advantages for their situation.

For example, in Chapter 13 you may be able to:

- Catch up with past-due house or car payments and stop foreclosure or repossession;
- Keep non-exempt property that would be sold in a Chapter 7 bankruptcy; or
- Eliminate some debts that cannot be discharged in Chapter 7.

As a general rule, Chapter 7 is probably best if you:

- Have primarily unsecured and dischargeable debts (credit cards, medical bills, personal loans).
- You have little or no non-exempt property.
- You need not cure defaults to retain secured property.
- You do not have sufficient disposable income to fund a Chapter 13 repayment plan.

Chapter 13 is probably best if you:

- Have non-dischargeable debts (alimony, child support, taxes, fines and penalties, student loans).
- Want to keep non-exempt assets.
- Want to cure a mortgage or car loan default.
- Have high disposable income.

A bankruptcy lawyer can review your situation and advise you on the better choice.

II. Key Events in a Typical Chapter 7 Bankruptcy

If you are eligible for and decide to proceed with a Chapter 7 bankruptcy, here is an overview of what you can expect.

§1:06 You Complete Credit Counseling

Before you can file for bankruptcy, you must complete a credit counseling session provided by an agency approved by the U.S. Trustee Program. The counseling must be completed at least one day but no more than 180 days before you file.

The credit counseling is easy to obtain and should not factor into your decision whether or not to file bankruptcy. Your filing decision should be determined primarily by the depth of your financial troubles and how much they are affecting your life. You can receive the counseling by phone, in person, or

online. It usually takes an hour or two. When you finish, you will receive a certificate of completion that will need to be filed with the bankruptcy court.

The goal of the pre-filing counseling course is to explore all available solutions to your financial problems and to discuss alternatives to filing for bankruptcy. The counseling will explain the alternatives, ask you to create a budget, request information about your assets and debts, and explain the basics of managing your finances.

Some filers find the counseling helpful; others do not. Even if the counselor suggests alternatives to bankruptcy, you do not need to follow the recommendations.

§1:07 You Complete and File Your Petition and Other Papers

These papers include your means test calculations showing you are eligible for Chapter 7 and schedules listing all your property, your creditors, and your current income and expenses. See §§1:14-1:19. If you are represented, your lawyer will prepare the papers. After you review and sign them, your lawyer files them with the bankruptcy court. You must pay a filing fee.

§1:08 The Automatic Stay Issues

On receipt of your petition, the court clerk prepares an "order for relief" and sends it to all your creditors. The order tells your creditors that they must stop all attempts to collect the debt from you. As a general rule, the stay remains in effect until your bankruptcy case is concluded, but the court can lift it under certain circumstances. See §1:20-1:23.

§1:09 The Trustee Is Appointed

A trustee will be appointed to represent the interests of your creditors. The trustee's job is to take possession of any non-exempt property you may own, sell the property, and distribute the proceeds among your creditors. The trustee is paid a commission on the sale of your nonexempt property. The bankruptcy trustee also runs the meeting of creditors.

§1:10 You Attend the Meeting of Creditors

Around five or six weeks after you file for bankruptcy, you will need to attend the meeting of creditors. Most meetings last only ten to fifteen minutes and are held in the trustee's hearing room. The trustee will put you under oath and ask you some questions about your finances. Typically the trustee will want you to confirm that all the information in your bankruptcy papers is accurate. Although your creditors will be notified of the hearing and have the right to attend, they rarely do. See §§1:24-1:-30.

§1:11 Creditors File Claims and the Trustee Liquidates Your Non-Exempt Assets

If you have any non-exempt property, your unsecured creditors must file a proof of claim specifying what they are owed. Otherwise, they won't be paid anything. The trustee reviews the claims and objects to any that appear improper. The court rules on the objections. The trustee seizes and sells your non-exempt property and distributes the proceeds to your creditors. See §1:34. This step is often skipped because most people who file for Chapter 7 have no non-exempt property.

§1:12 You Complete a Financial Management Course

You must complete a financial management course approved by the U.S. Trustee before the court will grant you a discharge. After finishing the course, you file a certificate of completion with the court. The form must be filed within 45 days after the meeting of creditors. You shouldn't wait until the 45 days have almost expired to take the course. It's best to get it done as soon as possible after you file. Your case will be dismissed (and you will have to start all over again) if you miss the deadline.

Like the pre-filing counseling requirement, the pre-discharge education course must be taken with an approved organization. You can go back to the same company where you took your pre-filing course. The course will address a variety of issues including how to use credit responsibly and how to develop a manageable budget. The course will last from one to two hours, and the fee for the course may be slightly higher than the fee for the pre-filing course.

§1:13 Your Debts Are Discharged

After the trustee has liquidated all of your nonexempt assets, if any, and distributed the proceeds to your creditors, the trustee will file a final report with the court, and you will be discharged from all dischargeable debts. See §§1:36-1:47.

III. Filing for Chapter 7 Bankruptcy

§1:14 Checklist of Documents to Gather

The first step in filing for bankruptcy is preparing your bankruptcy petition and the schedules and other materials that must be filed with the petition. You will need to gather a number of documents so your lawyer can prepare your bankruptcy filing.

Start gathering these documents now even if you haven't made a final decision to file. The more organized you are, the more quickly your lawyer can prepare your papers if you decide to proceed.

Here's a checklist that will help. It's a good idea to make copies of all documents just in case any get lost.

Income:

- Pay stubs for yourself and your spouse, even if your spouse may not be filing with you, for the preceding six months.
- Records of other sources of income your household received in the preceding 6 months, such as gifts, sales of property, rent, and support.
- Your tax returns for the preceding three years.
- Your most recent bank statements.

Debts:

- Your most recent bills from every creditor.
- Any divorce decree or court order requiring you to pay child or spousal support.
- Any judgments entered against you or pending suits.
- All correspondence between you and your creditors or collection agencies.
- Any other documents showing debts you owe others, such as promissory notes.
- Any documents showing money owed to you.

Property:

- Real estate deeds.
- All your insurance policies, including home and auto.
- Vehicle titles.
- Your lease or mortgage.
- A list of all assets in your possession.
- You may also want to begin saving receipts for items you purchase.

Proof of Identity:

- Your driver's license
- Your Social Security card or other proof of your Social Security number.

For further information on documents and information you'll need to file for bankruptcy, see §§5:45-5:52. Below is an overview of the official forms that must be filed with the bankruptcy court. For a detailed discussion of the forms, see §§5:53-5:60.

§1:15 The Bankruptcy Petition and Creditor Matrix

Your bankruptcy petition provides the court with basic information, such as your name and address; the type of bankruptcy you are filing; how many creditors you have; how much you owe; how much your property is worth; and whether you have any non-exempt assets.

In addition to the petition, you must file a list of all your creditors and their mailing addresses (the creditor matrix) and a form showing your complete Social Security number.

§1:16 Schedules A through C: Your Assets

On Schedule A, you list all real property you own, its current value, and the amount of the mortgage still owed. On Schedule B, you list all personal property, such as cash, investments, household furnishings, and vehicles, and each item's value. On Schedule C, you list all property you claim as exempt. See §1:31

§1:17 Schedules D through G: Your Debts and Creditors

In Schedule D, you list all creditors that hold secured claims and the amount you owe them. These are creditors who have liens on property you used as collateral for the debt. On Schedule E, you list creditors having unsecured priority claims and the amount you owe. Priority claims are claims that will be paid first from any non-exempt assets you may have. The most common of these are domestic support obligations (alimony and child support) and taxes. On Schedule F, you list all other unsecured creditors and the amount of their claims against you. It's important to be thorough and list all your debts. Failure to list a debt could mean it is not discharged. See §1:47.

If you are involved in a partially unperformed contract (an executory contract), you must list this contract and any unexpired leases in Schedule G.

§1:18 Schedules H through J: Your Personal and Financial Information

Schedule H asks you to provide information about co-debtors including both individuals and corporations that are also liable for any debts included in your schedules.

Your current income and expenditures must be listed in Schedules I and J.

§1:19 Statements of Financial Affairs and Current Monthly Income

The Statement of Financial Affairs requires you to answer questions about financial transactions such as payments to creditors and other transfers of property that occurred in the year or two before filing. Sometimes the trustee can void these transactions and get the money or property back to distribute among your creditors.

The Statement of Current Monthly Income shows your average monthly gross income for the previous six months. If it is above the median income for same sized family in your state, you must complete the means test calculations (see §1:03) to establish your eligibility for Chapter 7 bankruptcy.

IV. The Automatic Stay

§1:20 How It Protects You

The automatic stay stops collection efforts by virtually all of your creditors. Immediately after you file your bankruptcy petition, the clerk of the bankruptcy court will send a notice to all your creditors that the stay is in effect.

A creditor that violates the automatic stay after receiving notice of your bankruptcy filing can face harsh penalties. You may be able to recover actual and punitive damages and attorneys' fees from the creditor.

§1:21 Activities Prohibited by the Stay

Once a creditor receives notice of the stay, the creditor cannot:

- Contact you seeking payment.
- Ask you to furnish security (collateral) for an unsecured debt.
- Bring a lawsuit against you.
- Pursue a pending suit against you.
- Attempt to enforce a judgment against you.
- Continue with any debt enforcement efforts that are already begun, such as wage garnishments and sales of your property.
- Perfect a lien against property in your bankruptcy estate (i.e., property you owned when you filed for bankruptcy).
- Repossess or foreclose on property in your bankruptcy estate.

Your monthly bills for your home mortgage and car loan will stop. If you plan to continue to pay them to avoid foreclosure or repossession, you'll have to make a note of the payment amount, due date, and the creditor's address so that you can send in the payment on your own.

The automatic stay does not stop all collection efforts against you. For example, alimony and child support can still be collected. The stay won't stop an eviction if the landlord obtained a judgment of possession before you filed for bankruptcy or you are using illegal drugs or otherwise endangering the property. The IRS can continue with some auditing and tax assessment activities, but it can't put a lien against your property or seize it.

§1:22 When the Stay Ends

The automatic stay remains in effect until your case is concluded. Once you receive a discharge from the bankruptcy court, the stay ends, but your creditors cannot collect any discharged debts.

However, if you had a previous bankruptcy case dismissed within one year before you filed again, the automatic stay will terminate in 30 days unless the court finds that you are refilling in good faith. The case will be deemed to be filed in bad faith if you had more than one case under Chapters 7, 11, or 13 dismissed within the previous year for failure to provide the court with essential documentation and there has been no change in your financial condition. If you filed two or more cases in the previous one-year period, the stay will not go into effect. This rule prevents you from repeatedly filing for bankruptcy just to keep your creditors at bay.

The automatic stay stops efforts by secured creditors to repossess or foreclose on your property, but they may go forward with the repossession or foreclosure once the stay terminates or is lifted if you have not reaffirmed the debt, or redeemed, or surrendered the asset.

§1:23 Lifting the Stay

The bankruptcy court may lift the automatic stay for a particular creditor before your case is concluded if the creditor gives the bankruptcy court good cause. In a Chapter 7 case, secured creditors often ask the court to lift the stay when:

- The creditor holds a mortgage and the debtor has missed mortgage payments and appears unable to catch up.
- The property securing the debt is valuable, but uninsured and the creditor fears the property could be lost.
- The property securing the debt is depreciating rapidly, and the creditor believes the debtor will not turn over the property or redeem it or reaffirm the debt. See §1:02.

V. The Meeting of Creditors

Everyone who files for bankruptcy has to attend a meeting of creditors (also called the section 341 meeting after the applicable section of the Bankruptcy Code). If you skip it, the court could dismiss your case without discharging your debts.

§1:24 Time and Place

After your lawyer files your bankruptcy papers with the court, the bankruptcy clerk will send you a notice of the date, time, and place for the meeting. Generally, the meeting is scheduled for about six weeks after you file for bankruptcy. The meeting is usually held around a table in a conference room.

§1:25 What to Bring

You must bring proof of your Social Security number and a government issued photo ID. The meeting will need to be rescheduled if you forget these items. Your trustee may ask that you bring additional documents to the meeting such as pay stubs, bank statements, property deeds, mortgage documents, and car titles. Your lawyer will tell you if you need to bring any of these items.

§1:26 Who Will Be There

In most cases, the only people at your meeting will be you, your spouse who must attend if he or she filed with you, your lawyer, and the bankruptcy trustee. The bankruptcy trustee runs the meeting. Your creditors will be notified about the meeting and are entitled to attend and ask you questions, but they rarely do.

§1:27 Purpose of the Meeting

The meeting of the creditors gives your bankruptcy trustee and any of your creditors that wish to appear the chance to ask you questions about your property and debts. The trustee wants to know whether you have any non-exempt assets that can be sold to pay your debts.

§1:28 What Will Happen at the Meeting?

The trustee will place you under oath and ask you questions. Typically, the trustee will want to know whether the information about your income, assets, and debts in your bankruptcy petition and schedules is accurate.

The bankruptcy trustee may ask you some additional questions, such as how you determined the values of your assets, and whether you are expecting to receive additional money from an inheritance or lawsuit anytime soon that might be available for creditors. The trustee may also ask you if you have made any payments to creditors or transferred money or property to others before your bankruptcy. The trustee may be able to void these transfers and get the money or property back for your creditors.

The questioning by the trustee is typically brief, lasting between ten and fifteen minutes. After your bankruptcy trustee is finished asking you questions, your creditors will have an opportunity to ask questions. The trustee will then conclude the meeting. The meeting could be continued to a future date if the trustee has asked you to submit additional documents or amend your bankruptcy papers.

§1:29 Checklist of Typical Trustee Questions at the Meeting of Creditors

- ☑ Did you read the petition and schedules before signing?
- ☑ Is everything true and correct?
- ☑ Are there any errors or omissions?
- ☑ Did you list all of your assets?
- ☑ Did you list all of your debts?
- ☑ How did you reach the value listed for your house, car, etc.?
- ☑ Is your most recent tax return true and correct?
- ☑ Are you expecting a tax refund?
- ☑ Do you owe anyone domestic support?
- ☑ Do you own a business or have you owned a business in the last two years?
- ☑ Have you paid any friends or relatives in the last year?
- ☑ Have you sold, transferred, or given away any property in the last six years?
- ☑ Do you own a trust?
- ☑ Do you expect to inherit any money?
- ☑ Have you been in an accident or do you have a right to assert a claim?
- ☑ Does anyone owe you money?

§1:30 Possible Problems

Most meetings go off without a hitch. When problems do arise, they usually fall into these categories:

1. *You transferred something of value to family members within two years of filing.* If you borrowed money from family and have paid some or all of it back before filing, the trustee can force your relative to give up the payments. The money is then distributed to creditors. See §5:06.

2. *You made large payments to one creditor shortly before filing.* The trustee does not want one creditor favored over another, and so may redistribute large payments you made prior to filing. §5:07.

3. *Property values on loan applications differ from those on your bankruptcy paperwork.* If you or a loan broker pumped up asset values on a loan application, a creditor could ask you some embarrassing questions. Blaming the loan broker will not get you past the fact that you signed the application.

4. *Your paperwork raises a red flag.* Audits occur in a small percentage of bankruptcies when the paperwork raises red flags. For example, if you have an expensive home but put a low value on your furnishings, the

trustee may send an auditor to your home. A random audit may require you to submit bank statements with explanations of large deposits and withdrawals.

5. *You went on a pre-filing spending spree.* A creditor may challenge your discharge if you went on a spending spree shortly before filing. Maybe you took an expensive vacation or bought some pricey personal items. Creditors can challenge these debts. Bankruptcy law doesn't entitle you to charge luxuries that you never intended to pay for because you know you are going to file for bankruptcy. See §5:14.

VI. What Happens to Your Property

§1:31 How Exemptions Work

Probably one of the big questions on your mind is what property you will be able to keep and what property you will have to turn over to the trustee to be sold for the benefit of your creditors.

The property you are entitled to keep (called "exempt" property) is determined by state law, which can vary considerably from state to state. Most states allow you to keep up to a specified value of property in various categories such as a home, vehicles, household goods, clothing, tools used in your profession, insurance policies, and retirement benefits.

In some places, certain categories of property are exempt no matter what the value. The types of property that tend to be non-exempt include:

- Real estate, other than a home.
- Luxury vehicles.
- Valuable collectibles and art.
- Antiques.
- Expensive jewelry and designer clothing.
- Cash and investments.
- Business assets other than tools of your trade.

Some states allow filers to choose between two sets of exemptions: state exemptions and exemptions in the Bankruptcy Code. As a general rule, you use the exemptions of the state where you live. If you haven't been living there for at least two years, you may need to use the exemptions of the state where you formerly resided.

Many people who qualify for Chapter 7 bankruptcy have no non-exempt assets and are able to keep all of their property.

If you have a lot of non-exempt property, you will probably want to consider filing under Chapter 13, which allows you to keep all your property but requires you to pay back some of your debt.

For a detailed discussion of exemptions and an extended example. See §§4:27-4:46 and §§4:53-4:56.

§1:32 When You Own Exempt Property That Is Security for a Debt

You may own exempt property that is securing a debt. Cars, jewelry, and furniture bought on credit are common examples. Your bankruptcy will discharge your liability for the debt, but not the lien that the creditor has on the property. So if you do not keep up the payments, the creditor can repossess it.

In general, you have three options with regard to exempt property that is security for a debt:

1. If you cannot keep up the payments, you can surrender the property to the creditor. Since your personal liability on the loan will be discharged in your bankruptcy, if you owe more on the loan than the property is worth, the creditor cannot try to collect the rest of the debt from you.

2. You can redeem property purchased for personal or household use by paying the lender the property's current retail value. Most items will have a lower retail value than the remaining balance on the loan, making the redemption a good deal. The difficulty is that you will have to come up with the money for the redemption.

3. You can reaffirm the debt. A reaffirmation agreement is a new contract between you and the creditor. You assume the debt and become personally liable for it after your bankruptcy is complete. The downside is that, if you get behind in the payments, the creditor can repossess the property and, if the property is worth less than your debt, pursue you for the difference.

You have to make a decision and let the bankruptcy court and your creditors know by filing a form called Statement of Intentions before the meeting of creditors. The decision of whether to sign a reaffirmation agreement is tricky. You'll want to discuss it with your bankruptcy lawyer.

Sometimes the lender will offer better terms than the original loan that make the reaffirmation agreement attractive. Alternatively, some lenders will agree to accept payments and allow you to keep the property without a reaffirmation agreement so that you will have no personal liability on the loan.

If the property is worth less than the cost of repossessing it (often the case with computers, appliances, and furniture), it may not make sense to reaffirm the debt. The creditor is unlikely to follow through with repossession.

Credit card companies sometimes offer to let you keep a credit card if you reaffirm the debt. This is rarely a good idea, especially since the lender will likely allow you only a low credit limit.

§1:33 Keeping Your Home and Car

The two items of property that people are most concerned about in bankruptcy are homes and cars. To keep your home or car, you must satisfy two conditions:

1. You must not have any significant equity in your home or car that is not exempt. Your equity is the amount you would be left with if you sold your home or car after paying off the mortgage or car loan and the costs of the sale.

2. You must be current on your mortgage or loan payments and you must continue to make your payments during and after your bankruptcy.

If you have no significant non-exempt equity, the trustee won't want to sell your house or car because the sale will net nothing for your creditors or the trustee. However, if you are behind on your payments, the lender may foreclose on your home or repossess your car once the automatic stay is no longer in effect.

If you are underwater on a second mortgage, you may be able to keep your home even if you are behind on the payments. The lender has no incentive to foreclose because the lender won't get anything from the sale. It will all go to the first mortgage holder. To keep the home, you will still have to stay current on your first mortgage.

§1:34 If the Trustee Seizes your Non-Exempt Property

Your bankruptcy trustee has the authority under the Bankruptcy Code to seize your non-exempt property, sell it at an auction, and distribute the proceeds among your unsecured creditors.

If the nonexempt (or partially exempt) property is security for a debt, the bankruptcy trustee will repay the secured creditor the remaining balance on the loan. Next, the trustee will give you the amount you are entitled to as an exemption, if any. The trustee will be paid a commission on the sale. The amount that remains will be given to your unsecured creditors, who may receive only a fraction of the amount they are owed.

§1:35 Buying Your Property Back from the Trustee

Before selling the property, the trustee may offer you a chance to buy the property back for whatever price you can agree on. The trustee may agree to a reduced price to save him or her time and money that would be expended on an auction. For example, if you own a car with a value of $10,000 and $3,000 is exempt, the trustee may offer to let you purchase the car for the amount the trustee would end up with after paying the costs of the sale and paying you your exempt amount. Thus, you might be able to buy the car back for less than $7,000.

VII. Discharge of Debts

If everything goes smoothly in a Chapter 7 case, you can expect to receive a notice of discharge a few months after the meeting of the creditors. The bankruptcy court will send a notice in the mail to all the creditors listed in your bankruptcy petition notifying them of your bankruptcy discharge.

A discharge means that the creditor can no longer enforce the debt. A discharge prevents the creditor from contacting you or initiating collection efforts on the discharged debt. Below is an overview of the debts that are discharged and the debts that are not discharged in Chapter 7 bankruptcy. For an expanded discussion, see Chapter 3.

A. Debts That Are Discharged

§1:36 Credit Card Balances

Credit card debt is probably why most people file for bankruptcy. The bad economy and high rates of unemployment mean that many people are unable to make even their minimum monthly payment. Virtually all credit card debt can be discharged in bankruptcy. The exceptions are credit card debt incurred recently for luxury items and credit card debt incurred as a result of fraud.

§1:37 Medical Bills

Medical bills are a common reason for filing for bankruptcy. An accident or illness can easily lead to insurmountable medical bills for the uninsured or underinsured. Fortunately, bankruptcy allows you to discharge this debt. Dischargeable

medical bills can be for any form of medical treatment including hospital bills, doctor's bills, rehabilitation services, and emergency services.

§1:38 Lawsuit Judgments

If you lose a civil lawsuit, the court issues a judgment ordering you to pay money to the winner. If you don't pay voluntarily, the other party may enforce the judgment against you in a number of different ways: seizing a bank account, garnishing your pay, or placing a lien on your home. Most lawsuit judgments for money can be discharged in bankruptcy. There are, however, a few circumstances in which a judgment may not be discharged, such as judgments arising from a DUI (see §1:44) or a willful and malicious act (see §1:47).

§1:39 Personal Loans and Promissory Notes

Personal loans are dischargeable in bankruptcy. It doesn't matter from whom you borrowed the money. Nor does it matter whether you signed a written promise to pay it back (a promissory note) or whether your repayment promise was oral. The only exception is for fraud.

§1:40 Leases and Contractual Obligations

With few exceptions, bankruptcy will relieve you of contractual obligations, including a lease of real property (like an apartment) or personal property (like a car). You will not need to complete your obligations under the contract and the other party will not be able to sue you for damages for breaching the contract or lease. However, you have the option of keeping the lease or contract in effect by assuming it.

B. Debts That Cannot Be Discharged

Not all debts are eligible for a bankruptcy discharge. If you have primarily non-dischargeable debt, you may want to consider Chapter 13 bankruptcy which can provide you with an opportunity to catch up with arrearages over the course of your repayment plan.

The debts that cannot be discharged in Chapter 7 bankruptcy are outlined below.

§1:41 Domestic Support Obligations

Domestic support obligations are child support and alimony established by:

- A separation agreement, settlement agreement, or divorce decree.
- A court support order.
- A child support enforcement agency determination.

§1:42 Other Divorce and Separation Related Debts

Debts you owe to your spouse, former spouse, or child cannot be discharged in Chapter 7 if they were incurred:

- During a separation or divorce; or
- As a result of a divorce decree, court order, or separation agreement.

However, these debts can be discharged in Chapter 13 bankruptcy. See §2:50.

§1:43 Fines and Restitution Obligations

Fines imposed on you for violating the law cannot be discharged in bankruptcy, nor can obligations to pay restitution to the victim.

§1:44 Intoxication Related Claims for Personal Injury or Death

Debts incurred for personal injuries as a result of operating a motor vehicle or vessel while intoxicated cannot be discharged in bankruptcy. However, debts for property damage are dischargeable.

§1:45 Tax Debts

Income tax debts less than three years old and fraudulent tax debts are not dischargeable in Chapter 7 bankruptcy. But see §1:47 regarding older income tax debts.

C. Debts Subject to Special Rules

§1:46 Student Loans

Student loans are not dischargeable in a bankruptcy case unless you can show the court that you qualify for a hardship discharge, which is difficult. A hardship discharge requires you to fulfill three requirements:

1. You must be able to show the court that if you were forced to repay the student loans, you would be unable to afford a very minimal standard of living.

2. You must provide evidence that your current financial state will continue for a significant amount of time.

3. You must show the court that you made a good faith effort to repay the loans. A good faith effort is proven if you repaid the loans for at least five years before filing for bankruptcy.

For further details, see §3:285.

§1:47 Older Income Tax Debts

Recent tax debts and fraudulent tax debts are not dischargeable in Chapter 7 bankruptcy. In addition, any debts that you incur to pay a tax debt are not dischargeable (but they can be discharged in Chapter 13). This rule is intended to prevent you from effectively discharging your tax debt by converting it to a new debt and then discharging that debt.

You may be able to discharge your income taxes if you meet five criteria:

1. The due date for filing the tax return must have been at least three years before your file for bankruptcy.

2. The tax return must have been filed at least two years before you file for bankruptcy.

3. The tax assessment must be at least 240 days old.

4. The return must not be fraudulent.

5. You must not be guilty of tax evasion.

For further details, see §§3:29-3:31.

§1:48 Debts Not Dischargeable if Creditor Objects

Certain debts are not dischargeable if the creditor objects during your bankruptcy and proves to the court that the debt fits into one of these categories:

- Fraudulently incurred debts (e.g. you knowingly wrote a bad check, lied on a credit application, charged luxury items with the intention of filing for bankruptcy so you would never have to pay for them).
- Debts arising from your willful and malicious acts (e.g. vandalism, assault, arson, etc.) including both injury to a person or to property
- Debts from embezzlement, larceny, or breach of fiduciary duty.
- Debts not listed in your bankruptcy papers unless (1) the creditor knew or should have known about your bankruptcy even without notice from the court or (2) all of your property is exempt so that the creditor wouldn't have received any payment.

VIII. Chart: Chapter 7 Bankruptcy Action Steps and Deadlines

Action Step	Deadline
Step 1 You attend pre-filing credit counseling.	180 days or less before filing petition.
Step 2 You file Petition, Statement of Social Security #, and Matrix listing all creditors with bankruptcy court.	
Step 3 Automatic stay issues preventing creditors from further collection efforts.	On filing petition.
Step 4 You file remaining paperwork including: Schedules; Statement of Financial Affairs; Statement of Current Monthly Income and Means Test Calculations; and other documents.	If not filed with petition, must be filed within 14 days after filing petition. Your case will be automatically dismissed if these forms are not filed within 45 days after the petition is filed.
Step 5 You file Statement of Intentions telling creditors what you plan to do with property securing a debt: surrender it; redeem it; or reaffirm the debt.	Within 30 days after filing petition or before the meeting of creditors, whichever is earlier.
Step 6 You file tax return for year preceding filing with bankruptcy court.	7 days before meeting of creditors.
Step 7 You file tax returns for previous 4 years with bankruptcy court.	1 day before meeting of Creditors (if requested).
Step 8 You gather photo ID; evidence of SSN; pay stubs; financial statements.	Bring to meeting of Creditors.
Step 9 You attend meeting of creditors.	21 to 40 days after filing.
Step 10 You perform intentions as stated in Statement of Intentions.	Within 30 or 45 days after filing intentions. Creditors can repossess the property if you don't.

Action Step	Deadline
Step 11 You attend financial management program and file certificate of completion.	Within 45 days after meeting of creditors.
Step 12 Creditors file objections to discharge, if any. *This step occurs rarely.*	Within 60 days after meeting of creditors.
Step 13 Unsecured creditors file creditors' claims. If you have non-exempt assets (which most Ch. 7 filers do not), creditors must file proof of their claims to get paid. Or if creditor does not file a claim, you or trustee may file the claim. *This step may be skipped in a no-asset case.*	Within 90 days after the Meeting of Creditors. Within 30 days after expiration of the time for creditors to file claims.
Step 14 Trustee distributes bankruptcy estate, if there is one, to creditors. *This step is skipped in a no-asset case.*	After all non-exempt assets have been liquidated and a hearing has been held on the trustee's report.
Step 15 You obtain discharge and trustee closes the estate.	After approval of the trustee's final accounting and the trustee has been discharged.

Chapter 2: Chapter 13 Bankruptcy, A Bird's Eye View

I. Is Chapter 13 Right for You?

Most bankruptcy filers choose Chapter 7 over Chapter 13 because Chapter 7 is quick and relatively simple. However, some people have too much income to qualify for Chapter 7 leaving Chapter 13 as their best option. Others choose Chapter 13, even though they are eligible for Chapter 7, because Chapter 13 offers certain advantages not available in Chapter 7.

The two types of bankruptcy have some similarities and some significant differences.

§2:01 How Chapter 13 Works

In a Chapter 13 bankruptcy, you develop a plan to repay some or all of your debts over three to five years. The object is to reduce the amount of your monthly payments so that they are more affordable or to eliminate some of your debt so that you are able to manage to pay the rest.

Your repayment plan must meet certain requirements (see §§2:22-2:27) and be approved by a bankruptcy judge. The amount you'll have to repay depends on how much income you have, how much you owe, and how much your unsecured creditors would have received if you'd filed for Chapter 7 bankruptcy. Once your plan is approved, you make regular payments to a trustee, who then pays your creditors.

You get to keep all your property. None of it will be sold to pay your creditors. However, if you want to keep property that is security for a debt (e.g. a mortgage), you will need to be current on your payments and continue to make the payments after your bankruptcy. Most of your unpaid unsecured debts will be eliminated. Typically included are medical bills and credit card balances. Some debts, like child support, student loans, and some tax liabilities cannot be discharged. A Chapter 13 case lasts for the length of your repayment plan, i.e., three to five years.

§2:02 How Chapter 7 Differs

In a Chapter 7 bankruptcy, the bankruptcy trustee sells your "non-exempt" assets (if you have any), then uses the money to repay your unsecured creditors a portion of the amount that you owe. If you have secured debts, as in Chapter 13 bankruptcy, you will need to keep up your payments if you want to keep the property.

You can keep any property that is classified as exempt (items like your clothes, household furnishings, and perhaps a modest car). Most or all of your unsecured debts will be eliminated. As with Chapter 13, some debts, like student loans and support obligations, are not dischargeable. A Chapter 7 bankruptcy takes about five months to complete.

§2:03 Are You Eligible for Chapter 13?

To qualify for Chapter 13, you must meet these requirements:

- **Income**. You must have regular and reliable income for at least six months before filing. The income can come from any source including a pension, Social Security benefits, or a job. You must be able to show that you have enough disposable income to cover all required payment obligations. See §2:22. If your income is irregular or too low, the court may not approve your payment plan.

- **Debt limits**. Your debts must be within limits set by the federal government. As of April 2016, your unsecured debts must total no more than $394,725 and your secured debts must be no more than $1,184,200. The unsecured debt limit includes the total of all amounts owed on credit cards and other consumer debts and taxes. The secured debt limit includes the total of all debt that is secured by your personal property such as car loans and real estate mortgages.

These limits are adjusted every three years according to the consumer price index and the next debt limits adjustment will be in 2019.

If you have too much debt, you may still have the option to file under Chapter 7 or Chapter 11.

- **Taxes.** You have to have paid your income taxes for the four years before you file for bankruptcy.

§2:04 Are You Also Eligible for Chapter 7?

Not everyone will be eligible for both Chapter 13 and Chapter 7. You must pass a "means test" to qualify for Chapter 7 if over half of your debts are consumer (as opposed to business) debts.

You will be eligible for Chapter 7 if (a) your average annual income is equal to or less than the median income for households your size in your state; or (b) you don't have sufficient income (after deductions for living expenses) to repay at least a minimum amount of your debt (as specified in the bankruptcy laws) over five years. See §1:03 for further details.

§2:05 Why Choose Chapter 13 if You Can File under Chapter 7?

Most people choose Chapter 7 to get their bankruptcy over in a matter of months, rather than years. But, depending on your circumstances, Chapter 13 may offer you these advantages not available under Chapter 7:

- You can retain all your property so long as you fulfill the terms of your plan.
- You can catch up with delinquent payments on property like a car or home by spreading the missed payments through the term of your plan. See §2:25.
- You can reduce the amount you owe on some types of secured claims to the value of the property securing the debt (a "cram-down"). See §2:25
- If you have multiple mortgages and your home is worth less than your first mortgage, you can convert the additional mortgages to unsecured debts, which don't have to be repaid in full. See §2:25.
- If you have an unincorporated business, you may continue to operate your business but include the business' debts in your Chapter 13 plan.
- If friends or family co-signed for any of your debt, they are protected by your automatic stay. See §2:28.
- You can discharge some debts that are not dischargeable in a Chapter 7 bankruptcy, especially certain debts that are part of a divorce. See §2:50.

- Chapter 13 is an effective way to handle tax debt, especially if it is not dischargeable in Chapter 7. See §3:29. Filing a Chapter 13 bankruptcy can toll the interest on your back taxes, resulting in lower payments. In addition, Chapter 13 will allow you time to slowly pay back the tax debt.

On the other hand, Chapter 13 has certain disadvantages:

- You must pay a trustee's commission of roughly 10% of the plan disbursements over the three or five-year life of the plan.
- Attorney's fees are higher for Chapter 13 than for Chapter 7.
- For the life of your plan, the trustee will review your finances and you will need to get the trustee's approval to incur more debt.
- If your income or assets increase during the life of your plan, the trustee can seek increased payments.
- If you fail to make a payment, the trustee and creditors can seek to dismiss your case and thus block your discharge.

On balance, Chapter 13 is probably best if you:

- Have mostly non-dischargeable debts (alimony, child support, taxes, fines and penalties, student loans). See §§2:51-2:59.

- Want to keep non-exempt assets. See §1:31, §§4:27-4:46..
- Want to cure a mortgage or car loan default. See §2:25.
- Have high disposable income (and do not qualify for Chapter 7).

Chapter 7 is probably best if:

- Your debts are primarily unsecured and dischargeable (credit cards, medical bills, personal loans). See §2:44-2:49.
- You have little or no non-exempt property.
- You need not cure defaults to retain secured property.
- You do not have sufficient disposable income to fund a Chapter 13 repayment plan.

Your bankruptcy lawyer will review your situation and advise you on the better choice. If you decide on Chapter 13, you will want the help of an experienced bankruptcy attorney. It is very difficult to devise a repayment plan that complies with the requirements of Chapter 13 without special software and expertise. Most people who try to handle their own Chapter 13 cases run into trouble.

II. Key Events in a Typical Chapter 13 Bankruptcy

If you are eligible for and decide to proceed with a Chapter 13 bankruptcy, here is an overview of what you can expect.

§2:06 You Complete Credit Counseling

Before you can file for bankruptcy, you must complete a credit counseling session provided by an approved agency. The counseling must be completed at least one day but no more than 180 days before you file. You can receive the counseling by phone, in person, or online. It usually takes an hour or two. When you finish, you will receive a certificate of completion that will need to be filed with the bankruptcy court.

The goal of the pre-filing counseling course is to explore all available solutions to your financial problems and to discuss alternatives to filing for bankruptcy. Even if the counselor suggests alternatives to bankruptcy, you do not need to follow the recommendations.

§2:07 You Complete and File Your Petition and Other Papers

These papers include your bankruptcy petition; schedules listing all your property, your creditors, and your current income and expenses; and your debt repayment plan. See §§2:16-2:21. After you review and sign the papers, your lawyer files them with the bankruptcy court. You will need to pay a filing fee.

§2:08 The Automatic Stay Issues

On receipt of your papers, the court clerk prepares an "order for relief" and sends it to all your creditors. The order tells your creditors that they must stop all attempts to collect the debt from you. See §§2:28-2:22.

As a general rule, the stay remains in effect until your bankruptcy case is concluded, but the court can lift it under certain circumstances. See §§2:30-2:32.

§2:09 The Trustee Is Appointed

A trustee will be appointed to represent the interests of your creditors. The trustee runs the meeting of creditors, reviews your repayment plan, advises you of modifications needed to get the plan confirmed, and objects to the plan if he or she believes it should not be confirmed.

Once your plan is approved by the court, the trustee is the person to whom you make payments. The trustee will then pay your creditors from your funds according to the plan. The trustee will advise and assist you in performing the terms of the plan.

Some trustees will require you to start making payments under your plan 30 days after your bankruptcy petition is filed, even though the plan has not been confirmed. Others will require you to bring your initial plan payment to the meeting of creditors.

§2:10 You Attend the Meeting of Creditors

Around five or six weeks after you file for bankruptcy, you will need to attend the meeting of creditors. Most meetings last only ten to fifteen minutes and are held in the trustee's hearing room. Your lawyer will be with you. The trustee will put you under oath and ask you some questions about your finances. Typically the trustee will want you to confirm that all the information in your bankruptcy papers is accurate and that your proposed repayment plan meets legal requirements and is feasible for you to complete. Your creditors will be notified of the hearing and have the right to attend and ask your questions. See §§2:33-2:38.

§2:11 You Attend the Confirmation Hearing

After the meeting of creditors, the court will schedule a confirmation hearing to confirm your repayment plan. The court will rule on any objections that the trustee or your creditors have made to your plan. The court will confirm your plan or may allow you additional time to modify it to satisfy objections. See §§2:39-2:41.

§2:12 Creditors File Proofs of Claim

To receive any money from your plan, your creditors must file proofs of claim specifying what they are owed with the bankruptcy court .The trustee reviews the claims and objects to any that appear improper. The court rules on the objections.

§2:13 You Make Payments and File Reports

For the duration of your repayment plan, you must make regular payments to the trustee, who will then distribute the funds to your creditors. You may make the payments through a payroll deduction. If you don't make all your payments on time, the court may dismiss your case without discharging your debts or may convert it to a Chapter 7 if you qualify.

Periodically, the trustee sends you statements showing how much has been paid to each creditor and what you still owe. You file annual income and expense reports and copies of your income tax returns.

§2:14 You Complete a Financial Management Course

You must complete a financial management course approved by the U.S. Trustee before the court will grant you a discharge. After finishing the course, you file a certification of completion with the court. The certificate must be filed before the last payment required under the plan.

Like the pre-filing counseling requirement, the pre-discharge education course must be taken with an approved organization. The course will address a variety of issues including how to use credit responsibly and how to develop a manageable budget. The course will last from one to two hours, and the fee for the course may be slightly higher than the fee for the pre-filing course.

§2:15 Your Debts Are Discharged

After the plan has been administered, the trustee will file a final report and accounting and request a discharge. After a hearing, you will be discharged from all dischargeable debts. See §§2:42-2:59.

III. Filing for Chapter 13 Bankruptcy

The forms that you need to file for a Chapter 13 bankruptcy are mostly the same as those you would file for a Chapter 7 bankruptcy. Below is an overview of the official forms that must be filed with the bankruptcy court. For a detailed discussion of these forms, see §§5:53-5:60.

See §1:14 for a checklist of records and documents that you will need to gather to complete the forms.

§2:16 The Bankruptcy Petition and Creditor Matrix

Your bankruptcy petition provides the court with basic information, such as your name and address; the type of bankruptcy you are filing; how many creditors you have; how much you owe; how much your property is worth; and whether you have any non-exempt assets.

In addition to the petition, you must file a list of all your creditors and their mailing addresses (the creditor matrix) and a form showing your complete Social Security number.

§2:17 Schedules A through C: Your Assets

On Schedule A, you list all real property you own, its current value, and the amount of the mortgage still owed. On Schedule B, you list all personal property, such as cash, in-

vestments, household furnishings, and vehicles, and each item's value. On Schedule C, you list all property you claim as exempt. See §§1:31, 4:28, 4:33-4:46.

§2:18 Schedules D through G: Your Debts and Creditors

In Schedule D, you list all creditors that hold secured claims and the amount you owe them. These are creditors who have liens on property used as collateral for the debt. On Schedule E, you list creditors having unsecured priority claims and the amount you owe. Priority claims are claims that must be paid in full during your repayment plan. See §2:24. The most common of these are domestic support obligations (alimony and child support) and taxes. On Schedule F, you list all other unsecured creditors and the amount of their claims against you. It's important to be thorough and list all your debts. Failure to list a debt could mean it is not discharged.

If you are involved in a partially unperformed contract (an executory contract), you must list this contract and any unexpired leases in Schedule G.

§2:19 Schedules H through J: Your Personal and Financial Information

Schedule H asks you to provide information about co-debtors including both individuals and corporations that are also liable for any debts included in your schedules.

Your current income and expenditures must be listed in Schedules I and J.

§2:20 Statements of Financial Affairs and Currently Monthly Income

The Statement of Financial Affairs requires you to answer questions about financial transactions such as payments to creditors and other transfers of property that occurred in the year or two before filing. Sometimes the trustee can void these transactions and get the money or property back to distribute among your creditors.

The Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income shows whether your income is above or below the median for households your size in your state (which determines the length of your repayment plan) and the amount of disposable income you have to fund your repayment plan.

§2:21 Your Repayment Plan

Your Chapter 13 repayment plan is an essential part of your bankruptcy filing. You can submit your repayment plan with your bankruptcy petition, or within 14 days of when you filed your bankruptcy petition. See §§2:22-2:27.

IV. Developing a Confirmable Chapter 13 Repayment Plan

§2:22 Requirements

Before your repayment plan can take effect, it must be confirmed by the bankruptcy court. To be confirmed, your plan must:

- Pay your net disposable income to the trustee for a period of at least three, but not more than five, years.
- Pay your priority creditors in full.
- Pay your secured creditors the full value of their claims.
- Pay your unsecured creditors at least as much as they would receive in a Chapter 7 bankruptcy.
- Provide a percentage of plan payments for the trustee's compensation.
- Be proposed in good faith.
- Be feasible.

Developing a repayment plan that meets all these legal requirements can be challenging.

§2:23 How Long Will Your Plan Be in Effect?

If your current monthly income (CMI) is above the median monthly income for a household your size in your state, your repayment plan will last for five years. If your CMI is below the state median, your plan will last for three years, although it may last longer if necessary to make all required payments.

Your plan can be shorter than these periods if you will be paying your unsecured debts in full.

CMI isn't actually your currently monthly income. It's your average monthly income over the six months before you file, which may be more or less than your actual monthly income.

§2:24 Paying Your Priority Creditors

As a general rule, your repayment plan must pay your priority debts in full. Priority debts are:

- Child support and alimony arrearages owed directly to an ex-spouse or child.
- Back taxes incurred in the last three years.
- Wages, salaries, and commissions you owe to employees.
- Contributions you owe to an employee benefit fund.

§2:25 Paying Your Secured Creditors

In general. Secured debt is debt for which you have pledged property as collateral (e.g. a car loan or mortgage). Your Chapter 13 repayment plan must provide that you will stay current on your secured debts that will last longer than your plan (e.g. your home mortgage). All other secured debt must be paid in full under the plan if you want to keep the property.

If you are incapable of paying these mandatory debts during your plan, you may have to give up some secured property on which you are making payments. Alternatively, you will need to reduce your living expenses.

Making up past due payments. If you are behind on your mortgage, car loan, or other secured debt, you can make up missed payments over the term of your plan.

Lien stripping. If you have a second mortgage and you are underwater on your first mortgage (the amount of your mortgage exceeds the value of your home), you can remove the second mortgage (called "lien stripping"). The balance due on the second mortgage will be treated as unsecured debt. See §2:26.

Cramdowns. You may be able to reduce your secured debt on assets, other than your home, to the current value of the property (called a "cramdown"). For example, if you owe $15,000 on a car that has a current value of $9,000, you can propose a plan that pays your creditor $9,000 instead of $15,000 over the life of your plan. You can't do a cramdown on any property that you purchase within 30 months before filing for bankruptcy or for your residence. See §5:164.

Surrendering the asset. If you don't want to keep the property or can't afford to do so, you can surrender it to the creditor. Any balance that you still owe on the mortgage or loan above the value of the property will be treated as unsecured debt. See §2:26.

§2:26 Paying Your Unsecured Creditors

Unsecured debts are debts that are not supported by any collateral. The amount of non-priority unsecured debt that your plan must repay depends on three things:

1. How much disposable income you have each month to put toward your plan payments.

2. How long your plan will last.

3. How much non-exempt property you have, if any.

The total amount you could be required to repay could be anywhere from zero to all of your unsecured debt.

Your Chapter 13 repayment plan must devote all your projected disposable income over the term of the plan to pay your unsecured creditors. Your "disposable income" is income (other than child support payments you receive) less amounts reasonably necessary to support you and your dependants and less charitable contributions up to 15% of your gross income.

Your unsecured creditors must receive at least as much as they would have received if you were to file for Chapter 7 bankruptcy. In a Chapter 7 bankruptcy, your unsecured creditors would receive the proceeds from the sale of your non-exempt property less the costs of the sale and trustee's commission.

The greater the value of your non-exempt property, the more you will need to pay unsecured creditors. If you have no non-exempt property, your unsecured creditors would receive nothing if you filed for Chapter 7. In this case, your plan does not need to provide for payment of any of your unsecured debts.

§2:27 What Property Is Non-Exempt?

State law determines what property is exempt and what property is non-exempt. Most states exempt from creditors property up to a specified value in various categories such as a home, vehicles, household goods, clothing, tools used in your profession, insurance policies, and retirement benefits. In some places, certain categories of property are exempt no matter what the value. Property that you own beyond the specified amount is non-exempt.

The types of property that tend to be non-exempt include:

- Real estate, other than a home.
- Luxury vehicles.
- Valuable collectibles and art.
- Antiques.
- Expensive jewelry and designer clothing.
- Cash and investments.
- Business assets other than tools of your trade.

V. The Automatic Stay

§2:28 How It Protects You

The automatic stay stops collection efforts by virtually all of your creditors. Immediately after you file your bankruptcy petition, the clerk of the bankruptcy court will send a notice

to all your creditors that the stay is in effect. Individuals who are liable with you for consumer debts are also protected by the automatic stay in Chapter 13.

A creditor that violates the automatic stay after receiving notice of your bankruptcy filing can face harsh penalties. You may be able to recover actual and punitive damages and attorneys' fees from the creditor.

§2:29 Activities Prohibited by the Stay

Once a creditor receives notice of the stay, the creditor cannot:

- Contact you seeking payment.
- Ask you to furnish security (collateral) for an unsecured debt.
- Bring a lawsuit against you.
- Pursue a pending suit against you.
- Attempt to enforce a judgment against you.
- Continue with any debt enforcement efforts that are already begun, such as wage garnishments and sales of your property.
- Perfect a lien against your property.
- Repossess or foreclose on your property.

Your monthly bills for your home mortgage and car loan will stop. If you plan to continue to pay them to avoid foreclosure or repossession, you'll have to make a note of the payment amount, due date, and the creditor's address so that you can send in the payment on your own.

The automatic stay does not stop all collection efforts against you. For example, alimony and child support can still be collected. The stay won't stop an eviction if the landlord obtained a judgment of possession before you filed for bankruptcy or you are using illegal drugs or otherwise endangering the property. The IRS can continue with some IRS auditing and tax assessment activities, but it can't put a lien against your property or seize it.

§2:30 When the Stay Ends

The automatic stay remains in effect until your case is concluded. Once you receive a discharge from the bankruptcy court, the stay ends, but your creditors cannot collect on any discharged debts.

However, if you had a pending case dismissed within one year of the current filing, the automatic stay will terminate in 30 days unless the court finds that you are refilling in good faith. The case will be deemed to be filed in bad faith if you had more than one case under Chapters 7, 11, or 13 dismissed within the previous year for failure to provide the court with essential documentation and there has been no change in your financial condition. If you filed two or more cases in the previous one-year period, the stay will not go into effect. This rule prevents you from repeatedly filing for bankruptcy just to keep your creditors at bay.

§2:31 Lifting the Stay

The bankruptcy court may lift the automatic stay for a particular creditor before your case is concluded if the creditor gives the bankruptcy court good cause. For example, the bankruptcy court will often lift the stay to allow your home mortgage lender to foreclose if you are behind on your payments and appear unable to catch up.

§2:32 If You Stop Making Payments

You will remain under the protection of the bankruptcy court (from garnishment, collections), etc. as long as you stay current in your repayment plan and meet other obligations dictated by the plan. However, if life circumstances do not allow you to finish the plan (e.g. job loss, illness), you may have an opportunity to modify the plan or convert to a Chapter 7 bankruptcy. It is best to consult your attorney before you miss any payments. It is much easier to consider options before your plan payment is late. A court can dismiss your case if you don't make payments.

VI. The Meeting of Creditors

Everyone who files for bankruptcy has to attend a meeting of the creditors (also called the section 341 meeting after the applicable section of the Bankruptcy Code). If you skip it, the court could dismiss your case without discharging your debts.

§2:33 Time and Place

After your lawyer files your bankruptcy papers with the court, the bankruptcy clerk will send you a notice of the date, time, and place for the meeting. Generally, the meeting is

scheduled for about six weeks after you file for bankruptcy. (It must be held at least 21, but not more than 50 days after you file.) The meeting is usually held around a table in a conference room.

§2:34 Before the Meeting

At least seven days before the meeting of creditors, you must file with the bankruptcy court your tax returns for the preceding year. If requested by the trustee or a creditor, you must file additional tax returns going back three years. The trustee may extend the meeting of creditors for up to 120 days to give you time to obtain the tax returns. If a creditor requests a copy of your tax return, you must provide it. If you fail to file the tax returns, your case may be dismissed. In addition, you must authorize release of tax transcripts for the future four years to the trustee.

§2:35 What to Bring

You must bring proof of your Social Security number and a government issued photo ID. The meeting will need to be rescheduled if you forget these items. Your trustee may ask that you bring additional documents to the meeting such as:

- Pay stubs for the 60-day period preceding the filing date.
- Bank statements for all financial accounts, including investment accounts.
- A statement disclosing any changes in your income or expenses you expect to occur in the 12-months after you filed your petition.

§2:36 Who Will Be There

You are required to attend, as is your spouse if he or she filed with you. Your lawyer will accompany you. The bankruptcy trustee runs the meeting. Your creditors will be notified about the meeting and are entitled to attend and ask you questions. Creditors are more likely to attend when you file under Chapter 13 than under Chapter 7.

§2:37 Purpose of the Meeting

The meeting of the creditors gives your bankruptcy trustee and any of your creditors that wish to appear the chance to ask you questions about your property and debts. The trustee wants to make sure that your repayment plan satisfies all legal requirements and that you are able to make the payments. The trustee also wants to make sure you have filed your tax returns for the four preceding years.

§2:38 What Will Happen at the Meeting?

The trustee will place you under oath and ask you questions. Typically, the trustee will want to know whether the information about your income, assets, debts, and expenses in your bankruptcy petition and schedules is accurate. The trustee may ask you some additional questions such as how you determined the values of your property, what are the sources of your income and how stable are they, whether your expenses are reasonable, and what obligations you have to support dependants. For a checklist of likely questions, see §1:29.

The questioning by the trustee is typically brief lasting between ten and fifteen minutes. After your bankruptcy trustee is finished asking you questions, your creditors will have

an opportunity to ask questions, if any are present. Secured creditors are typically concerned about whether you'll be able to catch up with missed loan payments or whether you are offering to pay them the full value of the collateral on a cramdown. See §2:25. Unsecured creditors want to know whether you can cut your expenses and pay them more during the term of your plan. See §2:40.

If the trustee objects to any part of your repayment plan, the trustee will let you know what needs to be done to satisfy the objection. If you fail to comply, the trustee will file objections to confirmation of the plan. Creditors may also file objections.

After your creditors are finished questioning you, the trustee will conclude the meeting. The meeting could be continued to a future date if the trustee has asked you to submit additional documents or amend your bankruptcy papers or your plan.

VII. Confirmation Hearing for Your Repayment Plan

§2:39 When and Where

After the meeting of creditors, the court will schedule a confirmation hearing to confirm your plan. The hearing will be in a courtroom before a judge. The hearing will be held between 20 and 45 days of the meeting of creditors, unless the court orders otherwise. The clerk of court will give 28 days' notice of the date of the confirmation hearing and the date when all objections to your plan are due.

§2:40 Objections to Your Chapter 13 Repayment Plan

The trustee or any of your creditors may file objections to your plan with the court. Objections must be in writing and filed with the court in sufficient time to allow you and the trustee to respond. They must be supported by admissible evidence and must set forth specific reasons why the plan does not comply with the Bankruptcy Code and should not be confirmed. You may file a written response to the objections in time for the court to consider the response.

Overcoming Common Objections

Some of the most common objections to Chapter 13 repayment plans include:

- **Your plan does not commit all your projected disposable income to paying your debts.** This objection is more likely if your plan will pay your non-priority unsecured creditors a small fraction of what they are owed or nothing. To overcome it, you'll need to show that your plan requires you to live a modest lifestyle on a tight budget.

- **Your plan does not pay your unsecured creditors as much as they would receive in a Chapter 7 bankruptcy (the "best interests of the creditors" test)**. Your plan must pay your nonpriority unsecured creditors that value of your non-exempt assets minus costs of sale and the trustee's com-

mission. This objection is likely to come up if creditors or the trustee believe you have undervalued your non-exempt property. To overcome it you may need to produce proof (e.g. an appraisal or Blue Book value of a vehicle) of the valuation.

- **Your plan is not feasible.** The trustee or creditors are likely to raise this objection if it doesn't appear that you have enough income to make your monthly payments or if the source of your income (e.g. your job) appears unstable.

- **Your plan discriminates among creditors.** The objection may be raised if your plan proposes to pay some non-priority unsecured creditors a greater percentage of what they are owed than others. They should all be treated equally.

- **Your plan was not proposed in good faith.** This objection shouldn't be a problem if your purpose in filing for bankruptcy is to solve your debt problems and you were truthful in your bankruptcy papers and testimony to the trustee.

Secured creditors might also make minor objections to your plan: your proposed interest rate is too low, the schedule takes too long to pay your arrearage, or, if you are proposing a cramdown (see §2:25), that the value you assigned the collateral is wrong.

§2:41 What to Expect at the Hearing

If there are no objections, the court will approve the plan at the confirmation hearing. Some courts will confirm a plan without a hearing if there are no objections and the trustee recommends confirmation.

If the trustee or any creditor objects to your plan, the judge may ask you to submit a modified plan that addresses the objections and adjourn the hearing until you do so. If the judge believes that you simply can't come up with an appropriate plan, the judge may dismiss your case. Alternatively, you may be able to convert it to a Chapter 7 bankruptcy if you are eligible for Chapter 7.

VIII. Chapter 13 Bankruptcy Discharge

A. Requirements

§2:42 When You Are Entitled to a Discharge

When you have made all payments pursuant to your Chapter 13 repayment plan, you may request a discharge by making a motion to the bankruptcy court. After your discharge, creditors provided for in full or in part under your plan may no longer initiate or continue any legal or other action against you to collect the discharged obligations.

You are entitled to a discharge from the court if you:

- Are current with domestic support obligations (child support and alimony) as provided in your plan. You must file a certification that you have met all domestic support obligations.

- Did not receive a Chapter 13 discharge within two years before you filed your bankruptcy petition.
- Did not receive a Chapter 7, 11 or 12 discharge within four years before you filed your petition.
- Have remained current on your income taxes.
- Have provided the court with proof that you have filed your annual federal income tax returns.
- Have attended a personal financial management course as approved by the U.S. trustee and filed the required certificate.

§2:43 Hardship Discharge

After your plan is confirmed, things can happen that make it impossible for you to complete your plan. In this situation, you may be able to amend your plan or convert your case to a Chapter 7.

However, you may be able to end your case and get a hardship discharge from the court if all of the following are true:

- The circumstances that prevent you from completing the plan are not your fault and beyond your control.
- Your creditors have received at least as much as they would have received in a Chapter 7 case.

- You are not able to fund even a modified repayment plan because, for example, you cannot work due to illness or injury.

B. Debts That Are Discharged

Below is an overview of the debts that are discharged and the debts that are not discharged in Chapter 13 bankruptcy. Some debts can be discharged in Chapter 13 that are not dischargeable in Chapter 7. See §2:50. For an expanded discussion, see Chapter 3.

§2:44 In General

If your plan pays all your unsecured debts, then they will all be discharged no matter what they were for. If your plan pays less than 100% of your unsecured debts (as most do), the following types of debts will be discharged.

§2:45 Credit Card Balances

Credit card debt is probably why most people file for bankruptcy. The bad economy and high rates of unemployment mean that many people are unable to make even their minimum monthly payment. Virtually all credit card debt can be discharged in bankruptcy. The exceptions are credit card debt incurred recently for luxury items and credit card debt incurred as a result of fraud.

§2:46 Medical Bills

Medical bills are a common reason for filing for bankruptcy. An accident or illness can easily lead to insurmountable medical bills for the uninsured or underinsured. Fortunately, bankruptcy allows you to discharge this debt. Dischargeable

medical bills can be for any form of medical treatment including hospital bills, doctor's bills, rehabilitation services, and emergency services.

§2:47 Lawsuit Judgments

If you lose a civil lawsuit, the court issues a judgment ordering you to pay money to the winner. If you don't pay voluntarily, the other party may enforce the judgment against you in a number of different ways: seizing a bank account, garnishing your pay, or placing a lien on your home. Most lawsuit judgments for money can be discharged in bankruptcy. There are, however, a few circumstances in which a judgment may not be discharged, such as judgments arising from a DUI or a willful and malicious act.

§2:48 Personal Loans and Promissory Notes

Personal loans are dischargeable in bankruptcy. It doesn't matter from whom you borrowed the money. Nor does it matter whether you signed a written promise to pay it back (a promissory note) or whether your repayment promise was oral. The only exception is for fraud.

§2:49 Leases and Contractual Obligations

With few exceptions, bankruptcy will relieve you of contractual obligations, including a lease of real property (like an apartment) or personal property (like a car). You will not need to complete your obligations under the contract and the other party will not be able to sue you for damages for breaching the contract or lease. However, you have the option of keeping the lease or contract in effect by assuming it.

§2:50 Debts Discharged in Chapter 13, but Not in Chapter 7

A few types of debts can be discharged in Chapter 13 bankruptcy, but not in Chapter 7. These include:

- Debts (other than child support or alimony) you owe to your spouse, former spouse, or child that were incurred during a separation or divorce; or as a result of a divorce decree, court order, or separation agreement.
- Debts that you incur to pay a tax debt (e.g. you get a loan to pay the taxes or charge them on a credit card).
- Loans from a retirement plan.
- Court fees.
- Condo, co-op, and homeowners' association fees incurred after you filed for bankruptcy.

C. Debts That Cannot Be Discharged

Not all debts are eligible for a bankruptcy discharge. Debts that cannot be discharged in Chapter 13 bankruptcy are:

§2:51 Domestic Support Obligations

Domestic support obligations cannot be discharged. Domestic support obligations are child support and alimony established by:

- A separation agreement, settlement agreement, or divorce decree.
- A court support order.
- A child support enforcement agency determination.

Your repayment plan must require you to pay 100 percent of domestic support obligations owed directly to a child or ex-spouse. You don't have to pay 100 percent of domestic support obligations owed to a government agency through your plan, but you will still owe any balance after your bankruptcy. For example, if you are obligated to pay a credit card debt on a card you held jointly with an ex-spouse, you can discharge your obligation to the creditor and to your ex-spouse in a Chapter 13 bankruptcy. In a Chapter 7 bankruptcy, you can discharge your obligation to the creditor, but not to your ex-spouse.

§2:52 Fines and Restitution Obligations

Fines imposed on you for violating the law cannot be discharged in bankruptcy, nor can obligations to pay restitution to the victim.

§2:53 Intoxication Related Claims for Personal Injury or Death

Debts incurred for personal injuries as a result of operating a motor vehicle or vessel while intoxicated cannot be discharged in bankruptcy. However, debts for property damage are dischargeable.

§2:54 Tax Debts

Income taxes that became due within three years before you filed for bankruptcy are priority debts that must be paid in full through your repayment plan. But see §2:57 for discharge of older income tax debt. Fraudulent tax debts are not dischargeable.

§2:55 Debts Arising from Your Willful or Malicious Actions

A judgment against you for injuries or death caused by your willful or malicious act is not dischargeable in Chapter 13. This exception does not apply to property damage arising from willful or malicious acts, which is dischargeable.

To be non-dischargeable under Chapter 13, the act needs to be either willful or malicious. To be non-dischargeable under Chapter 7, the act needs to be both willful and malicious. Unlike Chapter 7, the creditor need not go to court and prove the debt was caused by a willful or malicious act.

D. Debts Subject to Special Rules

§2:56 Student Loans

Student loans are not dischargeable in a bankruptcy case unless you can show the court that you qualify for a hardship discharge, which is difficult. A hardship discharge requires you to fulfill three criteria.

1. You must be able to show the court that if you were forced to repay the student loans, you would be unable to afford a very minimal standard of living.

2. You must provide evidence that your current financial state will continue for a significant amount of time.

3. You must show the court that you made a good faith effort to repay the loans. A good faith effort is proven if you repaid the loans for at least five years before filing for bankruptcy.

For further details, see §3:285.

§2:57 Older Income Tax Debts

You may be able to discharge your older income taxes if you meet five criteria:

1. The due date for filing the tax return must have been at least three years before your file for bankruptcy.

2. The tax return must have been filed at least two years before you file for bankruptcy.

3. The tax assessment must be at least 240 days old.

4. The return must not be fraudulent.

5. You must not be guilty of tax evasion.

For further details, see §§3:29-3:31.

§2:58 Debts Not Listed in Your Bankruptcy Papers

As a general rule, any debts you don't list in your bankruptcy papers will not be discharged. The problem is that the creditor will not be notified and therefore not have the opportunity to file a proof of claim, which is necessary for the creditor to receive any distributions from your plan. There are two exceptions: (1) the creditor knew or should have known about your bankruptcy by some other means; or (2) the creditor would not have received any payments under your repayment plan.

§2:59 Fraudulent Debts

As in Chapter 7, debts resulting from fraud, theft, or breach of fiduciary duty are not dischargeable if the creditor objects and proves that the debt fits into one of these categories.

IX. Chart: Chapter 13 Bankruptcy Actions Steps and Deadlines

Chapter 13 Bankruptcy Action Steps and Deadlines

Action Steps	Deadline
Step 1 You attend pre-filing credit counseling.	180 days or less before filing petition.
Step 2 You file Petition, Statement of Social Security #, and Matrix listing all creditors with bankruptcy court.	
Step 3 Automatic stay issues preventing creditors from further collection efforts.	On filing petition.

Action Steps	Deadline
Step 4 You file remaining paperwork including: Schedules; Statement of Current Monthly Income & Means Test; copies of pay stubs for 60 days preceding filing; Statement of Change in Monthly Income; Payment Plan; and other documents.	If not filed with petition, it must be filed within 14 days after filing petition.
Step 5 You begin making plan monthly payments.	30 days after filing petition.
Step 6 You file tax returns.	7 days before meeting of creditors.
Step 7 You attend meeting of creditors.	21-50 days after filing petition.
Step 8 Creditors file objections to confirmation of plan, if any.	4 days before confirmation hearing or as set by the court.
Step 9 Plan confirmation hearing/plan confirmation.	21-45 days after meeting of creditors.
Step 10 You provide secured creditors with evidence of insurance on collateral.	Within 60 days after filing petition.
Step 11 Creditors file objections to discharge, if any, a rare event.	Within 60 days after meeting of creditors.
Step 12 Creditors file claims.	Within 90 days after the meeting of creditors.
Step 13 You file annual reports.	Within 45 days before the anniversary of your filing date.
Step 14 You attend financial management course and file certificate of completion.	Before motion for discharge is filed.
Step 15 Discharge hearing/discharge.	Within 3 or 5 years after filing petition unless extended by court.

Chapter 3:
Your Debts in Bankruptcy, A Closer Look

I. Understanding Your Bankruptcy Discharge

A. How a Bankruptcy Discharge Works

§3:01 What Is a Bankruptcy Discharge?

A bankruptcy discharge is the ultimate goal of a bankruptcy filing. Once a debt is discharged, you are no longer personally liable for that debt. More importantly, creditors that once had rights to collect, sue, levy or garnish on the debt no longer have enforceable rights against you.

Not all types of debts are dischargeable in bankruptcy. Furthermore, during and after bankruptcy you still need to make payments on property securing a loan like a house mortgage or car loan if you want to keep the property.

Once the appropriate timelines have run, you will automatically receive a bankruptcy discharge, unless a creditor, trustee or other party files an objection to the discharge, which is not common. Some challenges are for the entire discharge and other challenges are only on certain types of debt (e.g. one credit card company objects to your discharge based on some fact the company believes to be true).

§3:02 When Debts Are Discharged

The date on which a bankruptcy discharge occurs depends on what type of bankruptcy was filed. In Chapter 7, a bankruptcy discharge occurs approximately three to four months after the date your case is filed. You must have attended a meeting of creditors, complied with all other court requests, and fulfilled the debtor education requirement. In most cases, the bankruptcy discharge also means the end of your bankruptcy case. While some cases may remain open for asset collection (if not all your property is exempt) or for other administrative reasons, this does not usually affect the discharge date.

In Chapter 13, the discharge occurs only after your case has been completed. In most states, this is after all your plan payments have been made (usually three to five years) and you have completed the debtor education course and any other local requirements the court may have. These can vary greatly from state to state. For example, some jurisdictions require filing forms regarding the current status of domestic support obligations (e.g. child support) or the value of real

estate. It may take several months for the trustee to complete his or her final accounting of your case. At that time the discharge will be filed.

After you receive your discharge, if instructed to do so, you must continue to cooperate with the bankruptcy court and trustee assigned to your case. In rare cases, a bankruptcy discharge can be revoked by a court.

§3:03 How Creditors Will Know Your Debts Have Been Discharged

When you file your bankruptcy you must include all your creditors. It is very important to make sure all your creditors are listed in the bankruptcy filing. You have to list all your creditors, even if you want to keep paying a debt after the bankruptcy discharge (e.g. a car loan). This means everyone you owe money to, not just credit card companies and banks. It includes car loans, family loans, landlords, mortgages, medical bills, hospital bills, student loans, taxes, parking tickets and any other person or creditor to whom you owe money. You do not include your current utility suppliers, but do include past due utility bills (e.g. gas, electricity, or phone bills).

Once your bankruptcy petition is filed, the court mails a notice to all the creditors you listed. These same creditors get a notice of the discharge. Because the court uses the creditor names and addresses you list in your petition, take extra care to make sure all your creditors are listed and that the notice

addresses are correct. If you miss a creditor, the creditor will not receive notice of the bankruptcy filing or the discharge notice. In this case you might still owe the debt.

§3:04 If a Creditor Tries to Collect a Discharged Debt

A creditor is legally barred from collecting debts that were discharged in the bankruptcy. If a creditor or debt collector contacts you (whether by telephone, mail, or email), you should inform the creditor that you filed for bankruptcy and the debt was discharged. Tell the creditor if you are represented by an attorney. Creditors are barred from contacting you if an attorney represents you.

If a creditor continues to harass you or ignore the bankruptcy discharge, you can file a motion with the court to report the creditor's action. Creditors can be reprimanded and fined by a bankruptcy court for violating the discharge.

However, creditors with collateral do retain some rights after discharge. If you retained collateral of a secured debt, like a car, the creditor retains the right to repossess the car (or other collateral) if the debt remains unpaid.

In the case of a mortgage, liens will remain on the property. If you want to keep your house, and you had enough exemptions to protect it in the bankruptcy, you can keep your house as long as you continue to pay your mortgage per the terms of the agreement.

B. Potential (but rare) Obstacles to Discharge

§3:05 A Discharge Is Not Guaranteed

A Chapter 7 bankruptcy filer is never guaranteed an absolute right to discharge. There are multiple legal grounds in which creditors, the appointed case trustee, or the U.S. Trustee can object to discharge. A court may deny a Chapter 7 discharge if you:

- Do not provided required documents, including tax documents.
- Fail to complete the required personal financial management course.
- Transfer or hide property to defraud creditors.
- Destroy or hide records or books.
- Commit perjury or other fraud in connection with your case.
- Fail to explain lost assets.
- Violate a court order.
- File a bankruptcy case earlier than allowed by law when you were previously granted a discharge. See §§5:17-5:24.

An objection does not mean an immediate dismissal of the case. There are ways to overcome or challenge objections. If you've been honest and accurate in your dealings with the bankruptcy court system, you shouldn't need to worry

about anyone challenging your bankruptcy discharge. Most people who file bankruptcy receive a discharge without any problems. Every case is different because bankruptcy is very fact specific.

§3:06 Creditor Objections to Discharge

Creditors do have rights to challenge a debt from being discharged under very specific facts and on certain legal grounds. In order to challenge discharge of a debt, the creditor files a special lawsuit called an adversary proceeding.

The adversary proceeding is litigation under the umbrella of your bankruptcy. The filing of the adversary proceeding usually only affects the debt that is challenged and not other unchallenged debts in a bankruptcy filing.

Some debts that a creditor can object to being discharged are debts incurred through fraud, debts resulting from willful and malicious harm to a person or property (e.g. drunk driving) and debts resulting from breach of a fiduciary duty. Sometimes the creditor may argue that the filing of the bankruptcy case was done in bad faith.

Adversary proceedings by creditors are not common and not all claims have merit. Once the adversary proceeding is filed, a hearing will be scheduled in front of a bankruptcy judge to sort the claims and facts out. If you are represented by an attorney, the attorney will appear on your behalf and you may not have to go to court. The bankruptcy judge will then make a ruling on whether the debt is dischargeable. For most challenges, a creditor only has sixty days from the first scheduled date of the meeting of creditors to file an adversary proceeding.

§3:07 Revocation of Discharge

It is rare, but a bankruptcy discharge can be revoked (taken away) by the bankruptcy court. The court conduct audits from time to time. Sometimes these audits are random. Other times particular information alerts the court to conduct fact-finding. One of the most common reasons a bankruptcy discharged may be revoked is for fraud on the part of the filer in obtaining a discharge.

Example: Joe has three bank accounts totaling $150,000 in cash but only lists two accounts totaling $10,000 in cash in his bankruptcy petition. The Trustee does not immediately know about the third bank account with most of the money. Joe receives his discharge. However, Joe has knowingly hidden an asset. In three months, the Trustee discovers the bank account and brings a motion with the bankruptcy court to revoke Joe's discharge. Joe's failure to list the account in his petition is fraud and may result in his discharge being revoked. Furthermore, it may result in fines or criminal charges.

Other reasons a discharge may be revoked include:

- The filer failed to disclose that he or she acquired or became entitled to acquire property that would be part of the bankruptcy estate (nonexempt property);
- The filer failed to explain misstatements or provide documents in an audit of the case; or
- The filer refused to follow court orders.

In Chapter 7 bankruptcy, a motion to revoke a discharge must be filed within one year of the discharge, or in some circumstances, before the case closing date. In Chapter 13 bankruptcy, a request to revoke a discharge must be made within one year after the discharge is granted. The bankruptcy court has the final determination in whether to revoke the discharge.

Having a bankruptcy discharge revoked is a big deal. The consequences can vary greatly, depending on the severity of the claims. First, if the court revokes your bankruptcy discharge, you remain liable for the debts that were included in your discharge. Furthermore, you can never receive a bankruptcy discharge for these debts. Second, if you committed fraud or otherwise abused the bankruptcy system, you may also have to pay fines, forfeit assets, or face criminal prosecution. Every year there are news stories where people, including celebrities, have served prison time for bankruptcy fraud. The threat is real and the court is very serious about bankruptcy crimes.

§3:08 Denial of Discharge vs. Nondischargeable Debt

Although the court may rule on both these issues, they have very different meanings. The court may deny a discharge of all debts based on particular facts in the case (e.g. fraud). If the court denies the discharge of all debts, the filer will still be legally responsible for all the debts as if no bankruptcy petition had ever been filed. The individual is then barred from filing bankruptcy on these debts at a later date.

A court may also determine that a particular debt or debts are nondischargeable. If only certain debts are ruled nondischargeable, the filer will still receive a discharge order on the remaining debts. However, the filer will remain legally responsible for the nondischargeable debts.

Example: Joe files bankruptcy on six credit cards, totaling $50,000. He used one of his credit cards for a $5,000 cash advance two weeks before the bankruptcy filing. If the creditor objects, the court may rule that the $5,000 is nondischargeable, but the remaining $45,000 will be discharged. This means Joe will still owe the $5,000 debt, but the rest of his debt will be discharged.

II. Debts Discharged in Bankruptcy

In Chapter 7 bankruptcy, most or all of your unsecured, nonpriority debt is discharged (wiped out). Following is a summary of the types of debts commonly discharged in bankruptcy.

§3:09 Credit Cards Debts

Credit card debts are one of the most common types of debts in bankruptcy filings. These debts include both regular credit cards (Visa, MasterCard, American Express, and Discover) and store credit cards. If you were truthful about the debt, listed the debt, and haven't recently used the card or taken a recent cash advance, all your credit card debt should be discharged without any objections.

However, you may run into problems discharging credit card charges and cash advances taken in the 90 days before you file bankruptcy. To be safe, it is a good idea to stop using

all your credit cards (especially for non-essential items) and not take any cash advances in the three months before your bankruptcy filing. See §§3:11, 5:14, 5:36.

Remember that once you file for bankruptcy protection, the automatic stay prohibits most creditors from continuing collection efforts against you. The stay extends to credit card companies, and prohibits them from suing you, sending you collection letters, calling you, or engaging in other collection activities until the discharge occurs.

§3:10 Medical Expenses

Medical expenses are another very common debt in bankruptcy. Many people owe money directly to doctors, dentists, laboratories, hospitals and other medical providers. Sometimes individuals use credit cards to pay their medical providers. Those with medical debts often include individuals who had insurance but cannot afford their share of the additional expenses. In bankruptcy, all of these debts are unsecured. This means that you have not given collateral for payment of the debts and they will be discharged just like credit card debt.

As a practical matter, there are a few things to consider if your debt includes medical debt.

Are you still receiving treatment from the providers? Providers have different policies about whether they will continue to treat patients who have filed bankruptcy on medical debt owed to them. If there is a way to discreetly find out if the health care provider will continue to service you if you file bankruptcy, that is worthwhile information.

Also keep in mind that a bankruptcy discharge applies to debt incurred up to the date of filing only. So in the case of long-term ongoing medical treatment, any new debt incurred after your bankruptcy filing date will not be discharged. There are very specific rules that determine how often you can file. If you have already received a discharge in a Chapter 7 bankruptcy, you must wait eight years from the date you filed the previous case before you can file another Chapter 7 and receive a discharge. See §§5:17-5:22.

§3:11 Loans and Promissory Notes

You are required to list all your debts in your bankruptcy papers, and this includes loans and promissory notes. Whether it's a note made from you promising somebody that you will repay your debt, or a note that was made from somebody to you promising to pay you back, it must be listed.

A loan that someone owes to you is an asset, not a debt that you discharge. It is treated like property in your bankruptcy filing. See §4:15. A loan or promissory note that you owe to another can be discharged just like your other unsecured debts.

In Chapter 7, they are discharged right away. In Chapter 13, the court will use your repayment plan to distribute the monies owed on a loan or promissory note (and other unsecured debts) proportionally among your creditors. At the end of the Chapter 13, the remainder of your unsecured debts will be discharged, or legally forgiven. You'll no longer officially owe anything on the loan or promissory note, unless it secures property that you wish to keep.

Preferences. Loans and promissory notes can get emotional when you owe the money to family or friends. You have to list the debt in your bankruptcy and the obligation to pay the debt will be discharged. Legally, once the debt is discharged, you do not have to pay the family member back. However, after the debt is discharged, nothing prevents you from repaying your friends and family on your own. However, you should wait until after discharge. Payments made to family or friends before discharge could be considered "preference" payments. They will be brought back into the bankruptcy estate. This means the trustee can go after the friend or family for money you paid them within a certain period (usually one year before the filing date). The idea is that you are preferring one creditor (e.g. Aunt Sally) over other creditors. Such a preference is considered unfair, so there are special laws before and during bankruptcy to prevent this type of action.

Loans Secured with Collateral. Even though a discharge can cancel a promissory note, any lien that the creditor has against the property securing the note (e.g. your house or vehicle) is still valid even after a successful discharge. If you want to keep the property, you will have to continue with the payments until the lien is paid in full.

Payday Loans. Another special type of loan that often comes up in bankruptcy filings is the "payday" loan. Payday loans are short-term cash loans based on the borrower's personal check or asset held for future deposit or on electronic access to the borrower's bank account. These loans often come with high interest rates and unfriendly repayment terms. Fees can

escalate quickly. Most payday loans are unsecured debt, and therefore are treated like any other unsecured loan in bankruptcy and will be discharged. Make sure to take the time to find a valid address for the lender and list each payday loan separately in the bankruptcy filing. The loans may not be discharged if the lender does not receive notice. Some payday loan companies have branch offices, but their headquarters may be out of state or even out of the country.

§3:12 Judgments

A judgment is a court order that states you owe a debt as a result of a lawsuit. There are several types of judgments and the bankruptcy law does not treat all types of judgments the same. The most common type of judgment related to bankruptcy filings is a creditor or debt collector judgment lien against you for nonpayment of a credit card, loan, or medical debt. This judgment becomes a matter of public record, and is indexed with the clerk of the state court. It shows up on your credit report as well as on any background checks. The judgment is also considered a lien against your property, including any real estate that you have (different states have different rules about judgment liens attaching to certain types of property). A creditor can then use the judgment lien to garnish your wages or bank accounts. If you sell your property, and the lien has attached, a creditor might also be entitled to collect on the judgment before you are entitled to the sale proceeds.

Most judgments can be discharged in bankruptcy. Filing a bankruptcy petition will place an automatic stay on the judgment and any enforcement actions. This will stop the gar-

nishments and collection efforts while your bankruptcy case is pending. Once you receive your bankruptcy discharge, the creditor will forever be barred from collecting on the judgment. All your obligations to pay the debt will be wiped out.

Although the creditor can no longer collect on the judgment, the record and lien recorded in state court might still remain until you take steps to have it removed (all bankruptcy is in the federal court system). The lien removal may not automatic. It usually involves filing a copy of your bankruptcy discharge along with a special motion to remove it in state court. It is your responsibility to take the necessary steps to make sure the judgment is removed from public record and the liens are removed from your property.

Certain types of liens cannot be discharged in bankruptcy. These include some types of tax debt, student loans, debts for personal injury or death caused by your intoxicated driving, and fines and penalties imposed for violating the law, such as traffic tickets and criminal restitution.

§3:13 Contractual Obligations

Contractual obligations may include an unexpired lease or an executory contract (a contract that hasn't been performed yet). This category of debt means that the contract is still in force and that the contract term or lease period has not run out. Common examples include:

- Car leases.
- Residential leases and rental agreements (condo, apartment).
- Business leases and rental agreements.

- Service contracts.
- Business contracts.
- Timeshares.
- Personal property leases (e.g. chiropractor leasing equipment).
- Future homeowner's association fees.
- Insurance contracts.
- Boat docking agreements.
- Copyright and patent licenses.
- Other real estate leases.

Contractual obligations can be a little more complicated in bankruptcy (particularly in Chapter 7) than other types of debt. In general, the bankruptcy trustee appointed in your case may "assume" or terminate the lease or contract. The trustee has 60 days after you file for bankruptcy to decide whether an executory contract or unexpired lease should be assumed (continued to be enforced) or terminated (rejected). If the lease or contract would generate funds for your unsecured creditors, then it will be assumed; otherwise, it will be rejected.

As a general matter, most leases and contracts are liabilities (meaning the bankruptcy filer owes money and gets no income from the contract) and thus are rejected by the trustee. An example of a contract that might provide a benefit for the trustee (and your bankruptcy estate) is an insurance agent's contract. These contracts generally produce revenue and as

a result are an asset. The trustee has the power to assume (take over) these contracts and use the revenue to pay your unsecured creditors.

Most people who file Chapter 7, as a general rule, are not parties to leases or contracts that would likely add value to their bankruptcy estates. Most filers have simple car leases or apartment leases. These are liabilities and not assets. When it comes to your own obligations regarding contractual debt, you have the right to assume or reject the lease. Your personal circumstances will likely dictate what is best for you. For example, if you have a lease on personal property (for instance, a car lease) and you want to continue with the lease, as long as you give the creditor written notice and the creditor agrees, you can stay in the lease. You provide this written notice in the Statement of Intention that you file with your bankruptcy papers. This is an assumption of the lease. The creditor does have the final say in the matter. But, if you want to give the car back and get out of the lease, you can reject the lease, surrender the car and owe nothing.

III. Debts That Can Never Be Discharged

Even though the purpose of filing for bankruptcy, most often, is to discharge debts, there are some debts that cannot be discharged. Chapter 7 and Chapter 13 sometimes treat these categories of debts differently. Chapter 13 allows for some of these types of debts to be discharged. In other cases, the entire debt has to be paid back in full over the repayment period.

§3:14 Domestic Support Obligations

"Domestic support obligations" is a term that the bankruptcy court uses to refer to court-ordered child support and/or alimony. State courts may call the support by some other name, but no matter what it is called, this type of debt cannot be discharged. The effect of a discharge on child and spousal support obligations varies somewhat depending on whether you file a Chapter 7 or a Chapter 13 bankruptcy.

Chapter 7. Your bankruptcy papers require you to disclose whether you owe current or back domestic support obligations. Additionally, at the meeting of creditors you may be required to disclose under oath what you owe. Furthermore, the trustee in the bankruptcy is required by law to notify the party who receives the support and your state's Child Support Enforcement Agency, if applicable, of the bankruptcy proceedings. Just like creditors, the individual who is owed support will get two notices: one at the time of filing and another at the time of the bankruptcy discharge.

Chapter 13. In Chapter 13, domestic support obligations are treated somewhat differently than in Chapter 7. The court will distinguish between back support and ongoing support. All ongoing (current) support obligations must be provided for in the repayment plan and maintained after the bankruptcy petition is filed. The bankruptcy court cannot confirm your Chapter 13 plan unless all post-petition alimony (after the file date), maintenance and support payments are current at the time of confirmation. Once you successfully complete the payments due under your plan, the court cannot process your bankruptcy discharge unless you continue to be up to date with all post-petition domestic support payments at the

time of discharge. Therefore, keeping current with such payments is another very important factor in the success of a Chapter 13 case.

For arrears (past due or late) domestic support obligations, the court may allow collection efforts to be stayed (temporarily stopped). Then, the Chapter 13 repayment plan must provide for all arrears to be paid in full during the term of the repayment plan. In doing so, a Chapter 13 filer must certify the payment in full of domestic support obligations or that the confirmed plan provides for payment of pre-bankruptcy (before the filing date) domestic support obligations. These debts are considered priority debts and are paid first in the Plan.

Upon completion of the Chapter 13 repayment plan, all the arrears will be paid in full. However, a Chapter 13 discharge does not affect post-discharge child or spousal support obligations. In other words, even at the conclusion of the bankruptcy proceeding, these ongoing obligations remain.

Example: Dan files for Chapter 13 bankruptcy with a 60-month repayment plan. He was divorced two years ago and is under obligation of his state courts to pay his ex-wife $100 a month in spousal support for 10 years and $400 a month child support until his three children, ages 2,4 and 7 are of majority age. He has tried to stay current but owes $3,000 in back support payments. Under his Chapter 13 repayment plan, Dan is required to stay current on the $500 a month of total support he owes. Additionally, the $3,000 in domestic support obligations must be paid in full over the 60 months of his repayment plan. If Dan's Chapter 13 is successful, he will still owe the $500 per month, but the $3,000 in arrears will be paid in full.

§3:15 Fines, Penalties, Restitution Obligations

Restitution is a court-ordered sum of money you must pay for causing financial loss or personal injury to another. All fines and restitution obligations issued in criminal cases cannot be discharged in any bankruptcy case, Chapter 7 or 13.

Furthermore, civil fines and penalties owed to a governmental unit (state, county, municipality or any related department, division, board or other agency) are also not dischargeable in Chapter 7 if two conditions are met:

- The fine and/or penalties are payable to and for the benefit of a governmental unit. Debts payable to a private party arising from judicial sanctions imposed pre-petition do not fall under this discharge exception.
- The fine and/or penalties must not be compensation for actual pecuniary loss. This means that the fine or penalty must arise as a punishment for wrongdoing and not merely be a monetary remedy for a breach of contract.

Civil fines and penalties can sometimes be discharged in Chapter 13. Whether the debt can be discharged depends on whether the debt is considered a criminal fine or a civil penalty/infraction. This can be a fine line depending on how the statutes in a particular state are written. The Bankruptcy Code excludes all criminal fines from discharge. However, in Chapter 13, civil penalties can be successfully discharged

at the completion of the Chapter 13 repayment plan. These types of debts might include minor traffic offenses like parking tickets, failing to stop at a stop sign, or speeding tickets.

§3:16 Court Fees (Ch 7 only)

Court fees for proceedings other than bankruptcy are usually lumped in with fines, penalties, and restitution obligations and thus are not dischargeable in Chapter 7 bankruptcy. Additionally, there is a court filing fee when you actually file your bankruptcy case. In some cases, the court will waive the fee (extreme financial hardship) or allow the fee to be paid in installments. In all other cases, in order for your case to proceed, you must pay the filing fee in its entirety. The fee is never discharged.

§3:17 Intoxicated Driving Debts

While the bankruptcy laws allow you to discharge accident-related claims you may owe to an injured person for accrued medical bills, future medical bills, loss of income, and even compensation for pain and suffering, you can never discharge any debts related to driving under the influence of drugs or alcohol (DWI/DUI). This is true for both Chapter 7 and Chapter 13 and applies to debts related to both injury and death.

Example: Debbie Driver causes an automobile crash that results in the serious injuries of three people. It is determined that Debbie was intoxicated at the time of the crash and she is later convicted under her state laws of DUI and causing injury while intoxicated. In a separate civil suit, the three

injured people are awarded $50,000 each in medical bills, $5,000 for loss of income, and $10,000 each for pain and suffering. In total Debbie owes $195,000 to the three injured in the crash. Debbie files for bankruptcy. Although her personal debt can be discharged, she will still owe the entire $195,000. It cannot be discharged.

§3:18 Condo, Coop, Homeowner Association Fees (Ch. 7 only)

Not all homeowner association (HOA) fees can be eliminated through bankruptcy. These types of fees are distinguished under bankruptcy laws as pre-petition (before the bankruptcy filing) and post-petition (after the bankruptcy filing date) debts. HOA dues and fees, commonly known as maintenance, can be discharged in a bankruptcy proceeding, but only those dues and pre-petition fees owed up through the date the bankruptcy petition is filed. Any homeowner association dues and fees that accrue after the petition is filed cannot be discharged.

The scenario where this becomes a big deal is if the homeowner is seeking to walk away and abandon the home, but the bankruptcy filing occurs before a short sale or foreclosure. The homeowner who has filed for bankruptcy and received a discharge will still owe for all HOA fees accruing after the bankruptcy filing date up until the sale of the home or foreclosure date. If the homeowner does not pay, the HOA can enact its legal rights to enforce the HOA terms and obligations. This means that the homeowner's association

can pursue the homeowner for these post-petition monthly charges, and sometimes that does happen. This can include collections, court proceedings, and actionable judgments.

Example: Annette has lost her job and can no longer afford the mortgage on her condo. She moved out of her condo to save money and moved in with a family member. Annette has stopped paying her monthly HOA fees. She also talked to the bank and decided to let her condo go through foreclosure. The bank told her the process could take up to two years. In order to get rid of the rest of her debt, Annette files for Chapter 7 bankruptcy before her condo goes through foreclosure. She is able to discharge all of her debt, including the HOA fees she owed up to the time of her bankruptcy filing. However, Annette will have to now pay the monthly HOA fees that are due after her bankruptcy filing until the bank forecloses, even if she is not living there, or risk being sued.

§3:19 Retirement Plan Loans

Some qualified retirement plans allow a plan participant to take a loan against his or her retirement account balance. In essence, this is a loan from yourself, with interest, from money that you have already paid into retirement. The terms of the repayment are governed by a combination of the federal law and the plan rules.

Loans from your retirement plan are not discharged in Chapter 7 or Chapter 13 bankruptcy. This is because bankruptcy only discharges obligations you owe to others - and in the case of a retirement plan loan, you owe the loan to yourself.

§3:20 Debts Not Discharged in Bankruptcy Previously Dismissed for Fraud (Ch. 7 only)

If you previously filed for bankruptcy and debts in that bankruptcy were denied a discharge, those debts cannot discharged in a subsequent bankruptcy filing. This rule prevents a filer from being denied a discharge in bankruptcy, waiting a short period of time, and then trying it again.

Example: Walter filed for bankruptcy ten years ago and lied about a debt in his bankruptcy. A creditor objected and filed a motion for fraud. The court ruled that the $5,000 debt was nondischargeable. Walter ignores the debt and never pays it back. Now, Walter has amassed a lot of additional debt and files for bankruptcy a second time. His bankruptcy filing is valid (because it is more than 8 years after the first bankruptcy filing), but the $5,000 debt will not be discharged because it was previously dismissed for fraud.

§3:21 Fraudulent Income Taxes; Property Taxes; Debts Incurred to Pay Taxes (Ch. 7 only)

Fraudulent income taxes. Under certain facts, certain types of income taxes can be discharged in both Chapter 7 and Chapter 13 bankruptcy. See §§3:29-3:31. Any income taxes that would otherwise be dischargeable in bankruptcy are automatically barred from discharge if the return on which the taxes were determined is fraudulent.

Determining what is fraudulent and what is an honest mistake can be tricky. We all know blatant fraud when we see it, for example, fictitious child care expenses or a failure to

report obvious income. In these obvious fraud cases, the taxes are not dischargeable, even if they meet the 3-year rule/2-year rule/240-day rule discussed in §3:29.

In gray areas, the IRS bears the burden of proving a taxpayer filed a fraudulent return. The elements of fraud the IRS must prove are: 1) knowledge of falsehood of the return, 2) intent to evade taxes, and 3) underpayment of tax. Whether all three of these had to be present at the time of filing the tax return is debated by various bankruptcy courts. In some cases, the court will look at other factors including the filer's sophistication, reliance on an accountant, or reliance on a spouse. If fraud is suspected there may be extensive fact-finding and analysis to determine if each of these elements is met. If there is a finding of fraud, any tax debt associated with the fraudulent income tax returns will not be discharged and the filer will still owe the full amounts, including penalties and fees.

Property taxes. In Chapter 7, property taxes less than a year old cannot be discharged. This is because they are still current in the year that they are assessed. However, property taxes that are assessed more than one year before the filing date can be discharged. This may sound like a homerun, but like many discharged debts, a bankruptcy discharge can remove the obligation to pay the debt, but not the lien associated with the debt. Tax liens can never be discharged through bankruptcy. So if your unpaid property taxes have been converted into a tax lien, the lien will stay in place no matter what, until you sell your house and use the proceeds to pay the lien.

In Chapter 13, your back property taxes are repaid like your other debt obligations over the course of your repayment plan.

§3:22 Debts Incurred to Pay Taxes (Ch. 7 only)

This is a very fact-specific category of debt that is not dischargeable in Chapter 7 bankruptcy. Most people know that the IRS accepts credit cards to pay off tax debt. Credit card debt is usually dischargeable unless the credit card company challenges the discharge because of fraud. But there is another exception in the bankruptcy laws when credit card debt becomes nondischargeable. If you use your credit card to pay off nondischargeable debt, like income taxes less than three years old, then that debt is also nondischargeable.

Example: Brett filed his 2014 tax return on April 10, 2015. He owed $1800, which the IRS assessed against him. Brett didn't have the money to pay the debt, so he put off paying it. In June 2015, he received a notice from the IRS that the IRS intended to garnish his bank account. In a panic, Brett used his credit card to pay off the debt. Eight months later, Brett files for Chapter 7 bankruptcy. The income tax debt is new tax debt (priority debt) and would not be dischargeable in bankruptcy. Brett's credit card company can file a complaint against him to make the credit card debt nondischargeable.

Example: Nancy owed the IRS $6,000. The taxes were assessed over six years ago. Nancy made partial payments on some of the tax debt, but the balance never seemed to move much because of the high interest and penalties. Because the tax debt was so old and because all the circumstances were right, the tax debt would be dischargeable in bankruptcy. However, Nancy had no intention of filing for bankruptcy

and used her credit card to pay off the debt. Later, Nancy's debts have caught up with her and she files bankruptcy. Because her tax debt was dischargeable at the time she paid it with her credit card, the credit card debt is also dischargeable, and she will not have to repay it.

§3:23 Debts Not Dischargeable in Chapter 7 if Creditor Objects

Creditors can ask a court to determine whether some types of debts are dischargeable or not. For each of these categories, a creditor must file a motion in court. Then, a hearing will be held to determine if the debt will be discharged. If the creditor does not bring a motion, these debts will be discharged. These types of debts include:

- Credit card purchases for "luxury" goods owed to a single creditor and totaling more than $650 in the 90 days before the bankruptcy filing date However, if you can prove that you intended to pay the charges back or that the goods aren't "luxury" items then the debt will be discharged.

- Cash advances aggregating to more than $925 obtained within 70 days of filing for bankruptcy. But, if you can prove that you intended to pay this money back, then the debt will be discharged.

§3:24 Fraud

The general rule in bankruptcy is that any debt for money, property, services, or credit obtained by fraud or the use of a false financial statement cannot be discharged in any bank-

ruptcy case. The Bankruptcy Code has very specific definitions for types fraud and categories of fraud, much of which is too complicated to fully explain here.

Fraud is generally defined as a misrepresentation (a lie) about an important fact that another person relies on in deciding whether to enter into a transaction. A debt will be considered fraudulent if, at the time the debt was incurred, the debtor:

- Did not intend to repay the debt (received funds and already decided not to pay them back);
- Already had decided to file for bankruptcy and knew that before accepting the debt; or
- Did not have the reasonable means or possibility to repay the debt.

The specifics about the timing of taking on the debt, whether any repayment has been made, how much debt was taken out, and other additional factors play into whether there was actual fraud or not. Often, whether fraud exists requires an extensive fact-finding mission by the court. If a court does find fraud, the debt cannot be discharged.

Example: Sally approaches Worldly Bank for a $10,000 loan. She gives Worldly Bank a financial statement stating that she owns land, stocks and other assets worth $50,000. Worldly Bank relies on this financial statement and loans her the money. In truth, Sally's land and other property is worth only $5,000, and she does not even own some of the prop-

erty listed on the financial statement. Sally is guilty of fraud because she lied on the financial statement. The $10,000 debt is not dischargeable in a Chapter 7 bankruptcy case.

§3:25 Willful and Malicious Acts

Chapter 7. This category of debt does not come up very often. Most people might not even think of these as debts in relation to a bankruptcy filing. Essentially they are claims against you for intentionally hurting someone or his or her property. Whether an injury to another person or to the property of another person is the result of "willful and malicious" conduct has been the subject of substantial litigation. The courts have determined that in order to be a nondischargeble debt, both elements are necessary. Willful means that the debtor acted purposefully. Malicious has been defined as knowing that the act is likely to or will cause an injury or harm. The injury or harm does not need to be substantial or severe to come within the definition of malicious. The mere knowledge that the action is likely to cause an injury has generally been deemed enough by courts. If the debtor knew what she was doing, did it on purpose, and knew it would probably cause some type of injury or damage, the resulting debt is non-dischargeable.

Chapter 13. Debts from injuries to a person (including death) cannot be discharged in either Chapter 7 or in Chapter 13 bankruptcy. However, debts from injuries to property can sometimes be discharged in Chapter 13 because the bankruptcy laws for injuries in a Chapter 13 filing only exclude personal injuries. So, if you have a significant claim or judgment against you for some sort of property damage, it is important to consider Chapter 13 bankruptcy over Chapter 7.

§3:26 Embezzlement, Larceny, Breach of Fiduciary Duty

Like some of the other exceptions to discharge under the bankruptcy laws, this is a very specialized category of debt that will not be in play for the majority of people filing for bankruptcy. The Bankruptcy Code gives a fresh start to the "honest" bankruptcy filer, one who is honest both in presenting his or her financial information as well as honest in how he or she acquired debts. So, debts or claims against you that arose as a result of your allegedly dishonest, fraudulent and wrongful behavior likely will not be discharged in bankruptcy. This includes three categories of actions that are often criminal in nature - embezzlement, larceny, and breach of a fiduciary duty. Bankruptcy does not discharge any criminal penalties - neither Chapter 7 nor 13. However, the bankruptcy laws do address civil damages that can arise even if you are not charged with a crime, or if you are charged but are also facing civil lawsuits for the same behavior.

There are often complex statutory definitions for what constitutes embezzlement and larceny. In general embezzlement is commonly defined as the fraudulent conversion of another's property by a person who is in a position of trust, such as an agent or employee. Embezzlement is most often associated with employment. Larceny is the legal term for theft of personal property.

Example: Juan is a sales person at a high-end jewelry store. Often his clients pay with cash. On several occasions each week Juan slips himself an extra $50 or $100 from the cash payment and then changes the amount owed and calls it a

"discount" on the books so his employer won't discover the discrepancy. Over the course of several years Juan has easily pocketed $5,000. Juan's scheme is eventually found and he is guilty of embezzlement. As a result of his misdeeds, Juan is fired. He continues to have other financial difficulties and contemplates filing for bankruptcy. If he files, he cannot discharge the $5,000 debt owed in any bankruptcy case, Chapter 7 or Chapter 13.

A fiduciary is a person who has the right and responsibility to act on behalf of another in a relationship of trust. Besides formal trustees and similar legal agents, the following are examples of types of people who have fiduciary duties: corporate officers and directors of an insolvent corporation toward the corporation's creditors; an attorney with client's funds in a trust account; a partner toward the partnership and the other partners; a real estate broker toward the buyer or seller she is contracted with; and the executor of a decedent's estate toward the beneficiaries. Any intentional violation of this fiduciary duty will result in the debt not being discharged. Often the facts that surround these types of matters are very complex and require a very close examination before filing for bankruptcy.

Although debts related to embezzlement, larceny, or breach of fiduciary duty involve a small number of bankruptcy filers, in all cases debts arising from any of these actions are non-dischargeable.

§3:27 Unlisted Debts or Creditors

As previously discussed, the bankruptcy laws require you to list all your debts and all your creditors. You cannot pick and choose what debts you want to include in your bankruptcy. Leaving a creditor off can cause problems later, to varying degrees. How an unlisted debt or creditor is treated under the bankruptcy laws depends on whether the act was an honest mistake or deliberate, whether you are in a Chapter 7 or Chapter 13, when in the process the unlisted creditor or debt is discovered, and whether your case is a no asset or asset case.

If you leave a debt off deliberately, such as one on which someone else may also be liable, this can get you into trouble with the court (and sometimes the law) because you have thus filed incorrect papers, swearing they are true when you know they are not. Leaving off a debt because you do not remember or accidently forget will not get you into trouble because you have made your best effort to file correct papers. If this happens in a Chapter 7 case and you realize it before the case is closed, you can have your attorney file an amendment to add the creditor and all will be well.

If you remember a creditor after your Chapter 7 discharge what happens with the debt will be depend on whether you had assets in your case to be distributed to you creditors. If no money was distributed to creditors, all might not be lost. Get in touch with your attorney and he or she can write to the creditor and point out that the debt is discharged even

though it was not listed in the petition. The courts have ruled this to be true because the creditor is not missing out on anything because no money was distributed, and it is better to declare the debt discharged than have cases reopened to add a creditor.

If you remember the debt after discharge and you have a Chapter 7 case where some money was distributed to creditors, it is a bigger deal. If a creditor never gets notice of the bankruptcy filing and later the discharge, the creditor can still come after you for the debt. The debt is not discharged because the creditor has missed out on an opportunity to get a portion of the debt paid through the bankruptcy.

In Chapter 13, missing a creditor can be more complicated and the consequence depends on whether the mistake happens before or after the Chapter 13 repayment plan is confirmed.

If you forgot a creditor and file an amendment before the plan is confirmed, you will be all right with the creditor and eventually receive a discharge upon plan completion. However, in a Chapter 13 case, there is a problem when your plan has been confirmed and you find out about a creditor you omitted. This is because creditors have timelines after receiving notice from the court in which to file a claim to get paid a percentage of the plan payments. For example, if your plan provides for payments of 25 percent of your debts, and adding the new creditor to the mix brings the percentage down to 22 percent, you may have to find some extra money to bring everyone back up to 25 percent.

IV. Debts That Can Be Discharged Under Special Circumstances

§3:28 Student Loans

Chapter 7. In general, student loans are very difficult to discharge in bankruptcy. You must show that the payment of the student debt "will impose an undue hardship on you and your dependents." Courts apply variations of this "undue hardship" test. Courts are continually interpreting and questioning if there should be a different standard.

The variation of this test most commonly used by courts is called the Brunner test. This requires a showing of the following:

- That the filer cannot maintain a "minimal" standard of living if forced to repay the loans (based on current income and expenses); and
- Additional circumstances indicate this situation is likely to continue for a significant portion of the repayment period; and
- The filer has made good faith efforts to repay the loans.

Even if you can prove these factors, or other similar court requirements, the court has the final determination in whether the student loans can be discharged. If the court determines you will suffer undue hardship, the student loans will be completely canceled and all collection efforts must stop.

If you have already filed for bankruptcy, but did not initially request a determination of undue hardship, you may reopen your case at any time to file for an undue hardship.

Chapter 13. If you are unable to prove an undue hardship under Chapter 7, there are still advantages to filing a Chapter 13 bankruptcy when you have student loans. Because your Chapter 13 plan payment is determined by your disposable income, your Chapter 13 plan, not your student loan lender, will determine the size of your student loan payments. This payment will be constant or predetermined for the length of your plan, usually three to five years. You will still owe the remainder of your student loan balance when you receive your bankruptcy discharge, but you can try to obtain a hardship at that time. Another benefit is that any collection actions against you for student loans will be stayed (i.e., stopped) during the entire duration of your case. Different court jurisdictions may treat student loans slightly differently.

§3:29 Income Taxes

It is a myth that taxes cannot be discharged in bankruptcy. Although, some tax debts do survive bankruptcy, some income taxes can be discharged. The analysis of tax debt often requires a very careful accounting of dates, category of tax debt, and what activity the IRS may have had on the account. There are several key factors to analyze in order to determine if income taxes can be discharged. This applies in both Chapter 7 and Chapter 13 bankruptcy.

3-year rule: The tax return must have been due at least 3 years ago. "Newer" tax debt has a priority to be paid. If the three years have not passed, the taxes have to be repaid and cannot be discharged.

Example: Michael's 2012 federal income taxes are due on April 15, 2013. If Michael owes taxes for that year and wants to consider a discharge of the taxes, the earliest he can file for bankruptcy is a date after April 15, 2016, assuming no other facts interrupt the 3-year timeline (e.g. see assessment rule below).

Events can extend the three-year period. The most common scenario is when an individual gets an extension of time to file. Then the three-year period runs from the date the taxes are due under the extension. Because of this and similar factors, calculating the three years can be challenging.

Example: Samantha files for and receives an extension of time to file her 2012 personal income taxes until October 15, 2013. Now, the tax return due date is October 15, 2013, rather than the original date of April 15, 2013. If Samantha wishes to discharge her 2012 income taxes, she must wait to file her bankruptcy until after October 15, 2016.

2-year rule: The tax return must have been filed on time or no less than 2 years before the bankruptcy filing. This rule allows an individual to discharge taxes even if the tax return is filed late, as long as it meets the two-year rule.

Example: Samantha's 2012 income taxes are due on April 15, 2013. She does not file for an extension, and she does not get around to filing her taxes until July 1, 2014. If Samantha wants to discharge her 2012 taxes, she cannot file for bankruptcy until after July 1, 2016. (This is more than three years from the date her taxes were due and two years from the date she filed her tax return).

240-day rule: The IRS cannot have assessed the taxes in the last 240 days before the bankruptcy filing date.

Example: Michael files his 2012 tax return on April 15, 2013. The IRS assesses the taxes the same day. Michael meets the requirements of the 3-year rule/2-year rule/240-day rule on April 15, 2016. (Note: The actual assessment dates from the IRS can vary. It is important to always check the actual assessment date and not assume it is the same as the filing date).

When calculating timelines, it is important to be careful of audits, amended or corrected returns. Any changes made to an initial filing, can add time to the 2-year rule.

Example: Michael files his original income tax return on April 15, 2012. The IRS assesses the taxes on November 30, 2012, along with some penalties and interest. Michael then files a corrected return on July 1, 2013, showing that he owes additional taxes. Based on this amended return, the IRS assessed the new taxes, penalties and interest on January 1, 2015. Michael must now wait to file for bankruptcy until at least August 29, 2015 (January 1, 2015, plus 240 days) to discharge the entire tax debt. If Michael files for bank-

ruptcy before this new 240-day period is complete, the taxes assessed in 2012 would still be dischargeable, but the new taxes, penalties, and interest would not be dischargeable.

Example: Samantha files her 2012 tax return on time on April 15, 2013, and assesses her taxes shortly after that. However, the IRS audits Samantha's taxes and finds that Samantha made a mistake. Unbeknownst to Samantha, she owes a few hundred dollars more than the amount that is shown on her original tax form. The IRS assesses the additional taxes along with some penalties and interest on March 1, 2016. If Samantha wants to discharge the newly assessed taxes, penalties, and interest, she will have to wait until October 27, 2016, to file for bankruptcy (240 days from the IRS's new assessment).

No discharge of tax liens: Unfortunately, discharging income taxes in bankruptcy does not automatically remove tax liens. The advantage in still filing bankruptcy on income taxes that meet the 3-year/2-year /240-day rules is that the personal obligation to pay the taxes will be discharged. However, any lien against property you acquired before filing for bankruptcy would still stand. There may be other ways to deal with tax liens that may warrant talking with a professional.

No discharge for fraud or tax evasion: The bankruptcy laws make any tax debt related to a filed fraudulent return or willfully trying to evade the tax not dischargeable under any circumstances. The facts may vary, but a tax return is fraudulent if the filer knows that the return is false, intends to evade

taxes, or fails to pay the taxes. Innocent mistakes, verified by the IRS or proven in court, can sometimes overcome this assertion, but that is the exception.

§3:30 Other Tax Debts Not Dischargeable

In general, there are several tax debts that cannot be discharged in bankruptcy. These include:

- Personal income taxes that do not meet the 3-year/2-year/240-day rules.
- Tax liens (but the required amount to pay may be dischargeable).
- Recent property taxes.
- Trust fund taxes (e.g. FICA, Medicare, and income taxes than an employer must withhold from the pay of employees, and sales taxes related to a business).
- Employment taxes, excise taxes, and custom duties, depending on specific time periods.
- Non-punitive tax penalties on nondischargeable taxes if the transaction or event that sparked the penalty occurred less than three years before filing the bankruptcy petition.
- Erroneous or fraudulent tax returns.

In summary, you can discharge federal income taxes in Chapter 7 if: 1) The taxes are personal income taxes; 2) The tax return was due more than 3 years prior; 3) The debt has not been assessed by the IRS in the last 240 days; and 4) there is no fraud or willful evasion.

§3:31 Income Taxes in Chapter 13

Chapter 13 can be a useful tool to handle delinquent tax debt, even if the tax debt is not dischargeable. Taxes in bankruptcy are classified into priority debts or non-priority debts. Priority tax debts can be spread out over the length of a Chapter 13 repayment plan. This can buy a debtor time to pay the debt back in part, or full. In most cases the entire priority debt amount must be repaid in full during the time allotted for the Chapter 13 repayment plan (usually 36 to 60 months). In general, priority taxes are:

- Taxes that do not meet the 3-year/2-year/240-day rules. This means that (a) the income taxes first came due within 3 years of the filing of the bankruptcy; or the return has been filed within the 2 years prior to the bankruptcy filing date; or the IRS has assessed the taxes within 240 days of the bankruptcy filing or the taxes are assessable at the date of filing.

- Taxes that are a category of otherwise non-dischargeable tax debt.

The priority amount includes the tax and the interest to the date of filing on the tax; penalties associated with a priority tax are not priority claims and are treated just as any other unsecured debt, which means creditors may get little or nothing through the plan. One of the benefits in filing bankruptcy on tax debt is that interest on all unsecured claims in bankruptcy stops running upon the filing of the case. Thus, unsecured priority taxes are paid without interest continuing to accrue.

Tax liens can also be handled through the Chapter 13 repayment plan. The value of the lien that must be paid through the plan is the present value of the equity in the debtor's assets to which the lien attaches. If the lien exceeds the value of the assets available to secure the tax, the portion of the tax exceeding the value of the assets is treated as either a priority claim, if recent, or an unsecured claim, if older. The result is that tax liens that have grown huge over years can be stripped down to the actual value of current assets, locked in as to value as of the commencement of the case, and paid over the duration of the Chapter 13 plan. After the bankruptcy discharge, the pre-filing lien does not attach to newly acquired property.

There are many advantages to using Chapter 13 bankruptcy as a tool to effectively and efficiently manage tax debt. The biggest advantage is that Chapter 13 allows for the payment of tax debt over three to five years, and generally prohibits the assessment of additional penalties and interest on the amount of the tax. Other advantages include a set payment

plan, old taxes will still be discharged upon completion of the plan, and tax liens are frozen as long as the Chapter 13 plan stays current.

V. Chapter 13 - Other Considerations

§3:32 Differences between Chapter 13 and Chapter 7

The biggest difference between a Chapter 7 and Chapter 13 discharge is the amount of time that passes between the case filing date and discharge date. A Chapter 7 discharge is usually granted in a matter of a few months after the filing date. A Chapter 13 discharge is not granted until the entire Chapter 13 repayment plan has been completed, which is usually three to five years. In most cases the type of debts that are dischargeable in both chapters is the same, but the path to get there is quite different. There are some special considerations in Chapter 13 that are not present in Chapter 7.

§3:33 Secured Debts

Secured debts are debts backed by collateral. A lender or creditor loans money to a borrower in exchange for a lien or financial interest on some collateral (e.g. house, car, boat). The lien usually remains in effect until the loan is repaid in full. If the borrower defaults on the loan, the creditor can seize (take back) the property. The creditor then has the right to sell the property to recoup the balance of the funds owed. In Chapter 13, the repayment plan provides for how a creditor will be paid, either through the plan or directly from the borrower. There are some unique situations and rules that deal with secured property in Chapter 13.

§3:34 Arrears and Delinquent Payments on Secured Debt

Before discharge, all arrearages on secured debt must be paid off unless you are willing to surrender the collateral. Therefore, filers with secured debts that are delinquent must pay their arrears in full during the life of the bankruptcy payment plan if they want to keep the asset. For example, if a filer owes $5,000 in back payments on a mortgage, the filer must repay that amount over the life of the plan to keep the house. That means that each month he or she must pay down the $5,000 amount plus the regular mortgage payment and other debts related to the Chapter 13 repayment plan. This same example would apply to missed car payments or any other property the filer wants to keep.

§3:35 When Secured Debt Lasts Longer than the Repayment Plan

In many cases a house mortgage, or even a car loan, will last longer than the bankruptcy payment plan. There is no specific requirement that you pay off the entire secured debt, only that you cure any arrears before receiving you bankruptcy discharge. But, if you wish to keep the property tied to the debt, you will have to continue making payments on the secured debt after bankruptcy discharge. It is not unusual to receive Chapter 13 discharge with a mortgage or a car note while simultaneously discharging unsecured debts such as credit cards.

§3:36 Staying Current during the Payment Plan

The Chapter 13 filer has to stay current on the Chapter 13 payment plan (which might include mortgage arrears), and also make all regular mortgage and car payments on time. For example, if your mortgage payment to Bank A is $1500 a month and your Chapter 13 plan payment is $600 per month to the Chapter 13 trustee, both payments must be received to be considered current. If you miss a mortgage or car payment and don't get caught up quickly, the bank can file legal action in the bankruptcy to "lift the stay" and begin foreclosure proceedings on the house. The "lift the stay" motion is hard to defend and the only real way to make it go away is to bring any arrears accrued since the bankruptcy filing date current immediately. These motions are heard in the bankruptcy court. Actual foreclosure proceedings vary from state to state and will be heard in state court.

§3:37 Priority Debts

Priority debts are debts that the bankruptcy laws have classified as important enough that they must be paid in full, with a few exceptions, during the repayment plan. Repayment of these debts is given priority over the repayment of other debts. These debts are given a higher priority because money is owed to the government or because it's the right thing to do for the public good. In most cases, these debts cannot be discharged. The most common types of priority debts include:

- Bankruptcy Administrative expenses (e.g. Chapter 13 attorney's fees, trustee's fees)
- Child support.

- Alimony/Spousal Support.
- Certain types of income taxes.
- Payroll taxes and sales taxes.
- Money owed for causing a personal injury or death because of intoxication with alcohol or drugs.
- Criminal fines.
- Overpayment of government benefits.

§3:38 Joint Debts

When you obtain a bankruptcy discharge, it is only eliminates the liability on your discharged debts. A credit provider can still enforce the terms of an agreement (e.g. credit card terms) on other cosigners or joint account holders to recover payments. There is little direct protection for the joint account holder who did not file bankruptcy in Chapter 7. Creditors can still pursue the codebtor for payment.

However, in Chapter 13 bankruptcy, a codebter who does not file often has more protection. Once a bankruptcy case is filed, a codebtor stay immediately goes into effect and will protect all cosigners and joint account holders on consumer related debt. As long as the codebtor stay is active, creditors are legally stopped from attempting to collect on the debts from all cosigners or joint account holders. It does not matter that the cosigner did not file for bankruptcy. The Chapter 13 codebtor stay remains in effect until a creditor seeks permission to lift it or until a case is closed, dismissed, or converted to a Chapter 7.

Creditors are able to file paperwork (called a motion) to seek court permission to lift the codebtor stay if any of the following is true:

- The consigner or joint account holder received the primary benefit from the creditor's loan.
- The Chapter 13 repayment plan does not propose to pay the cosigned debt.
- The creditor's interest will be irreparably harmed if the codebtor stay remains in effect.

The success of a creditor's ability to lift the stay will be determined by facts unique to each case and decided by the bankruptcy court.

Chapter 4:
Your Property in Bankruptcy, A Closer Look

I. What Is the Bankruptcy Estate?

§4:01 Initially Includes All Property Owned at Filing Date

A bankruptcy begins when you file documents called the petition and schedules with the court. These documents list all the assets you own, which comprise the "bankruptcy estate." The "bankruptcy estate" is an important concept in bankruptcy law. Every case has one, but what it consists of can be difficult to understand.

The minute your case is filed, all of your property and assets enter the bankruptcy estate. With a few exceptions (see §4:10), property acquired after the bankruptcy filing date is excluded. The bankruptcy estate then becomes the temporary legal owner of all your property.

§4:02 Some Assets Are Excluded

Some assets pass outside of the bankruptcy estate as a matter of law. These are excluded from the bankruptcy but might still have to be disclosed to the court. They are not controlled by the bankruptcy court, but are also not subject to the bankruptcy protections, such as the automatic stay. See §§4:16-4:26.

§4:03 Exempt Property Is Removed

Federal and state laws provide exemptions that protect various categories of property up to a specified value from creditors' claims. In Chapter 7 bankruptcy, exemptions allow you to take exempt property out of the bankruptcy estate and keep it. Once exemptions have been applied, the bankruptcy estate may or may not have any value. If it does have value, this amount is used to pay creditors a portion of what they are owed.

In the majority of Chapter 7 cases, filers are able to keep all their property because the property does not exceed the value allowed by the exemptions. In these cases, the bankruptcy estate is left empty and the case is called a no-asset case. See §§4:27-4:46 for more about exemptions.

In contrast, assets that cannot be protected by exemptions, either because they are over the value or for other reasons, remain in the bankruptcy estate. Assets that are part of the estate and cannot be exempt are subject to the exclusive control and the protection of the bankruptcy court and trustee. Property left in the estate is handled according to a process

under the protection of the bankruptcy court. The trustee may liquidate the property (convert it to cash) for distribution to creditors. Alternatively, the filer may buy back from the estate assets he or she wishes to keep.

Chapter 13 treats the bankruptcy estate differently than Chapter 7, but the legal concepts are the same. If after exemptions have been applied, the bankruptcy estate has value, that amount must be paid to creditors during the course of the Chapter 13 repayment plan. See §4:28.

§4:04 Disputes about What Is in Bankruptcy Estate

Sometimes whether property (e.g. a car, a bank account, etc.) is part of the bankruptcy estate can be a disputable matter. Although bankruptcy law determines what property becomes part of the bankruptcy estate, nonbankruptcy law, often state law, determines whether the bankruptcy filer owns or has an interest in property. Because a trustee appointed in a case has a duty to determine whether the filer has disclosed all property and valued it appropriately, on rare occasions these matters can be challenged or litigated.

Example: Ben has disclosed that he owns a 5-year old car in his bankruptcy filing worth $15,000, with a lien of $12,000. Thus, according to his filing, he owns one car with $3,000 of equity. In most jurisdictions, the exemptions will cover the equity in the car. However, Ben had forgotten and was completely unaware that his cousin, for whom he had cosigned a loan four years ago on a 7-year old car, never transferred Ben's one-half interest out of Ben's name. The car is paid off and is worth $8,000 (Ben's one-half interest is $4,000). The

fact that Ben's name is still on the title, depending on other facts, might be proof enough that this asset is part of the bankruptcy estate. The trustee can litigate the matter to add the car to the bankruptcy estate. Then, depending on what else Ben owns, he may or may not be able to protect the one-half interest in the cousin's car. A trustee can force the sale of the car and use the proceeds to pay creditors out of the bankruptcy estate. Ben's cousin would be entitled to his one-half interest of $4,000, but could lose the car.

II. Property Included in the Bankruptcy Estate

A. The Basics

Keep in mind that just because property is initially in your bankruptcy estate, you won't necessarily lose it to creditors. You might have exemptions that can protect most if not all of it, but it is important to understand what property is in the bankruptcy estate before you begin to apply the exemptions. Whatever is left in the estate after application of exemptions is what is used to pay creditors, either directly, through liquidation, sale, or other methods.

§4:05 What Is Property under the Bankruptcy Code

The Bankruptcy Code defines "property" very broadly as all legal and equitable interests of the bankruptcy filer and any community property of the filer and his or her spouse. In simple terms, unless the property is excluded because it is in a special category (see §§4:16-4:26), it enters the bankruptcy estate.

Some property is obvious, like cars, a house, and bank accounts, but other items that could be in the bankruptcy estate may be things that you may not even think about as property. See §§4:07-4:15.

If property changes form, it is still part of the estate. For example, if funds in a checking account are used to buy savings bonds and then the account is closed, the bonds are now the asset of the estate, even if the original bank account has been closed.

Property includes:

- All personal property, including household goods, clothing, appliances, cars, boats, other vehicles, jewelry, electronics, etc.
- All interests in real estate.
- You portion of any jointly owned property, whether real estate or personal property. See §4:06.
- A portion of your wages or earnings prior to the case filing date.
- All your financial accounts, including bank accounts, 529 plans (see §4:23), prepaid debit cards, non-excluded retirement accounts (see §§4:18-4:20).
- Your interests in trusts (see exception for spendthrift trusts at §4:16) and other non-traditional assets.

- Certain interests in community property with your spouse (when community property rules apply). If you live in a community property state, all community property is part of your bankruptcy estate whether you are filing a joint bankruptcy with your spouse or filing alone. But if you are filing without your spouse, his or her separate property is not part of your bankruptcy estate.

§4:06 Effect of Filing on Co-Owners of Jointly Owned Property

If you own property jointly, filing for bankruptcy can affect the other co-owners. How much of the property you own, the total value of the property, how easily it can be liquidated (if not exempt) all factor into how the co-owners might be affected. Additionally, the property laws of your state and whether you are filing under Chapter 7 or Chapter 13 also matter.

If you have a co-owner who is not also filing bankruptcy (e.g. a friend or family member who is not your spouse), it is best to put your co-owner on notice that there is a chance he or she could lose the asset. The co-owner who is not filing for bankruptcy will be entitled to his or her share of the value of the property in cash if the trustee liquidates the asset.

B. Special Categories

§4:07 Property You Own but That Is Not in Your Possession

Most property you own is considered part of your bankruptcy estate whether or not you are in possession of it. This means that even if you don't currently have the property (for example, a boat you loaned to a friend or a security deposit you gave to your landlord), it is still property of your bankruptcy estate and must be disclosed in your bankruptcy paperwork. This category includes any property you have in a storage locker or are storing off-site at another location.

§4:08 Right to File a Lawsuit

In your bankruptcy filing, and at the meeting of creditors, you must disclose your right to any legal interest or claim you may have in a past (if it has not yet paid out), present, or future (known) lawsuit. This includes any money you might be entitled to receive, even if you have not yet filed a lawsuit. This money belongs to your bankruptcy estate. There are special exemptions for personal injury awards or recoveries, but you will have to use exemptions to keep most other monies you recover from a lawsuit award or settlement.

§4:09 Property You Are Entitled to Receive at the Time of Filing

Even if you have not received a payment owed to you, a tax refund, or other property to which you are entitled, the fact that these items are owed to you makes them property of the bankruptcy estate. The key factor is whether you have

earned the entitlement to the asset. Other examples include accounts receivable and unpaid income or commissions earned prior to filing your case.

Tax refunds owed to you before the date your bankruptcy petition is filed are part of your bankruptcy estate. Depending on the time of year the petition is filed, tax refunds from both the previous year and the current year up to the filing date may be included. For example, if you file your case on May 1, the tax refund attributable to the previous year may be included if you have not received and spent it yet as well as 5/12ths (May is the fifth month) of any tax refunds for the year in which the bankruptcy is filed.

§4:10 Certain Property You Receive or Are Entitled to Receive Within 6 Months after Filing

In general, property you acquire after filing for Chapter 7 is not property of the estate. But there are exceptions. If you become entitled to receive any property within 180 days after your filing date because of an inheritance, marital settlement agreement, divorce decree, life insurance policy, or death benefit plan, it is considered part of your bankruptcy estate. The 180 days are calculated from the filing date until the date on which you have the right to receive the property and not the date on which any disbursements are made.

§4:11 Stock Options

Stock that you own, whether, in a portfolio, or company issued stock that is not protected by an exempt or excluded retirement account (see §§4:17-4:20) is part of the bankruptcy estate.

§4:12 Revenues and Profits Generated by Estate Property

If the property in your bankruptcy estate produces profits or additional revenues (such as investment property rental income), those revenues are property of the bankruptcy estate as well. This type of income can be tricky in bankruptcy as it can be seized by the trustee and controlled until all your creditors are paid off in full. If you have rental income or a business that produces significant recurring income based on prior contracts, it is important to get a full understanding and accounting before filing of how your estate might be affected. Once your case is filed, you are subject to the powers of the trustee and bankruptcy law. You can never "undo" a Chapter 7 bankruptcy filing or change your mind once it's filed. This category often affects insurance and real estate agents.

§4:13 Fraudulent Transfers the Trustee Recovers

Under certain circumstances, if you give away or transfer your property before filing for bankruptcy, the bankruptcy trustee may be able to avoid (cancel) the transfer and get the property back into the bankruptcy estate for the benefit of your creditors. The idea is that if you transferred property to avoid creditors, for no or inadequate value, that type of transaction is unfair and therefore can be "undone" by the bankruptcy court.

Example: If Richard, six months before his bankruptcy filing, transfers his car title to a friend for $500 and the car is worth $6000 that is a fraudulent transfer. In this case, the trustee can use something called avoidance powers and

"undo" this transaction and pursue the friend for the value of the car at the time of the transfer for the benefit of Richard's bankruptcy estate and creditors.

The time limits for when and if the fraudulent transfer rules apply are based on the facts of each case. In some cases the look back period can span years.

§4:14 Preferential Payments to Creditors

Bankruptcy law requires you must to treat all of your creditors fairly. This means that you can't choose to pay one creditor over another. If you make payments to a creditor shortly before filing your case, the trustee may be able to get that money back and bring it into your bankruptcy estate to be distributed among all of your creditors.

Preference payments usually apply only to unsecured creditors and to secured creditors when you pay over the contracted payment amount. For example, if you pay $2,000 on one of your credit cards the week before filing for bankruptcy that will be a preference payment. You "preferred" one creditor over another. But, if you paid that same creditor $150, that would not be a preference payment. Regular car, mortgage and rent payments are excluded from this category.

If a preferential payment is found, you will not owe anything to the bankruptcy estate, but the trustee in the bankruptcy case will pursue the creditor for the preference amount and can take legal action if the creditor does not return the payment. A preference payment to repay a loan from a family

member may strain family relationships when the trustee pursues your family member for the payment. You may decide you want to wait out the look back period to avoid this problem. See §5:07

§4:15 Money Loaned to an Individual or Business

If you loaned an individual or a business personal funds, the repayment amount (owed back to you) is property of your bankruptcy estate.

Example: Sally has a hair cutting business and loans her business personal funds of $5,000. The $5,000 that her business owes her personally must be identified in her bankruptcy petition as an asset owed to her and she must be able to claim it as exempt, or the trustee can pursue the business for the full amount, regardless if whether the business has the funds to pay. This can be a sticky situation in family-run, closely-held, or sole proprietorship businesses.

III. Property Excluded from the Bankruptcy Estate

Although the bankruptcy laws have been drafted to include as much of a filer's assets as possible in the bankruptcy estate, several categories assets are never included in the bankruptcy estate. This means that these assets pass outside of the bankruptcy and no exemptions are needed to protect them. These categories are not "property of the estate" and they are beyond the reach of creditors and the Chapter 7 trustee. In most cases, you can keep assets in these categories.

However, full disclosure of the assets in your bankruptcy papers, when applicable, is still encouraged. The broadest three categories of property excluded from the bankruptcy estate are (1) spendthrift trusts, (2) ERISA qualified retirement accounts and 401K plans and (3) social security benefits.

A. Spendthrift Trusts and Retirement Plans

§4:16 Spendthrift Trusts

A spendthrift trust is an irrevocable trust for another's benefit. A spendthrift trust cannot be revised or changed; the terms in the trust document must be followed. The unique feature of these trusts that is significant for bankruptcy is that they contain language that protects the assets held in the trust from a beneficiary's creditors.

Not all trusts are spendthrift trusts. Often a careful analysis must be done on the actual trust document to determine if the trust will be protected in bankruptcy. Even then, a trustee might try to challenge the protection of the trust assets. In order to qualify for this special protection and treatment in bankruptcy, the trust must outline the settlor's (person who establishes the trust) intentions that the trust be treated as a spendthrift trust. The language of the trust, sometimes referred to as a spendthrift clause, must clearly show this intent. If a trust of which you are a beneficiary does not contain a valid spendthrift clause, your interest in the trust will be included in the bankruptcy estate.

Even if the trust has a spendthrift clause, it may be important to disclose the trust to the trustee in your bankruptcy filing. If the trust truly meets the spendthrift exception, it will be

protected. However, if there is a legal question whether the trust qualifies as a spendthrift trust, it is better to disclose the trust, rather than not disclose it and find out later that the trust does not qualify as a spendthrift trust. In that case, the failure to disclose an asset that is part of the bankruptcy estate can create other legal and even criminal implications.

Example: Grandpa has some extra money and wants to provide for his grandchildren, but also wants to make sure that the money is used for a specific purpose. Grandpa asks his attorney to draft an irrevocable trust to pay for all his grandchildren's education if they meet other requirements. Then the trust is to provide for each grandchild's health and wellbeing, after the age of 30, if they graduate from college. Grandpa makes sure that the trust has a spendthrift clause. Grandchild Julian is carefree with money. He buys his girlfriend expensive jewelry, takes lots of trips and doesn't feel like working much. Julian eventually can't fund his lifestyle anymore and files for Chapter 7 bankruptcy. Julian discloses his interest in the trust. Even though Julian receives regular monies for general living expense from the trust, the trust assets and Julian's allowance from the trust are protected by the spendthrift clause. Julian's creditors and the trustee cannot reach the trust assets.

Despite the spendthrift clause, some types of creditors can reach trust assets to recoup monies owed by the beneficiary. For example, a spendthrift trust can sometimes be reached to satisfy a beneficiary's alimony or child support obligations. An outstanding debt to the Internal Revenue Service can be taken from trust assets too. These scenarios are outside the scope of bankruptcy law and require special consideration.

§4:17 ERISA Based Retirement Accounts and IRAs

In general, in both Chapter 7 and Chapter 13 bankruptcy you get to keep your retirement plans and pension funds in their entirety, with a few limitations. Under the Bankruptcy Code, most retirement account plans and pension plans are fully "exempt" from creditors. Like spendthrift trusts, retirement accounts pass outside the bankruptcy estate. Although the accounts are protected, full disclosure is still recommended.

Two categories of retirement accounts are fully protected. These are all ERISA-based plans (ERISA stands for Employee Retirement Income Security Act) and special categories of IRAs. An ERISA based plan is a plan based on federal law that sets standards of protection for individuals in most voluntarily established, private-sector retirement plans. The majority of employer-based retirement plans are ERISA based. Examples of ERISA based plans include:

- 401(k)s.
- 403(b)s or profit sharing plans.
- 457(b) deferred compensation plans.
- Governmental plans.
- Tax exempt organizational retirement plans.

§4:18 Non-ERISA Qualified Plans

Although most plans are protected up to 100% of the value, there are some limitations to the exemptions for non-ERISA qualified plans or accounts. These types of accounts in-

clude regular IRAs and Roth IRA accounts. The bankruptcy law still grants a high level of protection, but the amount of protection is capped. The protection is currently (as of 2016) capped at $1,283,025 per person (Note: This amount is changed every three years for cost of living increases). If you have more than this amount in your retirement accounts, the excess can be taken by the bankruptcy court to pay back your creditors. This exemption amount applies to the combination and cumulative total of all of your retirement plans and is not to each plan.

B. Other Retirement Account Considerations

§4:19 Other Types of Investment Accounts

Some individual have investment accounts other than or in addition to ERISA plans and IRAs, for example a non-qualified account offered by employer to save additional pre-tax money. These accounts vary in how they are set up, but they are treated like bank accounts. You must use an exemption to protect them, or the bankruptcy trustee can seize the account and use the balance to pay your creditors.

§4:20 Special Circumstances and Exceptions

Although retirement accounts are protected from creditors, there are several exceptions. First, this protection is only afforded if you actually file bankruptcy. Other collection and seizure rules may apply to your accounts. Second, if you withdraw money from a retirement plan, it is no longer excluded from the bankruptcy estate.

Example: Jane withdraws $10,000 from a protected IRA and puts it in a bank account. When the money was in the IRA it was fully protected. When the money was withdrawn and put in the bank account, it became an asset of the bankruptcy estate. To keep the money, Jane must use an exemption. Depending on her other assets and available exemptions, she may or may not be able to fully protect the $10,000.

Third, if the IRS has filed a tax lien against you, it may be able to reach your retirement assets. Fourth, bankruptcy does not provide protection from divorcing spouses who might have access or rights to your retirement accounts. Finally, any regular disbursements you get from your retirement funds are considered a non-retirement asset once disbursed and are subject to the regular bankruptcy exemptions.

C. Other Excluded Property

§4:21 Social Security Payments

Social Security retirement benefits and disability benefits generally enjoy broad protection in bankruptcy. Social security benefits are expressly excluded from the bankruptcy laws that define what income is available to repay creditors. This means that these benefits neither count as income (i.e. an asset) that can be used to repay creditors nor do they count in the means test for Chapter 7 eligibility. See §1:03.

Furthermore, the bankruptcy laws also protect social security benefits already received. This protection operates as an exemption, just like an exemption that provides a homestead or a motor vehicle allowance. This is most advantageous

for debtors owed a lump sum payment under social security laws, or those who have an account with substantial social security deposits, received but not spent (e.g. a savings account). It will be easier to claim an exemption in social security money already in your possession if the money is separate from other funds and directly traceable to social security. If the social security money is comingled with other sources of income, it will be harder to establish where the money came from.

§4:22 Property Held for Another

Any property that is in your possession but belongs to someone else is not part of your bankruptcy estate, for example, if you are storing an item for someone or driving a borrowed car.

§4:23 529 Qualified Tuition Plans or Programs

A 529 plan is an education savings plan that has tax-advantages and is operated by a state or educational institution. It is designed to help families set aside funds for future college costs as a "completed gift." This means that the earnings grow tax-free and will not be taxed when used for college or other qualified educational expenses. One of the key components to a 529 plan is that the account creator has control over the account, even though it was created for the benefit of a beneficiary (e.g. your child). This includes the ability to cash out early, subject to a penalty, and the ability to change the beneficiary.

The protection of 529 plans in bankruptcy is not as straightforward as some other categories. Protection is based on specific factors that are time sensitive based on when the plan was created and how long the contributions have been in the plan.

Older contributions are protected while newer ones are not. Specifically, if the contribution was made more than two-years ago, it is not part of the bankruptcy estate and passes outside of it. For contributions made more than a one year ago, but less than two, the first $5,000 in contributions is protected and also passes outside of the bankruptcy estate. However, any contributions made during the last year before the bankruptcy petition filing date will be included in the bankruptcy estate.

The reason for the variation is to deter individuals from "stuffing" the plan with money before filing for bankruptcy. Some of the exclusions also depend on the beneficiary having specific familial relationships to the creator of the plan and the contributions being within the allowed 529 limits. If part of the account does come into the estate, it can still be exempted to the extent that the filer has available exemptions.

§4:24 Property Pledged as Collateral for a Loan

When a licensed lender retains possession of the collateral in exchange for a secured loan, the value or portion of the property that secures the loan is not in the bankruptcy estate. However, any equity in the property is in the bankruptcy es-

tate will needed to be protected by exemptions. Therefore, before filing, it is very important to determine the fair market value of an asset.

§4:25 Property Obtained after the Bankruptcy Case Is Filed (Chapter 7)

Generally, if you acquire property after you file your petition, it will not be included as part of your bankruptcy estate. There are exceptions to this general rule. Specifically, if you are eligible to receive compensation or property before you file your petition but do not receive it until after your bankruptcy case begins, the property may be considered part of your bankruptcy estate and subject to liquidation if it cannot be exempted. Examples of specific situations where this rule arises include inheritance and insurance proceeds or damage awards of certain types.

You are required to notify the trustee once you learn that you are awarded any of these types of assets or become eligible to receive them. The court will then determine whether they must be included in your bankruptcy estate. To determine whether property obtained through lawsuits, inheritance or insurance is part of the bankruptcy estate, the court looks to when you are eligible to receive the funds. If you can claim the money within 180 days after you filed your bankruptcy petition, it is subject to Chapter 7 liquidation. This six month rule applies even if you do not actually claim the money during the 180-day period. See §4:10.

§4:26 Property Obtained after the Bankruptcy Case Is Filed (Chapter 13)

Chapter 13 repayment plans can last up to five years. This is a long time and a lot of life circumstances and changes can happen in this lengthy period. What happens if you win a large sum of money? Or inherit property two years after filing bankruptcy (taking it out of the 180-day rule requirement)? Are you required to amend your Chapter 13 plan, or more fundamentally, must your amend your schedules to list the newly acquired property as an asset?

Whether you can keep property acquired after filing a Chapter 13 bankruptcy is not clear cut. If the trustee can force you to turn over newly acquired property, you could lose the entire value of the property.

In some jurisdictions, the Chapter 13 plan contains boilerplate language requiring the bankruptcy filer to report all property acquired after filing to the trustee during the entire duration of the plan. Once the plan is confirmed these provisions are mandatory requirements that the filer (and all parties to the case) must follow. In these jurisdictions, the filer has no choice but to amend the schedules and/or notify the trustee of an asset acquired during the Chapter 13 case regardless if the asset may go to creditors.

In other jurisdictions the Chapter 13 repayment plan form does not have specific language about money or property acquired after the case is filed. In these districts, the Bankruptcy Code and rules govern the result. In these locales, with the exception of 180-day rule for inheritance, death benefits,

etc. the bankruptcy filer has no duty to report an after-acquired asset received during a Chapter 13 case. However, as a practical matter, it may be wise to refrain from spending or disposing of such property until you are sure the asset is not part of the estate.

IV. Exemptions

Disclaimer: The examples regarding exemptions and amounts given in this chapter, and book, are meant for illustrative purposes only to help simplify complex legal principles. The actual exemptions vary from state to state and case to case. Furthermore, exemptions and exemption amounts can change over time. Therefore, it is impossible to give a complete and accurate example of every state and every specific bankruptcy exemption scenario.

A. The Basics

§4:27 Exemptions in Chapter 7 Bankruptcy

When filing bankruptcy, you are allowed to protect a certain amount or dollar threshold of personal and real property through a legal process called exemption. Exemptions acknowledge that once you declare bankruptcy, you will still need housing, a vehicle, clothing and some other property to maintain a reasonable standard of living and employment.

Exemptions can cover all types of assets from homes, to cars, to bank accounts and everything in between up to a specified limit. Through exemption laws, the property in these specified categories passes into the bankruptcy estate and then passes out of the estate as exempt property.

An exemption limit applies to the equity you have in the property. Equity is the difference between the value of the property and what is owed on the property. For example, a car valued at $6500 with a loan of $5500 has an equity value of only $1000.

To keep non-exempt property, you must generally pay the trustee the value of the non-exempt property.

§4:28 Exemptions in Chapter 13 Bankruptcy

In a Chapter 13 bankruptcy filing the selection of exemptions is the same as in a Chapter 7. However, in most Chapter 13 cases the filer can keep all his or her property, whether it is fully exempt or not. Exemptions in Chapter 13 are used to determine whether the payment plan meets the "best interest of the creditors test." This test requires the Chapter 13 plan to pay the creditors at least the equivalent of what they would have received if the filer had filed under Chapter 7 and the nonexempt assets had been liquidated. If this amount is paid to the creditors in the Chapter 13 plan, the test is met and the filer can keep all his or her nonexempt property.

A few exceptions to this rule might include:

(1) "Extraneous" secured debts like a boat or other not reasonably necessary recreational vehicles with loans against them. It's not the fact of owning a boat that's the problem, but rather the loan payments on it are not a reasonable and necessary expense during the payment plan. Therefore, that

extra money should be paid into the plan for the benefit of all of the creditors; (2) Property that you want to surrender and give back to a lender; and (3) Property that is security for a loan when you fail to keep up with the payments.

§4:29 State vs. Federal Exemptions

The Bankruptcy Code provides a set of federal exemptions. Some states have adopted the federal exemptions, while others have enacted their own exemptions that filers must use. As of the date of publication, in 20 states and Washington, D.C., bankruptcy filers have the option to choose either their state exemptions or federal exemptions, whichever is more advantageous. Filers must choose between the full set of federal or state exemptions, and cannot "cherry pick" from both sets.

For example, Minnesota allows a choice between federal or state exemptions. The state exemption scheme allows a very generous homestead exemption, so a filer who owns a home with considerable equity may want to choose the state exemptions. However, the state does not provide a "wildcard" exemption that would allow a filer to protect cash or bank accounts. Someone who is not trying to save a home may prefer the federal scheme which may allow him or her to keep significantly more property. The application of bankruptcy exemptions to the facts of a case can be complex.

§4:30 Common Federal Exemption Amounts-2016

Category	Amount of exemption	Restrictions
Homestead	$23,675	Equity in principal residence in the state of residence.
Motor Vehicle	$3775	Only can be applied to equity in one vehicle titled in debtor's name.
Household goods	$12,625	It is the total cumulative value) on household goods which includes: furnishings, appliances, clothes, books, animals, crops, musical instruments. Has a limitation of $600 of value per individual item
Jewelry	$1600	Total combined for all jewelry
Life insurance	$12,625	Applies to the loan value, accrued dividends or cash value in a life insurance policy.
Tools of the trade	$2,375	Includes implements and books
Wildcard	$1,250 of any property, and unused portion if homestead exemption up to $11,850. Total possible is $13,100.	Can be used for any property that does not fit another category exemption, or to pick up a portion of nonexempt value that remains from an already used exemption. This is the exemption category that must be used for cash, bank accounts, other vehicles, etc.
Health Aids	Unlimited	Professionally prescribed
Injury Recovery	$22,975	For personal injury recovery not including pain and suffering or pecuniary loss. Compensation for loss of future earnings necessary for support.

Category	Amount of exemption	Restrictions
Wrongful death recovery	Unlimited	Recovery must be related to a person you depended on.
Public benefits	Unlimited	Public assistance, Social Security, Veteran's benefits, Unemployment Compensation.
Alimony & Child Support	Unlimited	As needed for financial support.
Crime victim	Unlimited	Crime victim's compensation
ERISA retirement accounts	Unlimited	Tax exempt retirement accounts (including 401(k) s, 403(b)s, profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans)
IRAs and Roth IRAs	$1,283,025	Capped at this amount

§4:31 Residency Requirements for Claiming Exemptions

Where you currently live and where you lived in the two plus years before a bankruptcy filing really does matter. Although the bankruptcy process is a matter of federal law and generally the same big picture applies from state to state, states have some latitude in the exemptions and their application. As a result of these differences, the bankruptcy laws have strict residency requirements that affect what exemptions apply in a filing. These requirements are designed to prevent potential filers from "forum shopping" or moving from one state to another in search of the most bankruptcy-friendly exemptions. In other words, you can't just pick up move to another state with more generous exemptions and then immediately file in the new state using the better exemptions.

There are two main residency requirements related to bankruptcy filings. The first is that you must have lived in a state for at least 91 days before you can file for bankruptcy there. The second applies directly to what exemptions you are allowed to use.

- If you have lived in your current state for at least two years, you will file there using that state's exemptions.
- If you have lived in your current state more than 91 days, but less than two years, you will file in your current state and use the exemptions of the state where you lived for 180 days before the start of the two-year period, or for the greater portion of that 180-day period. Effectively, exemptions are governed by the laws of the state in which you lived longer than in any other.
- If the state where you are filing allows you to choose between the state and federal exemptions, you can use the federal exemptions, regardless of how long you have lived there.
- If these rules mean no state exemptions are available to you, you can use the federal exemptions. Some states allow their exemptions to be used only by residents.

Example: Zoe files bankruptcy in Colorado on January 1, 2016. Zoe has not lived in Colorado for two years. She moved there on September 10, 2015. Zoe will have to use the exemptions in the state where she previously lived for the period between July 1, 2013 and December 31, 2013. The exemptions that apply are where Zoe lived for the greater part of 180 days in the two years before her file date.

Example: Stan likes to move around a lot and follow his passion for pursuing the arts. He has moved over seven times in the last several years. During the time period from July 1, 2013 to December 31, 2013, Stan lived in two states, New York and Oklahoma. He lived in New York from May 2013 to July 4, 2013, then moved to Oklahoma from July 5, 2013 to January 19, 2014. Because Stan lived in Oklahoma for the greater part of the 180-day period prior to the two years before he filed for bankruptcy, Stan will have to use Oklahoma state exemptions. Also, Stan does not have the option to use the federal exemptions as Oklahoma does not give bankruptcy filers the option of choosing between the federal and state exemptions.

§4:32 Joint Filing with Spouse

Bankruptcy law allows married couples to file a joint bankruptcy case and in some states each married debtor can claim a full set of exemptions. Some states will also allow married couples filing bankruptcy jointly to double the exemption amounts. Doubling means that both you and your spouse can each claim an exemption against the same asset. For example, instead of only receiving a homestead exemption of $20,000, the married debtors might be entitled to claim dou-

ble the homestead exemption and protect $40,000 of equity. Doubling is usually only allowed on property that you jointly own with your spouse. You and your spouse cannot double an exemption on property if one of you does not own it.

There are some additional limitations in doubling. If you live in a state that gives you a choice between federal exemptions or state exemptions, you have to follow either the federal exemptions or the state exemptions. Remember, you cannot cherry pick the best exemptions from both schemes. For example, if your state homestead exemption is higher than the federal version but does not allow for doubling, you cannot use the federal exemption to double the state exemption.

Example: Alabama does not allow federal exemptions. Its homestead exemption is $15,000 and the property cannot exceed 160 acres. However, the state allows doubling. So, a married couple could claim up to $30,000 in equity in their homestead property.

Example: Minnesota allows a choice between federal and state bankruptcy exemptions. Minnesota has a very generous homestead exemption that allows a bankruptcy filer to exempt up to $390,000 in equity for the home and land, and if the homestead is used for agricultural purposes up to $975,000. In a joint filing, the state homestead exemption cannot be doubled. Therefore, a husband and wife filing jointly cannot double the homestead exemption if using state exemptions. The state exemptions also do not have a wildcard. Minnesota does allow the federal homestead exemption to be doubled for a joint filing. In Minnesota, you could get a small wildcard and a $47,350 homestead exemption if taking the federal exemptions and using the full homestead amount.

B. Types of Exemptions

§4:33 Homestead

The homestead exemption is meant to protect the equity in your homestead property. Equity is the fair market value of your property less any liens against your property. Liens are usually mortgages, but can also include IRS liens, property tax liens, child support liens, mechanic's liens, and in some states' judgment liens. (The laws about judgment liens attaching to homestead property vary from state to state). A homestead property is your primary legal residence in the state in which you reside.

The bankruptcy courts in many jurisdictions have ruled that the homestead exemption can be used to shelter manufactured homes when they are used as a primary residence. However, the homestead exemption cannot be used to protect second residences, cabins, or a manufactured home or trailer if you own another home that you use as your primary residence.

These other residences may be protected by a portion of another exemption, but often there is no exemption to protect a second home in full if the homeowner has substantial equity in it.

Some states allow you to use the homestead exemption automatically. Other states required you to declare the property as your homestead (which has to be done with the county recorder's office well in advance of the bankruptcy).

The bankruptcy laws give particular domicile requirements for homestead exemptions. Although the exemption amounts and application of the exemption vary greatly from state to state, federal law will cap the homestead exemption if you have not owned the home for at least 40 months before the bankruptcy filing date. There is one exception to this rule. If you sold a home and then used the proceeds to buy a new home in the same state, the ownership length of both homes can be combined to satisfy the 40-month rule.

§4:34 Motor Vehicles

The motor vehicle exemption is used to protect the equity in one car that is titled in the filer's name. Equity is the difference between the amount that you owe on the vehicle and the value of the vehicle. For example, if you own a car that is worth $8,000 and you owe $5,000 on your care loan, you have $3,000 of equity to protect.

If you cannot protect all the equity with just your motor vehicle exemption, some states allow you to combine the exemption with another category - the miscellaneous "wild card" exemption. See §4:45. This is called exemption stacking.

For example, if you have $7,000 of equity in a vehicle and the state you reside in allows a $3,500 motor vehicle exemption and a $4,000 wildcard exemption (to be used for any other assets that do not fit into another category), you could protect up to $7,500 in equity by "stacking" the two categories. Not all jurisdictions have a wildcard category and

if they do the wildcard category may be needed to protect things like bank accounts, tax refunds, etc. There are some assets that only fit into a wildcard category.

If after applying all possible exemptions and there is still unprotected equity, whatever amount is unprotected is property of the bankruptcy estate, and the trustee will have the right to ask you to compensate the estate for it. Negotiating with the trustee to keep the asset and paying a sum over the exemption amount might allow you to keep the car. Therefore, it is very important to make sure you have an accurate value for the amount owed on the vehicle and the value of the car to determine the equity that needs to be protected for your vehicle. In order to protect or keep more than the one car allowed by the motor vehicle exemption, there will have to be a wildcard category available or you will have to be prepared to pay the estate for the value of the car.

If you co-own a car with someone who is not filing bankruptcy, you only have to declare your equity in the car and use exemptions to protect your interest. For example, mother and son each own one-half of a 5-year old car that less the loan has $4,000 in equity. The son's one-half interest is $2,000 and that is the amount he has to exempt.

§4:35 Household Goods/Clothing

Most household goods and clothing that are reasonably necessary, including appliances, are fully exempt in bankruptcy because they usually have little resale value. Furthermore, the bankruptcy laws allow you to keep a certain amount of

property to make sure you can continue a reasonable standard of living. The federal exemption in this category is fairly generous. State exemptions vary, but most states have a household category, or at least a wildcard category (see §4:45) that allows you to list household goods.

The trustee is not going to be interested in every lamp, old couch, end table and dish in your cupboard. These assets can usually be listed in your bankruptcy papers in a lump grouping of household goods and given an approximate resale value (think garage or yard sale prices). However, if you have individual items of high value those should be listed separately and you might have to use a wildcard to protect them. The federal exemptions have a cap of a $600 value on any single item.

§4:36 Cash and Bank Accounts

Bank accounts of all forms (checking, savings, CDs, money market accounts) are property of your bankruptcy estate. The value included in your bankruptcy estate is the exact balance on the date of filing. It does not matter if you have written checks that have not cleared or other pending withdrawals are scheduled, but not yet completed. For example, if your checking account shows a balance of $453 and you have scheduled utility bills to clear in the next week for $65 and $40, the balance of your account is still $453. Additionally, the balance of your account will include all funds as of the day of your filing, regardless of whether checks are outstanding. Put simply, the actual balance in your account is the balance that you must list on your bankruptcy schedules.

In some cases, the bank balances may not matter much if they are minimal; however, it is a good idea to have your bank balances as low as possible on the date of filing. Don't file your bankruptcy the day you get paid. You can pay all your normal monthly bills (utility bills, car payments, mortgage payments, and any other normal monthly expenses such as groceries) right before you file to reduce the balances in your accounts. Make sure to wait for the transactions to clear. Don't pay above your normal amounts due, or the payment could be considered a preference payment. See §§4:14, 5:07. The money needs to be spent on legitimate, normal living expenses, in the normal cycle of business. The higher your bank balances, the fewer exemptions you will have left for other property such as tax refunds and vehicles.

Like, bank accounts, cash in any format is property of the bankruptcy estate and must be disclosed as an asset in your filing. Therefore, simply withdrawing the cash from a bank account does not change the numbers or the situation. The trustee will ask for verification at the meeting of creditors, or beforehand. Many trustees actually require three to six months of bank statements before the filing date to check for preference payments, weird transfers, large purchases and, other transactions that might raise a red flag.

§4:37 Pre-Paid Debit Cards

A prepaid debit card is a payment card that is used like a credit card. The biggest difference is that they are "pre-paid" with money before the card can be used. Usually prepaid debit cards will not let you spend more than you have deposited onto the card. You often see these cards for sale at su-

permarket checkout aisles. Some companies even use them for employee payroll. In regards to assets and the bankruptcy estate, pre-paid cards are treated like "cash." The cash value on the date of filing must be disclosed and exempted to fully protect the asset.

§4:38 Wages

In Chapter 7, income and wages are split into two categories: (1) income you earn after filing your case and (2) income you earned before your case was filed but have not yet received. In most cases, wages that you earn after filing your bankruptcy are not part of the bankruptcy estate and the trustee cannot pursue them. However, if you are waiting to get paid for work completed before the filing date, these wages are earned, but unpaid and property of the bankruptcy estate. All wages in this category must be disclosed as an asset in your filing.

Whether you get to keep these unpaid wages depends on two factors: whether they are exempt or whether you need them to pay necessary expenses. If you have enough exemptions left, you will want to use your federal wildcard, or similar state exemption, to protect them. If you are paid in regular intervals, the amount of unpaid wages you need to protect is likely small enough so that you can either explain to the trustee why you need to keep it, or use exemptions.

If you are owed larger sums of money (e.g. real estate agent waiting to be paid on several closings), needing the money for necessary expenses may allow you to keep the earned but unpaid wages. Whether the court will allow you to keep

your nonexempt wages depends on numerous factors including the amount of your anticipated income and necessary household expenses for you and your dependents. There is no guarantee you can keep all or a portion of these nonexempt wages, but it is worth a try.

§4:39 HSA/MSA Funds

Health savings accounts (HSA) and medical savings accounts (MSA) are essentially cash accounts in which you have put away money. Whether these are property of the bankruptcy estate (there are some arguments that they are part of health insurance and therefore not part of the bankruptcy estate) will depend on where you live. Recent court decisions in some states have determined that these are property of the bankruptcy estate, thus must be fully disclosed and exempted if they are to be fully protected from creditors.

§4:40 Retirement Accounts

As mentioned previously, states are permitted to "opt-in" (or use the federal bankruptcy exemptions) or "opt-out" (and use their own state exemptions). Some states allow a choice of either exemption option. But, with respect to retirement accounts, the bankruptcy laws eliminate any differences among the states. The purpose is to provide equal treatment of exemption claims of retirement funds to all Chapter 7 and Chapter 13 bankruptcy filers. Therefore, regardless of where you live, the retirement account bankruptcy exemptions are the same. But, for all other exemptions, it is important to know if you live in an opt-in, opt-out, choice state to determine which exemptions apply to your bankruptcy case.

§4:41 Tools of the Trade

If you are self-employed or need special tools to perform your job, you may be able to keep a portion, if not all "tools of your trade." The amounts exempted or even the existence of the exemption for tools of the trade varies from state to state. The 2016 federal exemption in this special category is approximately $2,375. This exemption will not ordinarily apply to the property owned by a business entity, such as a limited liability company (LLC) or a corporation, as exemptions are available only to natural persons.

This category is somewhat subjective and a little more complicated than it would seem by the description alone. What is a trade tool for one person may not be a trade tool for another person.

According to the bankruptcy laws, tools of the trade consist of those items absolutely necessary to successfully pursue a business. Therefore, your line of work largely determines what is allowed under this exemption category. For example, different types of tools will be necessary for a mechanic, a farmer, or a caterer. A set of automotive repair tools might be a trade tool for someone who sells automotive repair services. However, for an individual who just likes to tinker with cars, the tools are likely just household goods or hobby tools.

Depending on the business you are in, some items that may qualify as tools of the trade include:

- Machines or hand tools.
- Work uniforms.

- Computers or other electronic machines.
- Books and professional libraries.
- Specialized furniture (e.g. massage table)
- Work vehicles used for business (e.g. snow plow).
- Work animals.

§4:42 Jewelry

Jewelry that has significant value (precious metals, gems) is treated like any other personal property asset. It must be included and valued in your bankruptcy filing. Jewelry can be kept only if it fits within the exemptions.

The federal exemption provides a straight up category for all jewelry, up to a certain limit. States have different rules regarding the application of exemptions to jewelry. Some states provide an exemption up to a certain dollar amount for all jewelry, while others exempt certain categories of jewelry up to a specified amount (e.g. up to $1,300 total for a wedding ring, watch and jewelry). Still other states provide an unlimited exemption for wedding rings or family heirlooms. When a filer doesn't have enough exemptions to protect the full value of jewelry, many trustees will first try to make a deal with the filer to "buy back" the items at a discount (as it saves the trustee the fees and expenses of liquidating the items).

Whether applying federal or state exemptions, the trustee is entitled to ask for proof of the value of jewelry and often does. Therefore, if you have jewelry you want to keep, it may be important to get an appraisal. If a piece of jewelry is insured for a particular value, the trustee can ask to see the policy to help determine reasonable value.

If jewelry is financed, payments must be continued. Otherwise, the creditor has a right to reclaim the jewelry, regardless of whether it is exempt or not. A trustee will have no interest in jewelry unless it can be sold for significantly more than the claim of the secured creditor plus the exemptions.

§4:43 Tax Refunds

Tax refunds are property of the bankruptcy estate. This includes any tax refund owed to you from the previous year, earned but not yet received. For example, if you file bankruptcy in March and are owed a $2,000 tax refund but haven't received the refund before filing, the full amount is property of the estate. It also includes a portion of the potential tax refund in the year you actually file. For example, if you file bankruptcy in June you could technically owe 6/12ths of your next year's refund for filing in the 6th month of the year. Tax refunds are treated just like cash, so they must be exempted with a wildcard or other similar category of exemption. One exception to property of the estate is the Earned Income Credit. In some states, any refund attributed to Earned Income Credit and Additional Child Tax Credit is yours to keep. The rest is subject to the estate and exemptions.

Tax refunds are an easy asset for trustees to go after because, unlike real estate and other assets, there isn't the overhead and effort associated with listing the property for sale. A refund can be converted into cash quickly.

One strategy to potentially keep your tax refund might be to wait to file your bankruptcy until after you have received your tax refund and used it for legitimate living expenses. Some ordinary household expenses might include mortgage or rent payments, HOA dues, utilities, food, clothing, educational opportunities, medical and dental expenses, insurance, home maintenance and repairs, or car repairs and maintenance.

If you spend more than $600 on any one category and/or vendor, you may have to wait over 90 days to file your case to avoid preference payments (e.g. your regular mortgage payment is not a preference payment but spending $1200 on car repairs might be). See §4:14, 5:07. Also, if you buy any new assets with you tax refund, they will need to be covered by exemptions in order to keep them.

§4:44 Life Insurance Polices

Life insurance is separated into two types: term life insurance and whole life insurance. Term life insurance provides a death benefit to a beneficiary (or beneficiaries) upon the death of the insured. Term life insurance has no cash value while the insured is living. Because there is no cash value while you are alive, this is technically not an asset that can be administered by the chapter 7 trustee. Therefore depending on where you file, you may need to disclose the policy but no exemption is needed to protect it.

In contrast, whole life insurance often has a cash surrender value. This value is money that has accumulated in the policy that can be taken out and deducted from the amount of the death benefit. This cash value buildup can be a tricky asset in Chapter 7 bankruptcy. The cash value has to be protected with an exemption if you want to keep it; otherwise the trustee can force the cancellation of the policy to obtain the cash. The federal exemptions provide a specific category that protects the cash value of a whole life insurance policy in the filer's name, up to a certain amount. There are some other qualifications to be able to use the exemption (who are the beneficiaries, who pays the policy premiums, etc.).

In states that have opted out of federal exemptions, the existence of a life insurance exemption and its application varies greatly. Some states have an exemption for this category of asset, some do not. Some states require the "wildcard" exemption to be used if a filer wants to keep the policy and its cash value.

§4:45 Wildcard Exemption

Both federal exemptions and state exemption apply to particular types of personal property (e.g. homestead, motor vehicle). The wildcard exemption, in contrast, can be applied to whatever property the filer wants to save (some states may have restrictions). The wildcard exemption is available under federal law and in some states. In some cases, it may be the only exemption available to protect a particular type of asset, for example cash, extra vehicles above the one motor vehicle allowed in that exemption category, tax refunds, non-essential lusuries, and other unique assets.

It is not uncommon for individuals to have multiple vehicles titled in their name. An individual may own several cars or a car and a boat, camper, or other recreational vehicle. When it comes these extra vehicles, sometimes finding an exemption to protect the entire equity can be challenging. It is rare for states to have a boat or recreational vehicle exemption. This is because they are not considered necessary to be able to live to a reasonable standard or earn a living. They are extras or "toys." Most often these types of assets will have to be protected with a wildcard exemption.

When no wildcard exemption is available or it has been used without protecting the full equity/value of the asset, you might have to consider negotiating with the trustee to purchase (or redeem) the asset from the bankruptcy estate or filing a Chapter 13 bankruptcy. In Chapter 13, there are some different rules about how much property you can keep, depending on the values and the amount paid through the repayment plan.

§4:46 Unused Portion of Homestead Exemption

In the federal exemption scheme and some states' schemes, an unused portion of the homestead exemption adds to the amount of the wildcard exemption. The current (2016) federal wildcard exemption is $1,250; the unused portion of homestead up to $11,850 may be added to it. That means a total of up to $13,100 can be used for any type of property.

Example: Dennis is a single filer in a state that allows federal exemptions. He owns a home with $8,000 in equity. The federal homestead exemption is $23,675. He only needs $8,000 of this exemption leaving $15,675 of unused homestead ex-

emption. He cannot use this entire surplus amount, but is entitled to add $11,850 of the unused homestead exemption to the wildcard exemption. Combined with the $1,250 federal wildcard, Dennis gets $13,100 to use as a wildcard exemption.

Example: Avery is a single filer in a state that allows federal exemptions. She owns a home with $18,000 in equity. The federal homestead exemption is $23,675. Avery needs $18,000 of the homestead exemption leaving $5,675 of unused homestead exemption. Although she has used a large portion of her homestead exemption, she can still add the unused portion to the wild card exemption, as long as it does not exceed $11,850. Here, Avery gets to use the $1,250 wildcard exemption and $5,675 of the unused homestead portion for a total of $6,875.

Example: Bruce is a single filer in the state of Georgia. Georgia does not allow federal exemptions. The Georgia homestead exemption is $21,500. The Georgia wildcard exemption allows Bruce to exempt up to $1,200 of any type of property and also apply up to $5,000 of the unused homestead exemption to any type of property. Bruce owns a home with $12,000 in equity. He does not need all of the $21,500 homestead exemption and has $11,500 of the unused portion left. Bruce can use $5,000 of this unused portion to add to the wildcard exemption of $1,200 for a total of $6,200.

V. Valuing Your Assets

§4:47 You Must Be Able to Justify the Value

Obviously, determining what your property is worth in your bankruptcy is important. Whether any non-exempt property remains in your estate after the application of exemptions is in large part determined by the values placed on your property. When you file your bankruptcy petition, you will file schedules of property, in which you will list everything you own and declare a value for each item.

You want to make sure you can justify your valuations for bigger ticket items and not overvalue or undervalue them. Overvaluing your property may mean you don't have enough exemptions to protect it. Undervaluing the property may draw scrutiny from the trustee. The trustee can challenge a value that does not appear authentic. Take the time to do the valuations and get them right. It can be a delicate balance. Sometimes you may have to use multiple sources or methods to come to a fair valuation.

Example: Debbie lives in a jurisdiction that allows for a personal automobile exemption with a value up to $4,000. If she has a car with a trade-in value of $10,000 and she owes $6,500 on the car loan, the car has equity of $3,500. The exemption would cover the equity in the car. However, if Debbie doesn't value her car properly and guesses it is worth $12,000, there is now potentially more equity than she has exemptions.

§4:48 Valuation of Real Property

Bankruptcy valuations are determined by the fair market value of property at the time of the bankruptcy filing. With real property (e.g. your home) this may be the county tax-assessed value, or a more in-depth analysis may be required. The best source for the value of real property is current market data. Real estate agents will often estimate the price your property would sell for, based on recent sales of comparable properties. There are also websites that approximate the value of your property. If you feel that the value of your property might be contested or highly debatable (in a rapidly changing market this may be true), you could hire a real estate agent to do a formal current market analysis (CMA) or hire a licensed appraiser to do a more comprehensive, formal appraisal.

These valuations should be done close to the time of your actual bankruptcy filing date. Often tax assessment values are a year or two behind the actual value of the home and may be used as a starting point, but should not be conclusive evidence of the fair value market of your property.

§4:49 Valuation of Vehicles

The value of any vehicle (e.g. car, motorcycle, recreational vehicle) is the liquidation value or trade-in value. Getting the value right is worth the extra time because bankruptcy trustees often run their own valuations on vehicles based on make, model, mileage, and listed condition. There are some useful on-line resources that can help you determine the

trade-in value of your vehicle. For vehicles that are older or difficult to value, it's often worth the effort to visit a dealer in that make of auto and ask the used car manager what they'd pay you in cash for the vehicle. Get it in writing if you can, so you have the documentation. Alternatively, you can hire an appraiser.

The value of cars is something that can be contested, and it's better to have paperwork showing that you made a good faith effort in valuing the car and didn't just guess. Valuation of a motor vehicle has a subjective nature to it, but the idea is to use the lowest reasonable value that is still fair.

§4:50 Valuation of Tangible Personal Property

The valuing of personal property (e.g. household goods, electronics, sporting goods), for purposes of bankruptcy, is the "liquidation value." Liquidation value is not the purchase price of an item, nor is it the replacement cost, nor is it the price you could get if you advertised it in the newspaper, craigslist.com, or on Ebay.com. Typically, the liquidation value is what you could get if you sold the item at a garage sale, at an auction, or to a pawn broker. For example, if you paid $400.00 for a bed, it might now cost $600.00 to replace it new, but you might only get $35.00 for it at a garage sale.

Most people tend to exaggerate the value of their personal property. Value your assets fairly, but be careful not to be over zealous in how much you think your assets are worth. When, in doubt, back up with documentation.

§4:51 Valuation of Intangible Personal Property

Intangible personal property includes things like stock, copyrights, trademarks, and patents. The value of these items will be determined by the market: what would an interested buyer be willing to pay for it. Like real estate, there should be some legitimate research or basis for your valuation.

§4:52 Valuation of Bank Accounts, Insurance, Deposit Accounts

The value of any account that has a cash balance or cash value is the cash balance or value on the bankruptcy filing date.

VI. How Exemptions Work in Chapter 7 Bankruptcy: an Example

Below is a concrete example of how exemptions work. The example is set in Minnesota, a state in which the bankruptcy filer can choose either the state exemptions or the federal exemptions. The example applies both to show how the choice can lead to very different results. Remember, this is only for illustrative purposes and the application of exemptions to property varies greatly from state to state.

§4:53 The Situation

Ronnie lives in Minnesota. Ronnie is a plumber who runs his own business. Minnesota allows either federal exemptions or state exemptions. Ronnie owns the following property:

- Homestead - $15,000 in equity.
- Two cars: One with $4200 in equity and another with $1,000 in equity.
- Boat - $2,000 equity.
- Household goods and clothing - $3500.
- Tax refund owed to him - $1500.
- Tools needed for his business - $2000.
- SEP IRA - $400,0000.
- Term life insurance policy - $100,000 death benefit.
- Whole life insurance policy - $6500 cash value.
- Gold chain - $500 and watch - $200.
- Golf clubs - $500.
- Earned but unpaid wages - $1200.
- Checking/savings account - $600.

§4:54 Available Exemptions

Category	Federal Exemption	Minnesota Exemption
Homestead	$23,675	$390,000
Motor Vehicle	$3,775	$4,600
Household goods	$12,626 - no single item of more than 600 in value	$10,350
Tools of the trade	$2,375	$11,500
Jewelry	$1,600	No exemption. Debtor allowed to keep rings related to marriage.
Insurance benefits	$12,625	$11,500
Wildcard	$1,250 of any property, and unused portion of homestead up to $11,850. Total possible is $13,100.	No wildcard.
Wages	Reasonably necessary or apply wildcard	75% of your gross earnings, or 40 times the federal minimum hourly wage per week (whichever is greater)
IRA/SEP IRAs	Up to $1,283,025	Follows federal exemption-up to $1,283,025

§4:55 Application of Federal and State Exemptions to Assets

Ronnie's Asset	Value	Applied under federal exemption	Applied under MN exemption	Result
Homestead	$15,000	Fully exempt with $8,675 unused	Fully exempt	Homestead exempt under both state and federal exemptions.
Car 1	$4,200	$425 not exempt but can use wildcard for remaining	Fully exempt	Exempt under state. Will have to use a portion of the federal wildcard exemption to fully protect the car.

Ronnie's Asset	Value	Applied under federal exemption	Applied under MN exemption	Result
Car 2	$1,000	Can use wildcard	No exemption	Car 2 can be protected with the federal wildcard exemption, but is property of the bankruptcy estate under MN exemptions.
Boat	$2,000	Can use wildcard	No exemption	Boat can be protected with the federal wildcard exemption, but is property of the bankruptcy estate under MN exemptions.
Household/ clothing	$3,500	Fully exempt	Fully exempt	Exempt under both state and federal
Tax refunds	$1,500	Can use wildcard	No exemption	Tax refunds can be protected with the federal wildcard exemption, but are property of the bankruptcy estate under MN exemptions.
Tools of the Trade	$2,000	Fully exempt	Fully exempt	Exempt under both state and federal exemptions.
SEP IRA	$400,000	Fully exempt	Fully exempt	Exempt under both state and federal exemptions.
Term Life Ins	Death benefit	No need to take exemption	No need to take exemption	The term life insurance only has a death benefit, so no need to apply an exemption.
Whole Life Ins	$6,500	Fully exempt	Fully exempt	Exempt under both state and federal exemptions.
Gold Chain & watch	$500 gold chain and $200 for watch	Can use wildcard	Watch exempt. No exemption for gold chain.	Both can be protected with federal wildcard exemption, but only the watch can be protected under MN exemptions and the gold chain is property of the bankruptcy estate under MN exemptions.

Ronnie's Asset	Value	Applied under federal exemption	Applied under MN exemption	Result
Golf clubs	$500	Can use wildcard	No exemption	Golf clubs can be protected with federal wildcard exemption but are property of the bankruptcy estate under MN exemptions.
Earned but unpaid wages	$1,200	Can use wildcard	Can exempt 75% or $900	Can be protected with federal wildcard exemption, but 25% or $300 is property of the bankruptcy estate under MN exemptions.
Checking & savings accounts	$600	Can use wildcard	No exemption	Can be protected with federal wildcard exemption, but is property of the bankruptcy estate under MN exemptions.

§4:56 Summary

In Minnesota, with the current values of property, Ronnie is much better off using the federal exemptions. Under the federal exemptions, he can protect all of his property, much of it through the use of the wildcard exemption. Here is a summary of the federal wildcard exemption used in this scenario.

Portion of Car 1	$425
Car 2	$1000
Boat	$2000
Tax refunds	$1500
Chain & Watch	$700
Golf clubs	$500
Unpaid wages	$1200
Bank accounts	$600
TOTAL:	$7925

Ronnie has $9,875 wildcard exemption available ($1200 + $8,675 of the unused homestead). With these values, Ronnie gets to keep all his property by using federal exemptions. However, if he applied Minnesota exemptions he would have to surrender property or pay the trustee to keep his property. Calculating this scenario under Minnesota exemptions, the bankruptcy estate has $6400 in it. A summary of everything in the bankruptcy estate includes:

Car 2	$1000
Boat	$2000
Tax refunds	$1500
Chain	$500
Golf clubs	$500
Unpaid wages	$300
Bank accounts	$600
TOTAL:	$6400

As this example shows, the exemptions can have a great effect on what property ends up in the bankruptcy estate. The choice between federal and state exemptions, when that choice is available, can yield dramatically different results. When given a choice, it is very important to pick the right exemption scheme.

If Ronnie had $150,000 of homestead equity in Minnesota, with all the exact same assets and values listed here, by applying the Minnesota exemptions he could keep his entire house and still only potentially owe the estate $6400. He could surrender some of the items on the list and reduce

the amount even further. This is allowed because Minnesota has a very generous homestead exemption (up to $390,000). That is a small price to pay to keep a home.

If Ronnie's homestead equity was $150,000 and everything else stayed the same, but he applied federal exemptions, he would likely owe more than $130,000 to the bankruptcy estate ($150,000 home value less $23,675 federal homestead exemption = $126,325 of money in the estate that Ronnie cannot exempt plus his wildcard is reduced to $1200 so he has $6725 of unprotected property in other categories).

VII. Objections to Exemptions

§4:57 Chapter 7

From time to time, a creditor files a motion with the bankruptcy court to object to the exemptions on various grounds. Once a bankruptcy case is filed, the court notifies all creditors. After notification is sent, creditors and the trustee on behalf of the bankruptcy estate are allowed a certain time period to file objections. If a creditor or the trustee files an objection to exemptions after the deadline has passed, it will not be considered by the bankruptcy court. However, a court may extend the time for filing objections to exemptions for cause. Usually the time limit for filing an objection is 60 days after the date on which the first meeting of creditors was scheduled. There are several exceptions to this 60-day deadline, but they don't apply to most filers.

In order to object, the creditor needs a valid reason. For instance, the creditor could argue that an exemption used is not allowed by law or that the value of the asset is not correct. The reason for the objection may be to try and obtain more money from the bankruptcy estate. Creditors have an incentive to challenge the value of a major asset like a house or car because non-exempt assets are sold and the funds raised from the sale are distributed to them.

Once all parties have been served (received adequate notice of the objection), a hearing will be scheduled before the bankruptcy judge to determine the merits of the objection. Before the hearing the parties will submit arguments and evidence to the court. At the hearing, you must be prepared to show that the exemptions are legally allowed and that the value of the property is accurate. If the claim is that the value of the asset is not accurate, you need to provide proof of the asset's value, such as an appraisal, for example. The judge will then make a ruling based on the evidence.

§4:58 Chapter 13

A creditor or the trustee can object to exemptions in a Chapter 13 case on the grounds that the repayment plan does not meet the "best interest of the creditors." See §2:40. As in Chapter 7, this objection must be filed within 60 days of the originally scheduled meeting of creditors. If an objection is filed, the court will schedule a hearing and plan confirmation will be stayed (put on hold) pending the outcome of the hearing. If there is a pending objection, it is important that you continue to make scheduled plan payments and comply with the other requirements in the plan.

VIII. Administration of the Bankruptcy Estate

A. Chapter 7

§4:59 The Trustee's Role in Estate Administration

A trustee is appointed in every case. The Chapter 7 trustee's primary role is to oversee the bankruptcy estate, evaluate the exemptions, and liquidate any nonexempt assets that remain in the estate for the benefit of unsecured creditors. The trustee earns a fee and a percentage for administering the estate.

In a Chapter 7 case, the trustee first reviews your bankruptcy forms and if needed, further investigates your financial situation, assets and property valuations. For example, a trustee might search state title records, property records, and so forth to determine if all assets are reported correctly on the petition. The trustee will also ask questions at the meeting of creditors and may review tax returns, bank statements, pay stubs, and other requested documentation.

If the trustee determines that all your assets have been accounted for and they are all exempt, the trustee will file paperwork and notice with the bankruptcy court that there are no assets in the estate. The creditors will be notified. The Chapter 7 case should then proceed to discharge unless there is a reason for a creditor to contest a matter, there is fraud, or some other out of the ordinary circumstances. The majority of Chapter 7 cases follow this path.

If you own any nonexempt property, the trustee determines how to deal with it. The bankruptcy laws grant trustees sweeping powers to seize, receive, and liquidate assets, even if force (through court action) is needed. The trustee can use these powers to sell the non-exempt property if it is free of liens or if it is worth more than any security interest or lien attached to the property and any exemption that you hold in it.

The trustee may also attempt to recover money or property under the trustee's "avoiding powers." These powers include the power to:

- Set aside preferential transfers made to creditors within 90 days before the petition (see §§4:14, 5:07)
- Undo security interests and other prepetition transfers of property that were not properly perfected (titled) under nonbankruptcy law at the time of the petition
- Pursue nonbankruptcy claims such as fraudulent transfers under various state law that may be applicable

In addition, if the filer is a business, the bankruptcy court may authorize the trustee to operate the business for a limited period of time, if such operation will benefit creditors and enhance the liquidation of the estate.

The trustee will then use the funds generated from these transactions or property sales to pay creditors, less court costs, estate administration costs, and the trustee's fees. Creditors do not usually get the full amount owed to them. They receive a pro rata share of the amount recovered from the bankruptcy estate in relation to the total debt. For example, if a filer owes $50,000 to unsecured creditors and Credit Card Company A is owed $10,000 and Credit Card Company B is owed $15,000, A will receive 20% and B will receive 30% of what is in the bankruptcy estate, after fees.

§4:60 Buying Back Property from the Bankruptcy Estate

As is discussed in this chapter, exemption laws vary from state, but they often protect basic necessities, such as an inexpensive car, clothing and household furnishings, and some equity in a home, among other things. If you have you have nonexempt property that you want to keep, you may be able to negotiate an arrangement or settlement with the trustee. Since the property is technically property of the bankruptcy estate, it belongs to the estate, but it might be advantageous for the trustee to allow you to "buy it back" for a reasonable and agreeable sum. This can be the best arrangement for both parties. You get to keep your property and the trustee doesn't have to bother with collecting the asset and then liquidating it (which costs time and money). This way, the value of the nonexempt property is converted directly to cash, which can be used to pay the creditors (on a pro rata share). Coming up with the funds to buy back property from the bankruptcy

estate can sometimes be difficult. One possibility is to trade exempt property that is worth roughly the amount of the asset you want to keep. In possibility is to borrow money from friends or family.

§4:61 When Is Property no Longer Property of the Estate?

There are several ways in which assets are no longer part of the bankruptcy estate. First, when an exemption has been properly claimed, the amounts and values verified, and the trustee doesn't object within 30 days of the meeting of creditors, the exemption is valid and the property or asset is no longer part of the bankruptcy estate. At this time you are free to do whatever you want with the property. As a practical point, it is sometimes better to wait until the bankruptcy discharge is final to sell or transfer larger assets even if they are exempt.

Second, the property can be abandoned by the trustee. Trustees are really only interested in non-exempt property that has enough value to makes it worthwhile to sell the property for cash that can be used to pay the creditors their pro rata share. Thus, sometimes a trustee will "abandon" the property, especially when the net value is minimal, the tax burden is too great on the sale proceeds, or the cost of collection and liquidation will exceed the value. In these cases, the trustee has two options to formalize the abandonment:

1. The trustee can file a motion while the case is still pending to officially abandon the property

2. If non-exempt property is listed in the bankruptcy filing and the trustee does not take measures to collect, sell, or dispose of the property, it is automatically deemed abandoned at the conclusion of the case by operation of the bankruptcy laws.

§4:62 Hiding Assets from the Bankruptcy Estate

It is imperative that you are forthcoming in disclosing all of your assets and your debts in your bankruptcy. You have a duty under the law to do so, but also moral obligations to be truthful. This is not to say that people don't try to hide assets, but these individuals are most often caught in their dishonest acts. The consequences can be severe, including dismissal of the case (meaning the debt is never dischargeable, other sanctions, and in some cases even criminal charges that can result in lengthy prison time). Although a filer hiding is assets is rare, it does happen.

Some of the ways that bankruptcy filers can hide assets include withdrawing money from an account and holding it as cash that they hide or transferring the money to a friend's or relative's account. In some cases, the filer even gives away assets. The reality is that transactions, money, and assets leave paper trails. Trustees are very good about finding hidden assets and transfers that were used to hide assets. They have the ability to request mountains of paperwork, run title searches, and even undo transactions.

Example: D.J. knows that he is going to file bankruptcy and he is scared that he is going to lose his $40,000 in savings and some family heirloom jewelry worth $10,000. Six months before meeting with an attorney he withdraws the money from his account and asks his friend to hold $25,000 of it in a personal bank account. He takes the remaining $15,000 in cash and hides it throughout his house. D.J. then takes the jewelry and gives it all away to family who promise to return it after his bankruptcy is complete. D.J. meets with an attorney and fails to disclose his hidden assets in his bankruptcy filing. The trustee asks for one year of bank statements and finds the $40,000 withdrawals and D.J. doesn't have receipts for how he spent the $40,000 in six months. The trustee files a court proceeding to have the judge find more information. In the end, the court finds that D.J. knowingly and willingly withheld assets. He is denied a bankruptcy discharge on all his debts (forever) and is convicted of perjury and bankruptcy fraud and sentenced to one year in federal prison. (As a side note, a thorough bankruptcy attorney would have asked for substantial bank records and may have caught the bank withdrawals, promoting more inquiry and questions, but ultimately it is up to the person filing for bankruptcy to be truthful with his or her attorney and the court. The attorney can only do so much due diligence).

Hiding assets is to be distinguished from an actual honest mistake of forgetting an asset. If an asset is forgotten and later discovered, you have a duty to disclose it immediately to the trustee. The course of action taken will depend on the type of mistake, whether the mistake was genuine and the type of asset or value. There is a big difference between

forgetting to list a pair of diamond earrings that you don't wear and not listing a $50,000 car titled in your name (which would show up on a title search) that you drive every day.

B. Chapter 13

§4:63 Administrative Duties of Chapter 13 Trustee

Before your payment plan is confirmed, the Chapter 13 trustee's main objective is to confirm that all your income is reported and your expenses are verified. The trustee can file objections to your plan, for example because the trustee believes not all your disposable income is being paid into the plan, your expenses are unreasonable, or you are not seeking bankruptcy protection in good faith.

Once a Chapter 13 repayment plan is confirmed by the court, the Chapter 13 trustee is responsible for the following:

- Receiving your plan payments and keeping a record of them.
- Distributing the payments to each of your creditors in the manner required by your Chapter 13 plan and law
- Verifying the proof of claims your creditors are required to submit to prove the validity of the debts owed to them.
- Prioritizing which creditors get paid and when based on court rules

- Monitoring your monthly and annual reports.
- Monitoring your duty to file tax returns with all taxing agencies.
- Keeping all support agencies informed of certain required information, if you owe back child support.

Many Chapter 13 trustees play a much more active role in the cases they administer and are less adversarial than Chapter 7 trustees. For example, the trustee may help with creating a budget or modifying a payment plan. It is important to remember though that no matter how friendly a Chapter 13 trustee may be, the trustee does not work on your behalf.

Chapter 5:
Preparing to File

I. Is the Timing Right?

A. Are Your Finances in Bad Enough Shape?

§5:01 A Case-by-Case Determination

Am I "broke" enough to file bankruptcy? How much debt do I have to have to file for bankruptcy? These are common questions. Contrary to what many think, there is no minimum amount of debt that you must have to file for Chapter 7 bankruptcy. However, there are other eligibility requirements, which are discussed throughout this chapter and book. Whether bankruptcy is an adequate remedy to debt struggles depends on each individual or married couple's own unique situation. Bankruptcy is truly treated as a case-by-case area of law and likewise, the possible outcomes and relief it provides are also different for every filer. However, the overall bankruptcy process is pretty similar for each case.

§5:02 Common Bankruptcy Triggers

Three common triggers cause people seek bankruptcy protection:

1. Collection activities. A creditor's collection efforts, such as garnishment, foreclosure, repossession, and frozen bank accounts, threaten the individual's standard of living or livelihood.

2. Traumatic events. A traumatic event, such as divorce, long-term unemployment, serious illness, or a death in the family, drastically reduces the individual's income or increases his or her debts.

3. Overwhelming debt. The person has become so overwhelmed with debt that he or she has no reasonable prospect of improving the situation other than bankruptcy.

§5:03 Some Benchmarks for Assessing Your Situation

In the early phases of financial distress, you may be struggling to pay all your bills on time. You may even have fallen behind on a bill and been called by a collection agency. Bankruptcy may be avoidable if you take action immediately. You'll need to cut back on non-essential expenses and live on a budget. If you have fallen behind on a debt, now is the time to negotiate with your creditor to get a payment plan. A reputable debt counselor may be able to help.

However, seriously consider talking to a bankruptcy attorney if any of the following is true:

- You are two or more months behind on two or more debts.
- You are paying for necessities with credit cards.
- You are using one credit card to make the minimum payment on another.
- You have more credit card debt than you can pay off over five years.
- You've been sued by a creditor.
- You have high medical bills that aren't covered by insurance.
- You owe taxes you cannot pay.

And definitely seek help from a bankruptcy attorney if:

- Your wages have been garnished.
- Your bank account has been frozen.
- Your home is in foreclosure.
- Your car has been or is about to be repossessed.

You needn't wait until things get this bad. If you are going to end up in bankruptcy regardless of how much you delay the inevitable, you are better off filing earlier than later. Your credit score will bounce back faster if you file before you damage your score with late pays, no pays, collections, money judgments, and liens.

B. Do You Have Reasons to Wait?

Your bankruptcy filing should be timed to your own specific circumstances. In some situations, it makes sense to delay your Chapter 7 or Chapter 13 bankruptcy filing. Sometimes, filing bankruptcy too early can mean losing property you would have otherwise been able to keep, or even having to file for Chapter 13 instead of Chapter 7. Below are some specific situations that may warrant waiting to file.

§5:04 Recent Decline in Income Sufficient to Meet Means Test

The means test, which determines your eligibility for Chapter 7, considers your income for the preceding full six months before your filing date. Your spouse's income is also considered if you reside in the same household, regardless of whether your spouse is filing a joint bankruptcy with you.

Through an in-depth calculation, the means test doubles this six-month income number to create a proposed annualized income and also accounts for specific categories of necessary and reasonable expenses. Income is broadly defined by the bankruptcy courts and Bankruptcy Code and includes any contribution to the household. For example, if you have

a roommate (unmarried) who pays half the rent and utilities, those payments may be considered "income" for purposes of the means test. Sometimes, individuals may not qualify for Chapter 7 when the means test is calculated, but will qualify at a later date after a regular decline in income.

You have a duty to disclose anticipated increases and decreases in income in your bankruptcy filing, so a Chapter 7 bankruptcy filed during a brief window of eligibility because of a temporary reduction in income may or may not be filed in good faith. These situations are very fact specific. However, if you have a regular or permanent reduction in income, or you received a one-time bonus and some time has lapsed, it might be worthwhile recalculating the means test to see if you can qualify for Chapter 7.

Example: Ron had a job making $65,000 a year. He is single and lives alone. Ron's job and related expenses put him over the median household income for his state and he did not pass the means test to qualify for a Chapter 7. Ron did not have sufficient income to fund a Chapter 13 plan. However, Ron found out he is going to have to take a reduction in pay to $45,000 if he wants to stay at his job or take a buyout. Needing the job, Ron takes the reduction in pay. If Ron waits several months, he will probably qualify for a Chapter 7 and pass the mean's test with the reduced income level. Note that different states have different median household income numbers under the means test, and these numbers may or may not allow Ron to qualify in your state.

Example: Ellen's annual income is approximately $58,000 a year and she has one child. Only the two of them reside in their household. In most states this income would allow her to qualify for Chapter 7 and pass the means test. However, Ellen recently received an unexpected one-time $9,000 bonus at work. For the purposes, of the Means Test the bonus will factor into her "income" for the full six (6) months after it is received. It might be enough to put her over the median household income for a household of two in her state. Thus, at the present time she does not pass the means test. However, it was only a one-time bonus and six to seven months after it was received that income will no longer factor into the means test and Ellen might again qualify. In this case, it makes sense to wait and see if she will qualify to file the Chapter 7.

§5:05 Recent Move to State with More Favorable Exemptions

What bankruptcy exemptions apply to your case is not as straightforward as where you currently live. The exemptions vary greatly from state to state and there can be wide discrepancies that make one state significantly better for a bankruptcy filer than another.

The basic rule is that you are allowed to use a state's exemption if you have been "domiciled" in that state for at least two years before you file bankruptcy. The concept of what it takes to be domiciled in a state has evolved over time. In general, a person's domicile is where the person does some, if not all of the following: presently lives and intends to live for the indefinite future; works; receives mail; votes; pays

taxes; registers a motor vehicle; participates in neighborly and public affairs; has a driver's license or state id; sends children to school; or owns property.

Put simply, a person's domicile is typically where the person makes his or her home. However, in certain circumstances a person may spend a lot of time somewhere other than the place he or she calls home. For example, military families, artists, and athletes may spend significant time in one state, but actually make their homes and thus have their domiciles in another state.

If you have not been domiciled in your current state for the last two years before you file, the exemptions you must use are the exemptions for the state where you were living for the better part of the 180-day period ending two years before your filing date (i.e. the six months before the previous two years). Therefore, you may want to wait file bankruptcy until you qualify for your current state's exemptions, if they would protect more of your property. Congress enacted these strict domicile requirements for exemptions to prevent people from quickly moving to states with more liberal exemptions simply to file for bankruptcy.

Much longer domicile requirement applies to homestead exemptions. See §5:15

§5:06 Recent Gifts or Transfers for Less Than Market Value

In the ordinary course of life and business, it is not unusual to give gifts or even transfer an asset to a family or friend for less than the fair market value. In bankruptcy, these types of transactions are often a red flag for compliance with the bankruptcy laws. Within certain time limits before a bankruptcy filing, the court considers these to be "fraudulent transfers," which are subject to special rules. The filer's intent regarding the transaction is irrelevant. The fact that the transfer or gift has occurred is enough to trigger the rules. The bankruptcy laws have been enacted specifically to prevent dumping an asset before filing bankruptcy to prevent the asset from otherwise potentially being taken as an asset of the bankruptcy estate.

Transfers with actual intent to defraud. If within the two years before filing bankruptcy you transfer an asset or give a gift "with actual intent to hinder, delay, or defraud" any creditor, that transfer can be undone (the law uses the word "avoided") by the bankruptcy trustee. This "actual intent" basically means that you gave away or sold the asset for the purpose of keeping it—and keeping its value—away from your creditors.

Transfer without intent to defraud. You do not need the "actual intent" to hurt any creditor to have a "fraudulent transfer." A transfer is deemed fraudulent if (1) you "receive less than a reasonably equivalent value" in return; that is, you get paid less than what you sold (or gave away) was worth; AND (2) you were insolvent at that time; that is, you

owed more in debts than you owned in assets, either just before or just after making the transfer. If both these conditions are met, the transfer is fraudulent, regardless of your actual intent at the time of the transfer. Since most people are insolvent for quite a while before filing bankruptcy, the "less than a reasonably equivalent value" condition is often the most important one.

So a key way to avoid a "fraudulent transfer" is simply not to sell or give anything away unless you are receiving reasonably close to what it's worth in return. Make sure to get documentation for anything you sell showing a description of the item, condition, and value it was sold for. However, donating or giving away items with little or no value is acceptable. For example, if you have a garage sale and sell stuff for whatever people are willing to pay for it, or similarly sell other stuff on eBay or Craigslist at a sensible price, those sales would NOT be subject to being "avoided" by a trustee, assuming you got "reasonably equivalent value" for whatever you sold. However, if you sold your $2,000 car for $500 that will likely be a fraudulent transfer if it occurred in the two years before your bankruptcy.

The legal effect of the fraudulent transfer rules can be far reaching and even affect the individual who purchased or received the property. The laws give the bankruptcy trustee the power, in many circumstances, to reverse ("avoid") that gift or sale as a "fraudulent transfer." This means the trustee has the power to undo the transaction and take possession of the asset, sell it, and pay the proceeds to your creditors. If the tangible item of the transfer no longer exists (e.g. the

car is totaled), the trustee can use the same avoidance powers to collect the full value of the property from the buyer/recipient. The trustee can even sue the buyer/recipient for it. This can create big problems in your bankruptcy and for third-parties who never intended to be brought into the case. Additionally, you may be penalized even further. If the asset would have been protected by an "exemption" had you not transferred it, that protection is lost.

You may wonder how these transfers might be found if you fail to disclose them. First, you have a duty to disclose all transfers within certain time periods. Second, there are several ways the trustee may find a fraudulent transfer. The trustee runs title reports, checks bank records, and asks many questions at the meeting of creditors if he or she suspects a fraudulent transfer has occurred. You are under oath and have an obligation to answer all questions honestly and truthfully and produce all requested documents in a reasonable, timely manner.

If you are planning on transferring assets to a family member (e.g. gift an old car to a child), it is much better to wait until after your bankruptcy case is complete and you have received your discharge. If you already have a situation that might trigger these fraudulent transfer rules, you can wait out the timelines, or assess how much the transfer was for. There is a big difference between transferring a $10,000 asset for little or no value and giving away $500. Finally, it is okay to sell (transfer) your stuff in the two years (sometimes longer) before filing bankruptcy as long as:

1. You get paid a reasonable amount (of money or other assets) for it, or

2. It does not have any practical financial value.

Otherwise, the transfer could be "avoided" by your bankruptcy trustee once you file your bankruptcy case, meaning whoever received the property may have to give it back or pay the full fair market value for it to the bankruptcy estate.

State laws: Even though the bankruptcy laws impose a two-year rule on transfers, many states have state specific fraudulent transfer rules that impose a longer period than two years. Six years is not uncommon. Additionally, states may treat "insiders" with a different time period that other fraudulent transfer. An insider is anyone who has a close familial or business relationship with you.

§5:07 Preferential Payment of Debts

There is another fact scenario in which a trustee can use his or her powers to void (undo) a transaction and bring the property or value of property back into the bankruptcy estate for the benefit of unsecured creditors. Here, the law differentiates between close family relationships and other payments to creditors.

Payments made within 90 days of bankruptcy: If, in the 90 days preceding your bankruptcy, you transferred money or property worth over $600 in aggregate to one of your creditors while you were insolvent (meaning you had more debts than assets) and that payment resulted in the creditor

getting more than it would have been entitled to through your bankruptcy, the transfer is considered a preferential payment. The trustee can use his or her avoidance powers to bring preference amount back into the bankruptcy estate. If the payment or transfer was made directly to a creditor, you will owe nothing to the bankruptcy estate for this transaction. The trustee will pursue the preference amounts directly from the creditor. In most cases, the trustee doesn't have to prove your insolvency because bankruptcy law automatically presumes that filers are insolvent during the 90 days before their filing date.

Payments in the ordinary course of your financial affairs. Regular payments, like your mortgage, car, student loan, or utility bill are not considered preference payments.

Example: Sally is thinking about filing for bankruptcy, but she isn't quite sure if she wants to yet, so she keeps paying her mortgage, car loan, and all her credit cards. Sally then decides that bankruptcy is her best option. Over the 90 days prior to Sally's bankruptcy she pays Bank A $1200.00 on a credit card debt. The amount over $600 is a preference payment and will likely be brought into the bankruptcy estate. Sally is not responsible for the money (since it has already been paid to the creditor), but it could convert her case from a no asset Chapter 7 into an asset case and delay her case closing as the bankruptcy estate assets are administered.

Payments to Insiders: When you pay back a loan to a family member before your bankruptcy, the payment is also potentially a preference payment, but the time limits are even

longer. Instead of 90 days, the transfer will be considered preferential if made within one year before your bankruptcy filing date.

Example: Barb loaned her daughter Mae $5,000 several years ago for miscellaneous expenses. There was no formal written agreement. Mae now has significant medical expenses and files for bankruptcy. She must disclose the loan from her mother as an unsecured debt. On Mae's bankruptcy filing date, the balance on the loan is $1800. Over the last year preceding the bankruptcy filing date, Mae paid Barb a total of $1400, which she disclosed on the Statement of Financial Affairs. Because the look back period for preference payments made to an insider is one-year (Barb is an insider because she has a close family relationship with Mae), the entire $1400 is a preference payment. The trustee appointed in Mae's case will pursue Barb for the full amount and that money, when recovered, becomes property of the bankruptcy estate.

Depending on who received the preference payment, credit card issuer vs. family member, you may want to wait to file your bankruptcy case until all the preference period timelines have run. A case is certainly faster and cleaner without them. However, a preference payment to a credit card company really only means the money will be brought back into your bankruptcy estate from the creditor and you will not personally owe anything to the estate. But, it will make the case administration period longer. In contrast, if the preference payment was to a family member or close friend, it might be worthwhile to wait out the one-year timeline from

the date of the transaction, if other case factors allow you to wait that long. In the case of family member preference payments, the trustee can pursue the family member for the full amount paid to him or her in the year before you file, regardless of whether the family member has the funds or not. Situations like this can cause strained family relationships.

§5:08 Recent Income Tax Debts You Would Like to Discharge

The dischargeablility of tax debt is discussed at length in §§3:29-3:31. In general, most personal income tax debt cannot be discharged until more than three years have passed from the original or extended due date of the return. (Note-there are other factors that also need to be considered). If you are looking to discharge income tax debt and may be close to the three-year period, it may be worth waiting, especially if you have significant tax debt.

§5:09 Expectation of a Large Payment

If you are expecting a large payment, in almost any form, it might be worthwhile to wait to file bankruptcy (assuming after you receive the large payment you still need to file bankruptcy) until after you have both received the large payment and figured out how to handle it (spend, save and claim an exemption). Remember that if you receive a large payment and spend it—whether for needed household repairs—or to buy a car, these transactions can invoke other bankruptcy rules-including exemption amounts (see §§4:27-4:46), fraudulent transfers (see §4:13), and preference payments (see §4:14, 5:07).

§5:10 Income Tax Refund

Around tax time this category of large payment is the type most potential bankruptcy filers encounter. If you are expecting a large tax refund and you cannot protect it with an exemption, you'll have to turn it over to the bankruptcy trustee. In this circumstance, it might be better for you to delay your bankruptcy filing and spend the tax refund on necessities like car repairs or college tuition for yourself. But you'll want to wait out preference payment time limits.

§5:11 Inheritance

An inheritance (the right to receive it and not the actual disbursement of funds or property) triggers special bankruptcy rules. If you receive an inheritance after filing for bankruptcy, it might become part of your bankruptcy estate. In a Chapter 7 case, this means the trustee can take the inheritance unless it's protected by an exemption. In a Chapter 13 case, receiving an inheritance could increase the amount you have to repay to your creditors. In most cases, if you receive an inheritance after filing there is nothing you can do to protect the inheritance (except if you have an exemption left to cover part of it).

However, if you are aware you might receive an inheritance before filing your bankruptcy case, you might delay your filing until after the inheritance has been received and "spent" within the limits of your exemptions and all other preference periods have passed. You can use the money for things like home repairs, car repairs, school expenses, paying back nondischargeable debt (e.g. student loans), and needed medical

services. If you use the money for tangible things with value, these items will have to be able to be protected with exemptions.

§5:12 Large Income Bonus

The same principles and factors discussed in these other types of large income or windfall events also apply to income tax refunds. It might be worthwhile to delay your bankruptcy filing and spend the money. However, in the case of an income bonus, this one can be a little trickier. Although preference payments may come into play, a large income bonus can also affect your ability to qualify for Chapter 7 under the mean's test. See §1:03.

§5:13 Expectation of More Significant Debt

Once a bankruptcy case is filed, you cannot add to the list of debts you are filing to have discharged. In other words, if you expect a large, unavoidable expense in your future, consider waiting until after you are billed for it to declare bankruptcy. This often comes into play with medical debt or sometimes personal liability on business debts. Keep in mind that a bankruptcy case must be filed in good faith, so you must make a valid attempt to repay these debts before filing for bankruptcy. Additionally, you must be very careful when incurring any new debt close to the date that you declare bankruptcy. If the trustee or judge finds that you purchased luxury goods, took out cash advances, or otherwise spent a lot of money on unnecessary items, they will consid-

er that a sign you acted irresponsibly and those debts may "survive" the bankruptcy. In other words, you will still have to pay them even if the rest of your debts are wiped out.

Example: Molly is receiving treatment for cancer. She has incurred substantial medical debt above what her insurance covers, and has tried to make payments on the debt. She will incur more debt until her treatment is complete. Molly wants to continue to try and make what payments she can (showing good faith), but she should wait to file bankruptcy until most or all of her medical bills are past due. Otherwise, if she declares bankruptcy before her treatment is complete, she'll still be responsible for paying the medical bills incurred after she files and she may go further into debt. Molly can only qualify for a Chapter 7 discharge every eight years.

§5:14 Recent Cash Advances or Credit Purchases of Luxury Goods

Cash advances on your credit cards right before filing bankruptcy or charging luxury goods can complicate your bankruptcy.

Cash Advances: Cash advances more than $950 from a single creditor within 70 days before filing bankruptcy are presumed nondischargeable. Creditors have rights to challenge the dischargeability of certain types of debts and this category is a big one. As a practical matter, if you try to avoid the presumption limits (such as taking $824 in cash advances 71 days before filing your bankruptcy case), the creditor can

still try to prove that the cash advance was in bad faith (you never intended to repay it) and challenge the dischargeability of the cash advance amount.

Credit Purchases of Luxury Goods: Debts incurred by an individual primarily for personal, family, or household purposes owed to one creditor and totaling more than $675 for extravagances or self-indulgences purchased within 90 days before filing are presumed to be nondischargable. A "luxury good" is not easily defined. In general, luxury goods and services are things that are not reasonably necessary to support you and your dependents. For example, if you charge an expensive vacation to your credit card just before filing for bankruptcy, it will likely be considered a luxury item. However, if you are buying food and diapers with your credit card, those are more likely to be considered reasonably necessary.

Creditor's Remedies: The bankruptcy process allow creditors, under specific facts, to challenge whether certain debts qualify for a discharge. Creditors must file any objection to a discharge in writing within 60 days after the original scheduled date of the meeting of creditors. A creditor may object to the discharge of a particular debt or to the discharge of all of your debts listed in your bankruptcy petition. If a creditor only objects to a specific debt, the creditor's objection does not have an effect on your other debts.

Creditors may object to a discharge of a debt from a cash advance in the 70 days prior to filing or the purchase of luxury goods in the 90 days prior to filing by filing paperwork with the bankruptcy court that is called an adversary proceeding.

Then, this portion of the bankruptcy (the adversary proceeding) will be much like a traditional lawsuit under the umbrella of the bankruptcy court. You will have the opportunity to submit an answer and supporting documents. Then a judge will hear the case and rule on the objection. If the judge approves the objection, the debt will not be discharged.

When a creditor files an adversary proceeding claiming a debt is nondischargeable because of a cash advance or luxury good purchases within the time limits discussed, there is a presumption that the debt is not dischargeable. This means that the creditor may not need to provide direct evidence that you did not intend to pay the debt at the time of the purchase. This presumption is based on the notion that most people would have known they were going to file for bankruptcy when they took the cash advance or purchased the luxury goods and so never intended to pay the debt.

However, you can rebut this presumption with evidence to the contrary. The court will then make a ruling on the facts and determine if that portion of the debt is dischargeable. If the court rules that it is not dischargeable, you will still owe that part of the debt after the bankruptcy is concluded.

Example: Beatrice took cash advances of $1200 within the 70-day period before she filed bankruptcy. The creditor files an adversary objecting to the discharge of that debt. Beatrice had intended to repay the debt at the time she took the cash advance. She even made one payment towards the debt. Beatrice might be able to fight the presumption about her intent and/or establish other relevant facts, such as what happened

in her financial life after she made the cash advance which then drove her to file bankruptcy and seek to discharge that debt.

Example: Tommy is thinking about filing bankruptcy. He can barely make his minimum credit card payments and is even falling behind on his rent payments. Prior to talking with a bankruptcy attorney, Tommy decides to have one last fun hurrah. He books an expensive vacation that costs more than $3,000. Then, 45 days later Tommy files for bankruptcy. The credit card Tommy used to book the trip has a total balance of $9,500 on his filing date ($3,000 of this balance is for the trip). The creditor files an adversary proceeding to object to the $3,000 in charges as luxury goods. Tommy tries to defend the matter, but loses his case. Tommy will still owe the $3,000 to the creditor for the trip, but the remaining $6,500 on the same credit card will be discharged (assuming no other challenges to discharge).

Additionally, a creditor can bring an adversary proceeding challenging the dischargeability of a debt on the grounds of fraud, even if the debt falls outside of the presumption period. For example, a creditor could object to the discharge of a debt that was incurred through a misrepresentation, such as with a credit application that greatly exaggerates the borrower's income or assets, a year or two before the bankruptcy filing. These objections are rare, but they do happen.

If you have already incurred new charges on your credit card or taken cash advances, consider delaying your bankruptcy filing until the presumption period has passed. In general, the longer you wait, the less likely it is that the credit card

company will file an objection to your discharge. However, keep in mind that the credit card company can still object to your discharge even after the presumption period has passed. But it will have to prove fraud without the benefit of the presumption. The creditor would have to give the court strong evidence that you did not intend to pay the debt, which is usually not easy to come up with. That's why creditors are not as likely to challenge purchases and cash advances that were made outside the presumption periods.

When determining whether a debt should be discharged when the creditor has objected, bankruptcy courts typically consider numerous factors such as: when the charges were incurred, whether you made any payments to the creditor since incurring the debt, and whether you talked to a bankruptcy attorney before using your credit cards.

§5:15 Acquisition of Home Within Past 40 Months

No rules prevent you from filing bankruptcy within any time limits after buying a home. However, getting the full benefit of the homestead exemption offered by your state (and jurisdiction) may depend on how long you have owned the home. As is discussed in §4:33, different states have different homestead exemptions. The amounts from state to state can vary by hundreds of thousands of dollars. Some states allow you to choose between the state and federal homestead exemptions. Some states allow doubling of the homestead exemption for joint married filers, others do not.

In an attempt to prevent people from moving to and buying a house in a state with an unlimited or very generous homestead exemption, federal law places time length restrictions

on the homestead exemption. You must have owned a home for at least 40 months before filing for bankruptcy in order to take advantage of a state's homestead exemption. If you cannot satisfy the 40-month requirement, then the federal law caps the homestead exemption at $160,375, regardless of the state exemption amount. If you sold your home and bought a new one in that same state with the sale proceeds, then the time you owned your first home will count toward the 40-month requirement.

This rule might not affect you if you live in a state that allows for federal exemptions (allowing you to use the federal homestead exemption), or if your state homestead exemption is below $160,375. But, if you have significant equity in your home and live in a state with a high homestead exemption, but don't meet the 40-month requirement, it might be worth waiting to file bankruptcy until you have met the time requirement.

§5:16 Acquisition of Car Within Past 910 Days

Chapter 13 bankruptcy has a unique feature called the "cram-down." It allows you to reduce the amount of certain secured debts to the value of the property securing the loan. This can be one of the benefits of a Chapter 13 and most often applies to underwater car loans. However, you can only cram down a car loan if you bought the car more than 910 days (approximately 2-1/2 years) before you filed for Chapter 13 bankruptcy. This is referred to as the "910-day rule." The age of the car is irrelevant. So, for example, if you owe $12,000 on your car loan and your car is worth $8,000, you can reduce your loan to $8,000. The remaining $4,000 of the loan bal-

ance becomes unsecured debt, and is treated like the rest of your unsecured debt (which means you pay it through your Chapter 13 plan - probably at a big discount). Unfortunately, no such option exists in Chapter 7. The 910-day rule is strictly enforced. So, if you are close to the 910-day mark and you have an underwater car loan, it might be worth waiting to file Chapter 13 bankruptcy until you are past the 910-day mark.

C. Will Prior Bankruptcies Force You to Wait?

1. Prior Discharges (Completed Bankruptcies)

§5:17 Time Limits

If you have previously filed bankruptcy and received a discharge, there are time limits on when you can file again to seek bankruptcy relief. The purpose of the time limits is to encourage people who have been through bankruptcy once to take steps to manage their debt to avoid bankruptcy in the future. Sometimes, however, life circumstances, bad business deals, or even a housing crisis may force someone into another bankruptcy. When and how often you can file depends on the facts, the previous type of bankruptcy discharge, dates, and what type of bankruptcy the subsequent filing will be.

§5:18 Chapter 7 to Chapter 7

If the first bankruptcy discharge was a Chapter 7 bankruptcy, the Bankruptcy Code requires you to wait a full eight years before filing again. The eight years is calculated from the filing date of the first case and not the discharge date.

§5:19 Chapter 13 to Chapter 13

If you received a previous Chapter 13 discharge, you cannot receive another Chapter 13 discharge unless the subsequent case is filed at least two years after the filing date of the previous case. Because most jurisdictions require a 36 to 60 month (three to five years) payment plan, this rule is not as much of a problem as in back-to-back Chapter 7 filings. Most individuals can file a Chapter 13 immediately after the previous case is closed.

§5:20 Chapter 7 to Chapter 13

This is sometimes referred to as a Chapter 20 bankruptcy (Chapter 13 after a Chapter 7). In this scenario, if the first discharge was under a Chapter 7 bankruptcy, you can only receive a discharge in a subsequent Chapter 13 if the case is filed at least four years after the initial Chapter 7 filing date. However, filing a Chapter 13 bankruptcy after receiving a Chapter 7 discharge, but before the four year requirement is met, can still help you in certain circumstances. See §5:22.

§5:21 Chapter 13 to Chapter 7

To file a Chapter 7 after receiving a Chapter 13 discharge, you must wait six years from the date the Chapter 13 was filed. However, the six-year rule does not apply if either you paid back all your unsecured debts in the previous Chapter 13 or you paid back at least 70% of your unsecured debts and your plan was proposed in good faith and was your best effort.

§5:22 Chapter 13 (100% Plan)

There are circumstances in which seeking Chapter 13 relief makes sense, even though you are not eligible for a bankruptcy discharge because the Chapter 13 filing date is still within the restricted timeline for discharge. These situations are very fact specific but will be allowed if the plan is a 100% repayment plan. This means that all the creditors owed money in the subsequent Chapter 13 filing are paid in full during the plan. Scenarios where this might be a viable option are to pay off priority debts (e.g. nondischargeable tax debt) or get caught up on missed mortgage or car loan payments under the protection of the bankruptcy court and automatic stay.

2. Prior Dismissed Cases

§5:23 Cases Dismissed with Prejudice

Although it is rare, the bankruptcy court can prohibit the filing of another bankruptcy case indefinitely, or for a prescribed amount of time. This may occur if the court dismisses a previous case "with prejudice." Examples of these types of situations include if you fail to obey court orders, file multiple cases to delay creditors, or otherwise try to take advantage of the bankruptcy court and the privileges that come with it.

In many cases, a 180-day ban on refiling will be imposed if you: (1) willfully failed to obey or follow court orders; (2) voluntarily dismissed the pervious bankruptcy after a creditor filed a motion to lift the automatic stay; or (3) committed bankruptcy fraud (e.g. hiding assets, lying on bankruptcy

papers, or otherwise filing in bad faith). However, the bankruptcy court can prohibit you from filing another bankruptcy for a longer period of time or forever preclude you from discharging any debts that could have been discharged in the dismissed case.

§5:24 Cases Dismissed for Other Reasons

In Chapter 13, sometimes a case is dismissed for other reasons. The most common reason is for a failure to make timely plan payments or comply with other portions of the plan (e.g. submit tax returns to the trustee's office each year of the plan). In these situations, the barred refiling does not usually take effect, because no discharge was ever granted. Although, these situations will vary greatly across jurisdictions, many people in this situation can file another bankruptcy, either Chapter 7 or Chapter 13 depending on income level and the makeup of the debt, in a reasonable time after the previous case was dismissed.

II. Should You File Jointly with Your Spouse?

§5:25 Filing Jointly Is Permitted, but Not Required

If you are married, you are probably wondering whether you and your spouse should both file bankruptcy. When one spouse files for bankruptcy, the other spouse may also file, but is not required to do so. When both spouses decide to file, a joint petition is usually a cost effect approach.

Whether filing together is a beneficial strategy depends on your situation. In some situations filing jointly will produce the best result, in others filing sequentially will be better, and in yet others, the second spouse need not ever file. If you are married, it is advisable to consult a bankruptcy attorney to ensure you make the best choice. An error could mean the unnecessary loss of property to creditors or unnecessary damage to one spouse's credit.

§5:26 When Filing Jointly May Make Sense

Situations in which filing jointly with your spouse may be advantageous include:

- **Joint debts.** If most of your debts are joint, filing together will eliminate these debts. If just one of you files, the other spouse will still be liable on joint debts and on his or her separate debts.

- **Doubling of exemptions.** Every state uses its own bankruptcy exemptions or federal exemptions, which allow you to keep certain types of property up to certain values when you file under Chapter 7. In some states, when you file jointly, these exemptions are doubled so you have twice the amount of exemptions to protect your jointly owned assets. This can be beneficial to certain couples so they don't lose assets or owe money in their bankruptcy. In Chapter 13 bankrupt-

cy, doubling exemptions may mean the couple will have to pay less to creditors through their payment plan.

§5:27 When Filing Jointly May Not Make Sense

Some reasons not to file jointly with your spouse include:

- **One spouse solely responsible for debts.** You are solely legally responsible for most of the debts. You can file alone to eliminate your debts and your spouse will preserve the option to file bankruptcy later should the need arise.
- **One spouse owns non-exempt property.** Your spouse owns a significant amount of nonexempt separate property. If you file alone, your spouse's separate property is not available to creditors in your Chapter 7 bankruptcy.
- **Spouses own tenancy by the entirety property.** You live in a state that excludes property held in tenancy by the entirety from the bankruptcy estate when only one spouse files. If you and your spouse own your home as tenants by the entirety, you may be able to keep it if only one spouse files. If you file jointly under Chapter 7 and the homestead exemption doesn't cover your equity, you might lose your home.

- **Community debts discharged when one spouse files.** You live in a community property state and your state's law provides that community debts are discharged even when only one spouse files. As long as you remain married, creditors of the discharged debts cannot get at community property. However, the separate debts of your non-filing spouse will not be discharged.

III. Steps to Take Before You File

Bankruptcy requires advance planning. Once the case is filed you cannot "undo" it to take care of things you wish you had done before the bankruptcy. Therefore, if you might file bankruptcy or plan to file bankruptcy, it is worth the time to consider some steps ahead of your filing that might help your case or circumstances, once you do file.

Keep in mind that not all transactions or measures you take before bankruptcy are created equal in good faith. There is a big difference between moving money from Bank A to Bank B (under full disclosure) and giving a car to friend for no value.

§5:28 Move Money to Avoid Setoffs

It is not uncommon for an individual to owe money to a bank at which he or she also has deposit accounts (e.g. checking, savings, money market accounts). For example, you might have a checking account and a credit card with Bank A. If you file for bankruptcy, the bank cannot demand additional

payments on the credit card, but it can use the balance that was in your checking account on the date you filed for bankruptcy to pay down the credit card debt you owed on the date of filing. This is called a set off. If you need this money, and it will be exempt, it would be wise to consider moving the funds to another bank before you file. Full disclosure of both accounts and amounts in all accounts will be required, but where you bank is your business. So, move your money if you have a credit card or car loan with the same bank in which you keep a regular balance in your deposit accounts.

§5:29 Keep Ready Cash Available in Case of Frozen Bank Accounts

Some banks - even if you do not owe them money - will freeze your checking or savings accounts if you file bankruptcy. This practice has been a grey area in bankruptcy law for some time, with many bankruptcy filers arguing it violates the bankruptcy automatic stay. But a recent court case ruled that banks may freeze a bankruptcy filer's accounts even if the filer did not owe money to the bank when he or she filed bankruptcy.

If you have validly exempted your bank accounts in your bankruptcy filing, you will eventually regain use of the frozen funds. However, this process can take time, sometimes at least 60 days. You should have a contingency plan in place (keeping cash, or money on pre-paid debit cards) for how you are you going to pay expenses in the meantime.

§5:30 Pay Ordinary Bills and Spend Money Down before Filing

When you file bankruptcy, you must list (on your schedule of assets) your exact bank account balances as of your bankruptcy filing date. If you want to keep the money in these accounts, you must apply your exemptions to protect these funds. So, you will want to choose a filing date that legitimately minimizes your bank account balances.

It is wise to pay all your ordinary and necessary bills right before filing bankruptcy. Don't pay ahead (this creates preference payment issues), but spend down money in your accounts by getting groceries, filling your gas tank, paying your monthly utilities, buying a bus pass, etc. right before you file. It is not ideal to file on the day your pay check hits your account. You will have to account for that amount in your bank account on your exemptions. Instead, pay your bills, wait for the transactions to clear and file your case at the point of the month when your accounts carry the lowest balance. For example, if you are paid on the first of the month and you pay your living expenses on the fifth, you probably will not want to file bankruptcy on the 1st through the 4th of the month. This is because your bank account balances will appear artificially high until you pay your living expenses.

§5:31 Plan for Utility Company Setoffs

Special rules apply to utility companies. You can file bankruptcy on past due utility bills (and must disclose them as a debt if they are more than 30-days past due); however, your past-due utilities might require some pre-planning before filing. Public utility companies, such as the electric company,

the gas company, the telephone company, and in some cases the cable company cannot refuse or cut off service simply because you have filed for bankruptcy and owe them money. However, 20 days after the filing of a bankruptcy petition the utility company can terminate service if you do not pay a security deposit or possibly provide other security that the utility bill will continue to be paid.

The utility has the right to demand that you pay a deposit within 20 days to ensure the continuation of service for that utility. The utility deposit requested to assure the utility of future payment may be many times the amount of the monthly bill, sometimes 2 to 3 times your average monthly average bill. The deposit remains your money, but is held by the utility company as security for service. As a side note, some states have specific cold weather or hot weather laws that may prevent a utility company from shutting off service over a period of months when heat or cooling systems are required for survival.

If you do not owe money to your utility companies and do not list utility bills as a debt, then the utilities might waive the requirement for a deposit when you file. However, if you do owe money to the utility prior to filing for bankruptcy and you posted a deposit with them when you first ordered service, the utility provider can now recover pre-filing utility debt by a set off against the prepetition deposit without giving you notice.

Unfortunately, utility companies are not consistent in their policies. So predicting what a particular company will do is nearly impossible. Company A may choose to stop service, but Company B may give a grace period. Therefore, it is important to have a plan in place to literally keep the lights on.

§5:32 Stop Automatic and Direct Debit Payments

Automatic payments and direct debtis are a convenient way to pay bills. An automatic payment pays bills directly from a bank or other deposit account through an electronic payment system. An automatic payment may also be made to a credit card. These payments are for an amount that doesn't change from month to month, such as a mortgage or car payment. A direct debit is an agreement authorizing a creditor to take money out of your account to pay your bill. You might authorize a direct debit for an electricity, phone, or credit card bill. These amounts may be variable or the same month to month. A direct debit can be authorized for most any bill.

Automatic payments and direct debits can become problematic when you file for bankruptcy protection. When the case is filed, the bankruptcy court automatically issues a temporary injunction called the automatic stay. This court order prohibits all of your creditors from taking any action to collect a debt from you. The automatic stay is very broad and applies to most creditors; even the ones that you want to continue paying. Because of the automatic stay, most creditors will routinely stop any direct debit of your bank account and

refuse automatic payments. The purpose of this refusal is not to make life difficult for you, but rather to remain in compliance with the court order and avoid further complications with the bankruptcy case.

To avoid this problem, it is wise to stop all automatic payments and debits several months before filing your bankruptcy case. Instead, you can mail your payment or make it in person, if that is an option. It is good practice to maintain good records of all payments made to secured creditors during your bankruptcy. Your check may not be cashed for weeks while your lender forwards the payment to another department now handling your loan (e.g. the bankruptcy department). You may also want to consider sending your payment via registered mail. That way you will have a receipt of timely payment, regardless when the check is cashed.

Once your case is completed and you receive your discharge, it will be up the discretion of each individual bank whether to allow you to resume automatic withdrawal or direct debt payments and in what timeframe. Some banks will allow it several months after discharge and others will only accept payments by mail.

§5:33 Prepare Alternative Payment Options over Online Payments

Many people today pay their bills online. Because of a potential violation of the automatic stay, many creditors will turn off online payments for a filer when they receive notice

of the bankruptcy filing. Don't count on being able to make a mortgage or car payment online while you are in active bankruptcy. Consider alternative payment options, like mail or in-person payments. Keep accurate records.

§5:34 Order and Review Credit Reports

Credit reports include a significant amount of information, including addresses for your creditors, amounts owed, payment history and whether an account is current or delinquent. This information will be useful and necessary in completing your bankruptcy papers. Federal law allows consumers to pull their credit reports from each of the three bureaus (Experian, Transunion, and Equifax) once a year for free at annualcreditreport.com. Additionally, multiple online sources will pull your credit report for a fee. Pulling your own credit report does not count as a hard inquiry into your credit.

§5:35 Keep Track of Monthly Income and Expenses

A bankruptcy filing requires you to document all your monthly expenses such as housing, food, clothing, medical, transportation, child care, etc. You will need to list actual expenses for these categories (and some additional ones). This is important because your actual monthly income and expenses will be used to determine which type of bankruptcy you qualify for, Chapter 7 or Chapter 13, and if you file a Chapter 13 plan how much your monthly payments will be under the repayment plan.

§5:36 Stop Using Credit Cards

It is important to stop using your credit cards before filing bankruptcy for several reasons. Ideally, you want to stop using all forms of unsecured credit several months before filing (more than three months is ideal). First, there is an honest intent element to bankruptcy and the purpose of bankruptcy law, according to the United States Supreme Court, is to give an honest debtor a new opportunity. However, creditors can object to discharging credit card debt that a debtor runs up right before filing and never intends to repay. It is rare, but it happens and is called a presumption of fraud. So, to prevent any presumption of fraud, you should stop using your credit cards, pay what you can (but avoid preference payments (see §§4:14, 5:07), and file bankruptcy after the debt becomes too much of a burden. The presumption means that if a creditor files a challenge it becomes your burden to prove you had no bad intent.

Second, as discussed in §5:14, there is a "luxury goods or services" presumption in bankruptcy. This means that if you charge more than $650 with a single creditor within the 90 days before filing to purchase luxury goods or services (anything that is not reasonably necessary) this part of the debt could become nondischargable. Like the presumption of fraud, discussed above, any charge over $650 is presumed to be for luxury goods or services. If the creditor raises the challenge (only to the amount of the charge), the burden then shifts to you to prove the charge was reasonably necessary.

Third, if you take one or more cash advances totaling more than $925 from a single creditor in the 70 days before filing bankruptcy, the debt is presumed not be to be discharged if the creditor challenges it. The burden than shifts to you to prove that the goods or services purchased with the cash advance were necessary). This is harder to prove with cash advances than it is with purchases of goods or services.

Any creditor who wants to challenge the appropriate use of your credit cards has to do so within 60 days after the meeting of creditors. So within about three months after filing your case you will know whether any creditor will be challenging the discharge of any debt on the grounds that you accessed the credit too close to when you filed bankruptcy.

The best way to avoid a creditor taking advantage of these presumptions is not to use any credit or take any cash advances when you start thinking about filing bankruptcy. At the least hold off on filing bankruptcy until enough time has passed to get beyond these 70 and 90-day presumption periods. As mentioned above, a creditor could still challenge your right to a discharge even without the benefit of a presumption. But if you avoid filing within the presumption period, that significantly decreases the chance that a creditor will bring a discharge challenge.

§5:37 Stop Paying Unsecured Creditors Before Filing

If you are paying any your unsecured debts, which would include your payday loans, credit cards, medical bills, or bank line of credit, $200 per month or more during the three months before you filed bankruptcy, you may have a problem. Any payments on these kinds of debts that exceed $600 within a three-month period are considered preferential payments and a bankruptcy trustee can and usually will sue to get this money returned to be shared with all creditors. So, consider stopping payments on all unsecured debt when you are ready to file bankruptcy. It usually takes many months for a creditor to sue for unpaid debt, so you have a little time, but you might receive unpleasant phone calls or correspondence until you file.

§5:38 Complete Credit Counseling

Prior to filing a bankruptcy case, you must complete a credit counseling course through a U.S. Trustee-approved provider. For married couples filing jointly, each spouse needs to complete the requirement. Most of the courses are web-based and are easy to complete in a few hours or less. The agency will then send you (and your attorney if you request it) a copy of the certificate. It is good for 180 days. The certificate must be time-stamped before your case filing date, or the court will reject the filing. Also, after you file for bankruptcy, but before your debts can be discharged, you will also need to complete a debtor education course.

IV. Engaging a Lawyer

§5:39 Should You Try to Handle Your Own Bankruptcy?

There is no bankruptcy law that requires you to have an attorney to file a bankruptcy case. You are allowed to represent yourself in either Chapter 7 or Chapter 13 bankruptcy as a pro se (self-represented) debtor. Individuals who are thorough, detail-oriented, and able to research and educate themselves about bankruptcy law and court procedures may be able to file their own cases.

However, filing your own bankruptcy case is not always a good idea. Bankruptcy is a very specialized area of law with rules that are often counterintuitive to what we do in ordinary transactions. Whether you should hire an attorney to represent you in bankruptcy depends on: whether you are filing for Chapter 7 or Chapter 13 bankruptcy; the amount of income and property you have; how complicated your bankruptcy is; and whether or not you are comfortable with handling your own case. Filing even a simple Chapter 7 bankruptcy can be a daunting task for many without an attorney. If you don't believe that you can manage the entire bankruptcy process on your own (or are not comfortable with it), it may be in your best interest to get an attorney to prepare your case and represent you. It may be hard to obtain an attorney mid-case, even more so than in other areas of law.

§5:40 When Representing Yourself May Make Sense

Representing yourself will be easier if you have a simple Chapter 7 bankruptcy case. A simple Chapter 7 bankruptcy typically means that:

- Your household income is below your state's median income level. See §1:03.
- You have little or no property.
- What property you do own is covered by an exemption. See §§4:27-4:46.
- You haven't made any recent property transfers for less than full value. §§4:13. 5:06.
- You haven't made any recent payments to preferred creditors. See §§4:14, 5:07.
- Your creditors are not likely to claim that your debts are nondischargeable in bankruptcy.

However, it is important to keep in mind that even filing a simple Chapter 7 bankruptcy requires a fair amount of time and research on your part. Successfully filing, completing the case, and ultimately obtaining a discharge without putting your property at risk requires you to accurately fill out a stack of bankruptcy forms and schedules, identify the appropriate bankruptcy laws and apply them correctly, research your state's exemptions, and follow all the court rules and procedures necessary to complete the bankruptcy process.

§5:41 When You Are Likely to Need an Attorney

If you have a potentially complex Chapter 7 or are filing Chapter 13, it might make more sense to hire an attorney. Chapter 13 presents additional requirements and specialized rules. Some examples of more complex cases include any of the following:

- You have a significant amount of income that might potentially disqualify you from filing a Chapter 7 because you cannot pass the mean's test. See §1:03.
- You have a lot of assets that may be at risk if you file.
- You own real estate with equity (i.e. value above the loan balance).
- You own a business or have business interests with other parties.
- You recently transferred or sold valuable assets out of your name. See §5:06.
- You owe significant tax debt. See §§3:29-3:31.
- You have debts that may not be dischargeable in bankruptcy. See §§3:14-3:27.
- You have creditors that may challenge your discharge.

- You might receive an inheritance or other windfall payment. See §§5:09-5:12.
- You have a pending or potential personal injury or worker's compensation claim.
- You work in a profession that has continued pending commissions or deferred income (e.g. real estate agent).

§5:42 When You Cannot Afford a Bankruptcy Attorney

While having a bankruptcy attorney represent you in your case filing is almost always better than filing on your own, not everyone who needs to file for bankruptcy can afford an attorney. In general, if you can't afford a bankruptcy lawyer, you might consider:

- Getting assistance from a free clinic or legal aid organization in your area.
- Finding a pro bono attorney to handle your case free of charge or at a reduced rate (in some cases the filing fee may still apply if you do not meet the court requirements for a fee waiver).
- Paying your attorney fees through your Chapter 13 plan, if filing Chapter 13.

§5:43 What to Look for in an Attorney

Finding the right bankruptcy attorney may take some time. Ask yourself, what are my needs? What traits in an attorney are important to me? Your bankruptcy attorney will serve as your advocate and guide through what is a sometimes confusing and stressful process. Taking the time to contact a few attorneys and knowing what to look for can set you on the path toward hiring the right attorney to represent you in your filing for bankruptcy. Many online databases can help you identify potential attorneys but sometimes the right and best attorneys come as referrals from people you know. Ask around.

Some attorneys offer free meetings or consultations, and others will charge a flat fee for this initial conference. Don't assume no charge means lesser qualifications. Starting with free meetings can help you get comfortable interviewing lawyers and may lead you to the one you choose. At all of the meetings, or over a telephone call, strive to find out some pertinent information about the attorney. Some information to discover and questions to ask yourself may include:

- Does the attorney have the expertise to help you?
- Are the fees appropriate to the market rate?
- Would you feel comfortable working with this person?
- What is the attorney's communication style?

- Can the attorney meet your timelines?
- What is included and not included in the fee?

Successfully navigating the bankruptcy laws and court requires a deep knowledge of this area of law and the experience to know how to use it. A misfiled form or missed deadline could result in your case being thrown out. That's why finding a specialist is important. Try to find an attorney who has some experience specializing in bankruptcy. It is appropriate to ask the attorneys you meet how many Chapter 7 and Chapter 13 bankruptcies they've handled.

Additionally, a good bankruptcy attorney will discuss alternatives to bankruptcy, such as credit counseling, and be honest with you if he or she thinks bankruptcy is not the best option for you or you stand to lose too much (i.e. you cannot protect the majority of your assets). When choosing an attorney and before hiring one, you have to make sure you feel comfortable with him or her and can be open and honest about all the details that you must disclose in a bankruptcy case. Before hiring an attorney, get the details, fee arrangement, and scope of representation in writing. A good attorney will always offer a written contract or representation agreement.

§5:44 What to Expect at Your First Meeting with an Attorney

Every bankruptcy attorney will have a process for conducting a first meeting with a potential client. Different attorneys will approach the meeting differently. Some attorneys might start with a simple consultation and overview and others a more in-depth meeting. However, there are items that you can expect most bankruptcy attorneys to cover in client meetings including: an overview of the bankruptcy process, general case preparation, gathering of documents, completion of documents, and payment of fees. It is also not unusual, in larger firms, to meet or discuss the information of your case with a paralegal or other office staff before meeting with an attorney.

Some attorneys offer free consultations. A general consultation is exactly what the name implies—a general overview of your bankruptcy case. If you have prepared a list of debts, property, and income, before heading into the consultation, a bankruptcy attorney at the first meeting will be able to offer a more accurate assessment of your options. Keep in mind this doesn't necessarily mean you hire this attorney or the attorney will agree to represent you. Your information, regardless of whether you hire the attorney or not, is protected by attorney-client privilege and must remain confidential.

Overall, the first meeting with a bankruptcy attorney usually focuses on gathering information. Until a bankruptcy attorney has a full assessment of your finances, the attorney can't

advise you whether bankruptcy is a good solution for you and, if so, which type of bankruptcy will be best for your situation.

Some attorneys have a general intake form to gather and document your information. If you are asked to complete one of these forms, be as thorough as you can, so the attorney will be in the best position to assess your case. Bankruptcy is very fact specific.

V. Completing Your Bankruptcy Paperwork

A. Documents and Information You'll Need to Gather

1. In General

§5:45 Why You Need This Information

Before you file for bankruptcy, you will need to gather a significant amount of information and documentation. Once you have decided that filing for bankruptcy is your best option, it is time to start. Whether you file for Chapter 7 or Chapter 13 bankruptcy, you will have to complete a large packet of forms that are filed with the bankruptcy court. See §§5:53-5:60. These forms require specific information regarding your assets, asset values, debts, and financial transactions. The bankruptcy trustee, your creditors, and the bankruptcy court use the filing to evaluate your case and determine if you meet the requirements for protecting your assets and ultimately discharging your debts.

§5:46 Accuracy and Thoroughness Are Important

It's very important to be accurate and complete when filling out your bankruptcy forms. Mistakes can be corrected by filing an amendment, but that takes time (and sometimes money). Worse, inaccuracies may cause the trustee and creditors to doubt the rest of the information you've provided. And, if the trustee decides that you intentionally hid property or lied about important money matters such as your income or financial transactions, your whole case could be dismissed (i.e. thrown out). Therefore, take the extra time to find the required documentation and complete the bankruptcy papers thoroughly, or if you are hiring an attorney, to provide the attorney what he or she needs to properly evaluate and file your case. An attorney can represent you adequately only if you provide thorough and truthful documentation and information.

§5:47 Missing and Lost Documents

Make every attempt to locate the records before filing your case. If you are having trouble locating particular documents, see if you can request records from the source (e.g. credit card statements you may have lost). If the records are honestly lost (e.g. a home fire), whether the case may or may not proceed through bankruptcy is determined on a case-by-case basis.

2. Specific Items

This list is not exhaustive and every case situation is slightly different, but this list provides an overview and categories of documents that might assist you or your attorney in completing the bankruptcy forms accurately. Not all of these will apply in every situation.

§5:48 Basic Personal Information

You will be required to disclose basic information such as your legal name, social security number, mailing and current address, marital status, employer information, and other similar information.

§5:49 Your Past 6+ Months of Income

You need to disclose your income in your bankruptcy paperwork to complete the means test and to compare it with your expenses in the bankruptcy papers.

Income is defined as any source of income received for the benefit and need of the household. This broad definition includes items you might not ordinarily think of as income. Included in income are:

Actual wages, salaries, tips, bonuses, overtime, and commissions. All income that you or a spouse received from employment for the previous six months before the filing date must be disclosed. This is includes your gross income (before tax and other deductions) and calculations for the deductions. The previous six months is the actual full six

months prior to the filing date. For example, if a case is filed in October, the 6 months of income are calculated from April through September. You will still need to produce your October income statements for the court, but they are for disclosure and current income and not the mean's test calculation. If one spouse files bankruptcy and the other does not, both spouse's full gross incomes count on the mean's test and must be disclosed in the filing if they reside in the same household.

Income from business, or farm profession. If you are self-employed or own a business or farm, you must disclose all the net income from these sources. Net income is the income after deducting business expenses. Some local courts might also want to see the gross receipts and expenses and documentation regarding bank statements and copies of checks or pay stubs for the prior six months, or a profit and loss statement, and documentation of any unemployment benefits or additional sources of income received in the prior six months.

Contribution to the household. This category is fairly unique to bankruptcy. Income includes what others contribute to your household. For example, if an adult child is living with a parent and pays rent, the rent is income for the parent and must be disclosed by the parent if the parent files for bankruptcy.

Net rental or other real property income. If you receive rents or have other income from real property, your net income after expenses with documentation must be provided.

Income from investments. This includes income from interest, dividends, and royalties.

Regular pension and retirement income. If you receive regular pension or retirement benefits, these are "income" in bankruptcy. Social security is excluded from the income category.

Unemployment benefits. Any unemployment compensation you receive must be included. However, unemployment benefits received under the Social Security Act are not income in bankruptcy. This is often a fine line and requires a more in-depth analysis.

Income from all other sources. Any income you receive from other sources such as state disability payments or annuities must be disclosed.

§5:50 Financial Records

Bank statements. You should provide at least three to six months of bank statements, from all accounts including joint accounts. The trustee will verify there are no preference payments or out of the ordinary transactions.

Tax returns. Before filing bankruptcy, you must be current with all your federal and state income tax return filings. Bankruptcy papers require you to disclose all your assets and all your debts, including tax debt or tax refunds. You cannot accurately assess whether you owe taxes or are entitled to a refund (an asset) unless your returns have been filed. Disclosure of prior years' tax returns may vary by jurisdiction and type of bankruptcy filed, but in general you should have

four years of returns available for court or attorney review, if you file bankruptcy with attorney representation. If you owe back taxes over multiple years, you should order tax statements and/or transcripts from the Internal Revenue Service (IRS) to determine amount of actual tax debt, penalties, and fines. Information regarding tax transcripts and other related documents can be found on the IRS's website.

Tax refunds. As indicated above, you need to disclose all tax refunds owed to you, including anticipated refunds for the subsequent tax year. This includes federal, state and property tax refunds.

Secured debt statements. You will need to examine the most current secured creditor statements for all secured debt. Most debt related to real estate and vehicle loans is secured debt. Take note of the principal still owed and monthly payment. If filing Chapter 13 and you owe arrears, the amount and interest rate are also important.

Credit card statements. Collect the most recent statements from all your credit card companies, including major credit cards (VISA, MasterCard, Discover, American Express), retailer credit cards, and other lines of credit.

Unsecured loans. If you have an unsecured line of credit with a bank or other third-party make sure to include these in your bankruptcy. If you have borrowed money from a friend or family member who has not given you regular statements, collect cancelled checks or other forms of records that show payment history, balance, etc.

Bank advances and reserve lines. Many checking accounts offer a reserve line of credit if you overdraw your account. For example, if you use all available funds in your checking account, the bank might allow up to an additional specified amount in protection to allow charges or checks to clear, but will charge interest and fees for this service. These extra fees and balances owed on overdraft protection are unsecured debt and should be included in your bankruptcy.

Pay day loans. Many services and outlets offer "pay day" loans. These are high interest loans for a sum of cash that give the creditor direct access to your bank account or pay check, or even other collateral, until you repay the loan. These loans are unsecured and can be discharged in bankruptcy. Many pay day loan companies have multiple locations, but are headquartered outside the United States. You must include a valid address for the company to ensure the loan is discharged in bankruptcy.

Medical debt. Medical debt is the second largest category of unsecured debt discharged in bankruptcy. It is also a type of debt, unless it is in collections, that often does not appear on your credit report. Therefore, to make sure you have all your unsecured creditors listed, it is important to locate statements for all medical debt, including hospitals, laboratories, doctors, dentists, and other health care providers. To be included, the debt must be more than 30-days from the date of service.

Correspondence from creditors. Gather any letters, collection notices, emails, garnishment notices or other related correspondence from creditors.

Lawsuits or garnishment notices. If you have been sued on a debt or are being garnished, obtain copies of all the related paperwork. Garnishments over $600 in the 90-days preceding the Chapter 7 filing date must be returned to you, if you have enough exemption to protect them. Additionally, all lawsuits within the year preceding the bankruptcy must be disclosed.

Copy of credit report. As indicated earlier in this Chapter, it is imperative that you pull a copy of your credit report right before filing for bankruptcy.

Receipts for large purchases or payments. If you have made any large purchases, or large payments above a required minimum payment in the months before your bankruptcy locate the receipts or details regarding the transaction.

Cash advances. If you have taken large cash advances from unsecured credit sources in the three to six months before your bankruptcy filing, locate receipts or records regarding these transactions.

§5:51 Assets

Any proof that anyone owes you money. If someone owes you money (e.g. you loaned your brother $2,000) locate documents that evidence the loan and show the current balance owed. Money owed to you is considered an asset in bankruptcy.

Real estate deposits. If you have made a deposit for a real estate lease or similar transaction, include a copy if the lease and receipt for the deposit in your bankruptcy preparation papers.

Real estate title. Provide recorded titles and other documents related to all real estate you own. This includes your homestead, undeveloped land, mineral rights, and fractional interests in property (e.g. if you own 1/5 of a family farm or cabin).

Vehicle titles. Copies of your vehicle titles are important. They show who is the actual title owner, the vehicle identification (VIN, make, model, year), and whether there is an active lien on the vehicle. Vehicles include anything with a title; for example, automobiles, campers, all-terrain vehicles, boats, trailers, motorcycles, and other recreational vehicles.

Insurance policies. Another category of personal property is life insurance. Life insurance is treated in different ways, depending on the type of insurance, and the analysis can be quite complex. Term life insurance has no cash value and is not an asset of the bankruptcy estate. But term life insurance may need to be disclosed. In contrast whole life insurance usually contains a cash surrender value that can be liquidated by the trustee if not protected by exemption. See §4:44.

Personal property. Create a list of all your other personal property. Generally, you can group household goods and clothing into one category and assign a fair market value for the lot of goods. However, you must identify higher valued items separately. These might include sporting goods, tools,

antiques, high value electronic items, collections, jewelry, and other things with more than $500-$600 in value. For higher value items, gather any proof you have of value, such as purchase receipts, insurance policies, and appraisals.

§5:52 Expenses

Both the means test and the schedules attached to your Petition (Schedule I and J) require a full accounting of all your expenses. The means test focuses on what expenses are reasonable and necessary and assumes some standard amounts for food, healthcare, etc. However, Schedule I and J require disclosure of your actual expenses. In order to be prepared to show these expenses you should gather your statements and bills related to all expenses. Some of these expenses might include:

- Mortgage or rent.
- HOA fees.
- Property taxes.
- Insurance (home, renters, auto, life).
- Utilities (gas, electric, water, heat or oil, garbage, telephone, cell phone, security system, internet, cable).
- Taxes (federal, state, income, self-employment tax).
- Mandatory employment items (e.g. parking).

- Court-ordered payments (spousal or child support).
- Transportation costs (car loans, operating costs such as fuel, registrations, tolls, parking, bus or train passes).
- Education for employment or for a physically or mentally challenged child.
- Daycare/childcare.
- Health care costs (prescriptions, co-pays, physician visits, dietary supplements).
- Charitable contributions (not to exceed 15% of your gross income).
- Minimal education expenses for minor children.
- Food and clothing.
- Actual debt payments.
- Retirement deductions.

B. The Official Forms

§5:53 Forms That Must Be Filed to Start a Bankruptcy Case

A bankruptcy case is filed in federal court in the jurisdiction in which you live. It is a special court with its own rules, procedures, and forms. All bankruptcies, no matter what bank-

ruptcy court they are filed in, will require you to complete a lengthy petition that includes multiple forms and schedules. Additionally, many jurisdictions also have "local forms" that are unique to that location.

Following is a list of the general bankruptcy papers required in a typical bankruptcy case; it does not include any specific local filing requirements. If you are representing yourself, you will have to check with your jurisdiction to make sure you have all the correct forms. If a form is missed, the court will issue an order to comply for incomplete filing and allow a short time for you to comply or it will dismiss the case. If the case is dismissed for failure to complete the filing of all the papers, your case will have to be refiled and a new file fee will apply.

§5:54 Penalty of Perjury

All parts of the Petition, schedules and related documents are signed under penalty of perjury. This means you are telling the court that all of your papers are accurate to the best of your knowledge. You further understand if you make a false statement, conceal property, or commit fraud your case can be dismissed and you can even be fined or imprisoned.

§5:55 The Petition and Other Initial Forms

Form 101: Voluntary Petition for Individuals Filing for Bankruptcy. This form identifies the type of bankruptcy you are filing (Chapter 7 or Chapter 13), personal information for each filer such as address, social security number (encrypted if filed electronically), how the fee is being paid, some other

case related questions, whether you have business interests, have completed the pre-filing credit counseling, and statistical information about your type of debts and amounts.

Creditor Mailing List (Creditor Matrix). As part of your bankruptcy filing, you must prepare a list of all your creditors' mailing addresses. The court uses the creditor mailing list to send notice of your case to your creditors. Each bankruptcy court has its own rules and required formatting for the creditor mailing list. If a creditor does not receive notice, the debt may not be discharged.

Form 121: Statement about your Social Security Numbers. On this form you and a joint debtor disclose and verify that your social security numbers are correct. In order to protect sensitive information, the court will seal this document.

Certificate of Credit Counseling. All debtors are required to complete credit counseling (usually done online) from an agency approved by the U.S Trustee's office within 180 days before the case filing date. The agency then issues a certificate with your name, the agency's identification, and the date completed. When you file your bankruptcy case, you will need to file this certificate.

§5:56 The Schedules

Schedule A/B: Real Property. This schedule identifies all real property that you own. Real property is all real estate interests including land, homes, homestead property, manufactured homes (used as a primary homestead residence), and mineral rights.

Schedule A/B: Personal Property. This schedule identifies all your personal property. Personal property includes cash, bank accounts, retirement accounts (which may be a non-bankruptcy asset), all stocks and bonds, vehicles (cars, boats, ATVs, motorcycles, and other types of vehicles), household goods, collectibles with value, firearms, clothing, business interests, tax refunds, claims you might have, and any other items you own with value.

As a practical matter you only have to list the items with real value, but not every lamp, book, etc. Most jurisdictions allow you to lump household goods together with a total value. All cash, accounts with liquidity, and titled assets should be listed with the interest that you own. For example, if you own a car with your cousin, your interest in the car is one-half an interest and the value is one-half the car's book value.

Schedule C: The Property you Claim as Exempt. Schedule C is one of the most important forms in your bankruptcy filing. It is how you protect your property and claim it as exempt. This is also one of the most difficult parts of the bankruptcy filing to complete. It requires a thorough understanding of what property can be claimed in which exemption category, what the exemption limits are for your jurisdiction and how to apply them. If this schedule is not completed correctly and the property clearly identified as exempt and under what provision of the law, you may lose the property. Some trustees may give a person filing without an attorney an opportunity to amend the Schedule C, but they are neither obligated to do so, nor can they provide legal advice. For more on exemptions, see Chapter 4.

Schedule D: Creditors Who Have Claims Secured by Property. This is a list of all your creditors that have liens against your property. The most common examples are mortgages and vehicle loans. You also have to list how much you owe, the value of the collateral, and if any portion of the debt is unsecured. You must list a valid address for each secured creditor. If the creditor does not receive notice of the filing, the creditor could have a defense that it was not listed as a creditor.

Schedule E/F: Creditors Who Have Unsecured Claims. This schedule is split into two parts: 1. Priority unsecured claims. These debts include debts owed to your bankruptcy attorney (more applicable in Chapter 13), priority taxes, unpaid domestic support obligations, and a few other specialized categories of debt. 2. Nonpriority Unsecured Claims. This is all the debt that will likely be discharged in the bankruptcy and includes credit card balances, medical debt, nonpriority taxes, unsecured loans, and payday loans. For each creditor you must list a valid address, the amount owed, type of debt, and an account number if you have it. If the creditor does not receive notice of the filing, it could have a defense that will keep the debt from being discharged. Loans from family and friends are also unsecured debt and must be listed.

Schedule G: Executory Contracts and Unexpired Leases. This schedule requires you to list any contract or lease you're a party to when you file your bankruptcy case, such as an apartment lease, car lease or gym membership. An executory contract is a contract you are still responsible to per-

form when you file for bankruptcy. Examples of executory contracts include: cellphone agreements, business contracts, franchise agreements, country club memberships, and real estate contracts to buy or sell property that is still in escrow. An unexpired lease is a lease in which the term has not yet expired. You can choose to assume the lease (keep paying) or reject the lease.

Schedule H: Your Codebtors. This schedule may not apply to all filers. If any of your debts has a codebtor, someone who is also contractually responsible for the debt, it must be disclosed here. The form requires the codebtor's name and address. The codebtor will get notice of the filing.

Schedule I: Your Income. This schedule is where you'll disclose your employment information and current income from all sources. If a married couple resides in the same household, even if not filing jointly, both incomes must be disclosed on this form. If you have no income, you may list $0.00 income. Even though Social Security income does not factor into the mean's test, it should be listed as income on this schedule.

Schedule J: Your Expenses. Schedule J is where you'll disclose all of your current expenses. Because it serves as a budget going forward, you won't include payments for any debts that will be wiped out by your bankruptcy (such as credit card bills or a car payment if you're returning the car to the creditor).

Schedule J2: Expenses for Separate Household of Debtor 2. If married debtors filing jointly are residing in separate households, the second household expenses are disclosed on this form. If married debtors reside in the same household this form is not needed.

Form 106 Declaration: Declaration about an Individual's Debtors Schedules. This form requires you to sign your name (some jurisdictions allow electronic signatures and some require hard copy) that all the information in the schedules is true and correct.

§5:57 Statement of Financial Affairs and Statement of Intention

Form 107: Statement of Financial Affairs for Individuals Filing for Bankruptcy. This lengthy form requires you to disclose information about your prior financial affairs in multiple categories and over specific time periods. The required information includes how much income you made over the past several years, previous payments to creditors, closed bank accounts, if you have paid friends and family, given charitable contributions, whether you have owned a business, and other related financial information. You will also be required to disclose pending or potential lawsuits, repossessions, foreclosures, property transfers, storage facility use, and if you are holding property for another.

Full disclosure on the Statement of Financial Affairs is very important. The trustee will use this information to determine if you have made preferential payments, fraudulent transfers, or potential fraud. Often a trustee will ask for additional

documentation regarding disclosures made on the Statement of Financial Affairs. For example, if you list a closed bank account that had a balance of $5,000 when the account was closed, the trustee will likely ask you for documentation showing where the funds went. If you cannot produce the requested paper trail, you could be in trouble. Your discharge could be in jeopardy and you could face potential bankruptcy crimes.

Form 108: Statement of Intention for Individuals Filing under Chapter 7. This form applies only if you have secured debt, such as a mortgage or car payment. If you have secured debt this form informs the court and the creditor whether you intend to keep the asset (the house or car) and continue making payments, surrender it to the creditor, redeem it, or reaffirm the debt. It also applies to whether you plan to keep an unexpired personal property lease.

§5:58 The Means Test

Form 122A-1: Chapter 7 Statement of Your Current Monthly Income. This is the official court form that shows the means test calculations. It determines whether you qualify to file for Chapter 7 bankruptcy. The form requires disclosure of your average monthly income for the six-month period preceding your bankruptcy as well as the size of your household. If your income is below the median, you automatically qualify. If your income is above the median, you will need to complete the second form, Form 122A-2, Chapter 7 Means Test Calculation.

Form 122A-1Supp: Statement of Exemption from Presumption of Abuse Under §707(b)(2). This form is used to determine if you might be exempt from the means test. This would be the case if most of your debts are business debts or if have recent military service. If the exemption applies, then you are not required to fill out most of Form 122A-1 and do not need to complete Form 122A-2.

Form 122A-2: Chapter 7 Means Test Calculation. If you are not exempt from the means test under Form 122A-1 Supp. and your income is above your state median income, you must fill out the entire means test calculation form. It is the final step in determining whether you have funds to pay your creditors. If you don't, you can file a Chapter 7 bankruptcy. If you do, you must file a Chapter 13 bankruptcy instead.

Those who file Chapter 13 repayment plan cases are not subject to the Means Test itself. But, Chapter 13 filers must complete two forms that serve a somewhat similar function.

Form 122-C1, Statement of Your Current Monthly Income and Calculation of Commitment Period (Chapter 13). This statement, which compares your family income to your state's median income, determines whether you will be required to enter into a three-year or a five-year repayment plan. If you are above the median, you will stay in Chapter 13 for five years. If below the median, you will only be required to stay in three years, although you can propose a plan to last up to five years if necessary.

Form 122C-2 Chapter 13 Calculation of Your Disposable Income. This form deducts your reasonable and necessary expenses to determine your disposable income, i.e. your minimum Chapter 13 plan payment.

§5:59 Additional Forms that May Apply in Some Cases

Form 101A & B: Initial Statement about an Eviction Judgment against You. These forms will not apply in every case. They are only required if you lease or rent your current residence and the current landlord has an eviction judgment against you based on a failure to pay rent. If there is no judgment, these forms are not needed.

Form 103A: Application for Individuals to Pay the Filing Fee in Installments. You can complete this form and file with your other documents if you want to pay your filing fee in two to four payments.

Form B103B: Application to Have Chapter 7 Filing Fee Waived. The court filing fee for a Chapter 7 bankruptcy is several hundred dollars and is increased every so often. It is difficult to qualify for a fee waiver in bankruptcy. However, you may qualify for a waiver of the filing fee, if your family income is less than 150% of the official poverty guideline published by the U.S. Department of Health and Human Services.

§5:60 Local Forms

Although bankruptcy is a matter of federal law and the basic forms filed with the court are the same from jurisdiction to jurisdiction, different local courts may have different and or

supplemental forms that the court requires. The overview in this book is general in nature and cannot outline every federal bankruptcy court. However, usually the local rules and requirements are listed on the bankruptcy homepage for each court. Examples of additional documents that might need to be included are various disclosures regarding personal information, copies of actual financial statements or records, or specific notices related to the jurisdiction. If you are filing without an attorney, make sure to check your local court rules and requirements prior to filing a bankruptcy case.

Glossary of Bankruptcy Terms

Abandonment: Process by which the debtor's estate would not benefit by the sale of certain property so the trustee will turn it back over to the debtor.

Abandonment of Property: Trustee's declaration that the trustee has no interest in certain property because of lack of value, debtor's exemption, or because it is burdensome to the administration of the estate.

Absolute Priority Rule: Requirement that a certain class of creditors be satisfied before payment to another class of creditors.

Abstention: Process of the district court deciding not to hear a matter that would be more appropriately heard in another court.

Acceleration Clause: A clause in a promissory note allowing the creditor to declare the entire balance due upon default.

Adequate Protection: The standard of protection of the interest of a creditor which must be provided by the trustee or debtor in possession before the creditor's interest can be used without an unconstitutional taking of the creditor's interest.

Administrative Claim: Claim for reasonable and necessary expenses and fees incurred in the administration of an estate.

Adversary Proceeding: A lawsuit in the U.S. Bankruptcy Court that is related to a bankruptcy case.

Affirmation: A declaration, oath or promise made by a person.

Agent: A person who is authorized to represent another person, corporation or entity.

Amortize: To satisfy a debt in installments or recovery of an investment over a period of time.

Antecedent Debt: An obligation that has not yet matured or become due, such as an installment loan payment.

Appeal: A review of a decision of the Bankruptcy Court.

Assets: Things owned by a person, corporation or business.

Assume: An agreement to continue performing duties under a contract or lease.

Automatic Stay: An injunction or court order that takes effect when a bankruptcy petition is filed, prohibiting a broad range of activities against the debtor, property of the debtor and property of the bankruptcy estate.

Avoidance Powers: The powers used by a trustee to undo transfers of the debtor's property.

Balance Sheet: A statement of financial condition as of a specific date.

Bankruptcy: A legal procedure by which an individual or corporation is able to reduce or cancel debts, or reorganize, under the direction of the bankruptcy court.

Bankruptcy Administrator: An officer of the judiciary serving in the judicial districts of Alabama and North Carolina who, like the U.S. trustee, is responsible for supervising the administration of bankruptcy cases, estates, and trustees, monitoring plans and disclosure statements, monitoring creditors' committees, monitoring fee applications, and performing other statutory duties.

Bankruptcy Code: The information name for title 11 of the United States Code (11 U.S.C. §§101-1330), the Federal bankruptcy law.

Bankruptcy Court: The bankruptcy judges in regular active service in each district; a unit of the district court.

Bankruptcy Estate: All legal or equitable interests of the debtor in property at the time of the bankruptcy filing.

Bankruptcy Mill: A business not authorized to practice law that provides bankruptcy counseling and prepares bankruptcy petitions.

Bar Date: Date set by the court for filing pleadings; usually refers to last day to file a proof of claim.

Book Value: The value of property as shown by the records or books of the owner (usually a corporation).

Cash Collateral: Cash or equivalent that is subject to a security interest.

Certified Financial Statement: A financial statement that is certified by the accountant of the debtor to be accurate and correct.

Change of Venue: Moving the case from the jurisdiction of one bankruptcy court to another.

Chattel Mortgage: Transfer of ownership of personal property to ensure payment of a debt.

Claim: Creditor's right to payment.

Claims Bar Date: Last day to file proof of claim, usually 90 days after the §341(a) meeting of creditors.

Class of Creditors: A group of creditors entitled to similar treatment.

Co-Debtor Stay: The stay of an action against guarantors and co-obligors provided in Chapters 12 and 13 that applies to individuals jointly liable on consumer debts.

Cognovit Note: Debtor's confession of judgment.

Collateral: Property of a debtor on which a creditor has a lien securing the debt.

Collateral Recovery: The method of a secured creditor in recovering its collateral for a secured debt.

Composition: An agreement between debtor and creditor whereby creditor agrees to take less than the original claim.

Complaint: A pleading that is filed to initiate a lawsuit or adversary proceeding.

Community Claim: Claims against community property of debtors.

Confirmation: The court's approval of the debtor's plan before it goes into effect.

Consensual Lien: A lien created by the consent of the parties, such as a mortgage or a security interest.

Constructive Fraud: Debtor transferred property for less than its value while the debtor was insolvent.

Consumer Debt: Debt incurred by an individual primarily for a personal, family or household purpose.

Contingent Claim: A claim conditioned upon a future event that may never happen.

Conversion: Process by which the debtor may change the chapter under which he or she filed.

Core Proceedings: Core proceedings are directly related to the bankruptcy case which arises under the Bankruptcy Code. Core proceedings include estate administration, claim allowance or disallowance, use and sale of property, preference litigation, automatic stay litigation, fraudulent conveyance litigation, plan confirmation and the like. A bankruptcy judge may render final orders in core proceedings.

Cram down: In Chapter 13 bankruptcy a procedure that allows the debtor to reduce the principal balance of a debt to the value of the property it is secured by.

Creditor: Entity that has a claim against debtor that arose at the time of, or before, the order for relief.

Creditor's Bill: Judgment creditor's attempt to attach property that could not be attached by execution at law.

Cure Amount: The amount of arrearages of a secured debt needed to bring the arrearages current.

Custodian: Trustee, receiver or agent appointed by the court to take charge of debtor's property for the purpose of enforcing a lien against the property, or for general administration of the property for the benefit of debtor's creditors.

Deacceleration: A debt that became due before term could be extended and a new payment schedule proposed.

Debenture: A promissory note of a corporation for money received which is not secured by assets.

Debt: Liability for a claim.

Debtor: Person, partnership, corporation or municipality that is the subject of bankruptcy proceedings, whether voluntarily or involuntarily.

Default: Failure to perform when due, such as failure to file an answer when due.

Discharge: The termination of the bankruptcy proceedings when all payments under the plan have been paid or debtor has been "forgiven" his or her debts.

Dischargeable Debt: A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

Disclosure Statement: A document prepared by the debtor to creditors that discloses information that the debtor deems important concerning his or her plan of reorganization. Usually accompanied by the plan.

Disinterested Person: Person who is not a creditor, equity security holder, or insider.

Dismissal: Process by which a court will terminate a case.

Disputed Claim: A claim that is disputed as to amount or validity.

Distribution: Process by proceeds of an estate are paid to various classes of claimants.

Dividend: Payment a creditor receives from a debtor's estate.

Entity: Person, estate, trust, governmental unit or U.S. trustee.

Equitable Subordination: That action by which a court postpones payment to one creditor until others are paid.

Equity: The value of an asset after encumbrances are deducted from the market value.

Equity Cushion: Form of adequate protection wherein value of property is compared to claimant's lien interest.

Equity Lien: A lien established to secure payment of debts.

Equity Security: Share or stock in a corporation or limited partnership.

Execution: The signing of a document, which officially completes the document.

Executory Contract: Contract that requires performance by both parties, e.g. a lease or employment contract.

Exempt Property: Property of a debtor that the law protects from the action of creditors.

Exemptions: Debtor's property that is free from claims of creditors.

Face Sheet Filing: A bankruptcy case filed either without schedules or with incomplete schedules listing few creditors and debts. Face sheet filings are often made for the purpose of delaying an eviction or foreclosure.

Fair Consideration: The amount paid for an item that is not disproportionately small. The price paid is adequate for the value of the asset.

Federalism: The theory under which the powers of government are divided between the states and the central government.

Fiduciary: A person acting on behalf of another person, which requires a high degree of trust, e.g. executors, directors of a corporation and guardians.

Final Decree: Order of the court that the case has been fully administered and is closed.

Foreclosure: The process by which a secured creditor takes possession of the debtor's property because the debtor has failed to pay the debt.

Forward Contract: Contract for purchase, sale or transfer of a commodity or product with a maturity date more than two days after the date the contract was executed.

Fraudulent Transfer: Transfer of debtor's property to conceal the property from the jurisdiction of the court in order to secure the property from creditors.

Fully Secured Creditor: A creditor that has security in the full amount of the debt.

Garnishment: A judicial debt-collection procedure whereby, at the suit of a creditor, the court orders a third person to hold, subject to the court's direction, money or property of the debtor in his or her possession.

Homestead: Primary family residence for which part (or all) of the debtor's equity may be exempt.

Indenture: Mortgage or deed of trust under which there is a security outstanding constituting a claim against debtor, or claim secured by a lien on debtor's property.

Indenture Trustee: A person who is trustee under a mortgage, deed of trust or security.

In Forma Pauperis: Proceeding of indigent person; because of lack of funds, certain fees may be waived.

In Pro Per: Debtor representing himself or herself without an attorney.

Insider: A person who is debtor's relative or among debtor's close working associates.

Insolvency Presumption: A debtor is presumed to be insolvent during the 90-day period preceding the date the petition is filed.

Insolvent: Financial condition in which the sum of a person's debts exceeds the sum of that person's assets.

Interim Trustee: Trustee appointed upon entry of the order of relief to administer the estate until the permanent trustee can be appointed at the §341(a) meeting of creditors.

Ipso Facto Clause: A clause in a promissory note or lease allowing the creditor or landlord to declare a default if the debtor or tenant files bankruptcy or becomes insolvent.

Joint Administration: A court-approved mechanism under which two or more cases can be administered together. Assuming no conflicts of interest, these separate businesses or individuals can pool their resources, hire the same professionals, etc.

Joint Petition: When two or more persons are listed on the same bankruptcy petition, e.g. husband and wife.

Judicial Lien: A lien created by order of a court, such as the lien of a judgment.

Jurisdiction: The power and authority of the court to administer justice by hearing controversies.

Levy and Execution: A judicial debt-collection procedure whereby the court orders the sheriff to seize all of the debtor's nonexempt property that can be found in the county to sell in satisfaction of the debtor's debt(s).

Liabilities: Debts of the debtor and encumbrances on the debtor's property.

Lien: An interest in property securing the repayment of a debt.

Liquid assets: Assets that are easily convertible to cash.

Liquidation: Sale of debtor's assets in a Chapter 7 case.

Margin payment: Payment on a forward contract.

Market Value: The price property would sell for if sold in the ordinary course of business.

Matrix: List of creditors' names and addresses, filed with the petition.

Means Test: A method of determining if a debtor has the ability to pay some debts thereby requiring the debtor to file a Chapter 13 proceeding rather than a Chapter 7 proceeding.

Modification: Changes made in the plan of reorganization or other bankruptcy documents.

Motion: A request for the court to act, which is filed within a lawsuit, adversary proceeding or bankruptcy case.

Municipality: Political subdivision of a state.

Net Income: Debtor's income after expenses are deducted.

Net Worth: The remainder after deducting liabilities from assets.

No-Asset Case: A Chapter 7 case where there are no assets available to satisfy any portion of the creditors' unsecured claims.

Noncore Proceedings: Those proceedings that are related to the bankruptcy case but do not arise directly from the Bankruptcy Code. Bankruptcy judges may not render a final order in noncore matters without the explicit written authorization of all parties involved. When written authorization is not obtained, the bankruptcy judge will submit findings of fact and conclusions of law to the district judge, who will render a final decision. An example of a noncore proceeding is a personal injury or wrongful death claim of the debtor.

Nondischargeable Debt: A debt that is excluded from discharge.

Nonexempt Property: Property that the debtor may not keep.

Nonpossessory Security Interest: A security interest or lien in property in the possession of the debtor.

Nonpurchase-Money Security Interest: A security interest given to secure a loan not used to purchase the collateral.

Objection to Discharge: A trustee's or creditor's objection to the debtor's being released from personal liability for certain dischargeable debts.

Objection to Exemptions: A trustee's or creditor's objection to a debtor's attempt to claim certain property as exempt.

Option: A written instrument that gives a person the right to purchase an asset at a stated price within a specified time period stated in the instrument.

Party in Interest: A party who is actually and substantially interested in the subject matter, as distinguished from one who has only a nominal or technical interest in it.

Par Value: The value of corporate stock, which is determined by the incorporator of the corporation when the corporation is formed.

Perfect: To make a security interest legally enforceable. Taking possession of collateral may be necessary to perfect a security interest.

Personal Jurisdiction: The power and authority of a court to issue an order that is binding upon a particular individual, entity or piece of property.

Personally Identifiable Information: Specific information about individuals provided in connection with obtaining a product or services for personal, family or household purposes, including social security numbers, e-mail addresses, telephone numbers, and credit card numbers.

Personalty: Moveable property, property not permanently attached to land.

Petition for Relief: The pleading that is filed to initiate a bankruptcy case.

Plan: Statement of debtor's modus operandi to repay debts and satisfy creditors, which is approved by the court.

Possessory Security: A security interest or lien in property in the possession of the creditor, such as a pawn or pledge.

Postpetition Transfer: Transfer of property after petition is filed.

Prebankruptcy Planning: The arrangement, or rearrangement, of a debtor's property to allow the debtor to take maximum advantage of exemptions. It typically includes converting nonexempt assets into exempt assets.

Preemption: Preemption occurs when Congress enacts a federal law or statutory scheme that is intended to preclude enforcement of state laws on the same subject.

Preferential Transfer: A transfer of property of the debtor to a creditor, on account of a prior debt made immediately prior to the debtor's bankruptcy, while the debtor was insolvent, enabling the creditor to receive more than he or she would have received from the bankruptcy if the transfer had not been made.

Prepackaged Plan: A plan for which acceptances were solicited prior to the commencement of the bankruptcy case, thus making the meeting of creditors unnecessary.

Priority: Classification of claims whereby the claims in one class must be paid in full before the next class receives any payment.

Priority Creditor: A person whose debt is entitled to priority, e.g. wages, employee benefits, taxes.

Pro se: A nonlawyer who represents himself or herself in a court proceeding.

Proprietorship: A business that is owned and managed by one person.

Purchase Money Security Interest: A security interest given to secure the loan used to purchase the collateral.

Reaffirmation Agreement: An agreement between debtor and creditor to pay a debt regardless of dischargeability.

Realty: Immovable property, such as land and buildings attached to land.

Receiver: A person appointed by the court to hold property in trust until the court can rule on its disposition.

Recoupment: The right of a creditor to assert a demand arising from the same transaction as the debtor's claim for the purpose of reducing the claim.

Redemption: The right of a debtor in bankruptcy to purchase certain types of collateral from secured creditors by paying the value of the collateral rather than the total secured debt.

Remainder: The part of a debtor's estate that is left after the debts have been paid.

Removal: Moving litigation from a state court to the Bankruptcy court or District Court.

Replacement Value: The price a willing buyer in the debtor's trade, business or situation would pay to obtain like property from a willing seller.

Replevin: Recovery of property or goods after legal action.

Repossess: The act of a creditor to recover from a debtor property that was not paid for.

Repo Participant: An entity that has an outstanding repurchase agreement with debtor within 90 days before the date the petition in bankruptcy is filed.

Reversion: Return of property to a creditor when debtor is unable to pay for it.

Ride-Through: Instead of reaffirming a debt, the debtor simply continues paying a debt during bankruptcy proceedings.

Rule of 78: The method generally used to determine the payout balance of an installment loan.

Turnover Action: Adversary proceeding brought by a Chapter 7 trustee for return of debtor's property held in the possession of a third party.

Secured Creditor: A creditor whose debt is secured by a lien on debtor's property.

Secured Debt: Debt backed by a mortgage, pledge of collateral, or other lien; debt for which the creditor has the right to pursue specific pledged property upon default.

Securities Self-Regulatory Organization: Securities association registered with the SEC.

Security: Includes stocks, notes, treasury stock, bonds, certificates of deposit and debentures.

Security Agreement: An agreement that creates a security interest in property.

Setoff: Crediting one claim against another without an actual exchange of money.

Small Business: A person engaged in business activities whose aggregate liquidated secured and unsecured debts do not exceed $2,190,000. For the purposes of the Bankruptcy Code, a small business does not include a business whose primary activity is owning and operating real property.

Standing Trustee: A trustee with a permanent appointment to serve in Chapter 12 or 13 cases.

Statement of Intention: A declaration made by a Chapter 7 debtor concerning plans for dealing with consumer debts that are secured by property of the estate.

Statutory Lien: A lien created by operation of law without either the consent of the parties or a court order, such as a mechanic's lien or a material man's lien.

Straight Bankruptcy: Proceedings under Chapter 7.

Strong Arm Powers: The right of a Trustee to avoid or reverse certain transactions.

Sua Sponte: On the court's own motion.

Subordination: To place in lower order or rank.

Subrogation: The substitution of one party into another party's position.

Substantial Abuse: The characterization of a bankruptcy case filed by an individual whose debts are primarily consumer debts where the court finds that the granting of relief would be an abuse of Chapter 7 because, for example, the debtor can pay his or her debts.

Surety: One who agrees to be responsible for another's debts if the other person does not perform as agreed.

Transfer: Voluntary or involuntary disposing of, or parting with, property or an interest in property, including creation of a lien, the retention of title as a security interest, and foreclosure of the debtor's equity of redemption.

Trustee: An officer of the court appointed to take custody of the assets of a bankruptcy estate.

Turnover Action: An adversary proceeding brought against a third party demanding return of debtor's property.

Unlawful Detainer Action: A lawsuit brought by a landlord against a tenant to evict the tenant from rental property; usually for nonpayment of rent.

Unliquidated Claim: A debt in dispute.

Unscheduled Debt: A debt that should have been listed by a debtor in the schedules filed with the court but was not. Depending on the circumstances, an unscheduled debt may or may not be discharged.

Unsecured Creditor: A creditor without security for the debt.

Venue: Geographical location of debtor to determine proper court jurisdiction.

Voidable Preference: Transfer of property that is voidable by the trustee.

Waiver: The intentional relinquishment of a right, usually in writing.

Workout: Arrangement between debtor and creditor to satisfy a debt.