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CHAPTER 13 BANKRUPTCY

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MICHAEL LYNN GABRIEL
ATTORNEY AT LAW
B.S., J.D., DIP.(Tax), LL.M.(Tax)

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CHAPTER 13 BANKRUPTCY

INTRODUCTION

This book is a companion to another book of this legal series, CHAPTER 7 BANKRUPTCY. A Chapter 7 proceeding is known as a "straight liquidation"; whereas the Chapter 13 proceeding is known as an "individual reorganization." One or the other of these books should be used by the average individual contemplating the filing of a bankruptcy petition.

There are two other types of bankruptcy: Chapter 12 bankruptcy for farmers and Chapter 11 reorganization for large debtors (persons with over \$250,000 in unsecured debts and over \$750,000 in secured debts). Most people who file for bankruptcy protection do so under either Chapter 7 or Chapter 13 of the Bankruptcy Code.

A Chapter 13 petition is one of four types of bankruptcy and is often called an "individual's reorganization." Unlike a Chapter 7 proceeding, this type of bankruptcy filing does not liquidate all of a debtor's non-exempt property and immediately discharge a debtor of all dischargeable debts.

A Chapter 13 proceeding requires the debtor to make payments pursuant to a plan to the creditors. At the end of the plan's period of life (usually three years,) all unsecured debts are discharged. if all payments have be met. Debts owed to secured creditors usually are not discharged under the plan unless they are

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judgment liens on exempt property or non-purchase money liens on consumer goods. Full satisfaction of plan requirements relieves the debtor from any obligation to pay any discharged debts.

As with the Chapter 7 book, this one is free-standing and deals with its own area of the law although many of its areas overlap with a Chapter 7 bankruptcy . This volume helps the user understand the area of Chapter 13 reorganization.

This book deals entirely with Chapter 13 bankruptcy. It assists the average person who seeks to file a Chapter 13 petition. This books contains the appropriate forms for Chapter 13 bankruptcy filing along with detailed instructions and examples for their completion. The law on bankruptcy is covered as it now relates to exemptions and dischargeable debts. Issues that may require a consultation with a bankruptcy attorney are stated in such a manner that the user can verify if the law has subsequently changed. In the vast number of cases, this book should be suffice with little additional source material and verification that the exemptions have not changed.

This volume explains Chapter 13 bankruptcy procedure and includes sample motions for special relief, such as lien avoidance or reopening the estate. After reading this book a few times and following its guidelines for verifying the current exemptions under state law, the reader should have nol difficulty in applying this book to the debtor's bankruptcy.

This book was written to be user friendly. In addition, the

bankruptcy court as a stated objective, has the goal of helping a debtor start over. As such, there no honest mistakes a debtor can make that cannot be corrected before final discharge in the case and most such mistakes can be rectified after final discharge.

If this book is used for the purposes outlined and if the book's suggestions, comments and recommendations are considered, the reader should find the bankruptcy proceeding less intimidating and more understandable.

2005 BANKRUPTCY REFORM ACT

Effective on October 19, 2005, the 2005 Bankruptcy Reform Act became effective. This was the most sweeping change in Bankruptcy Law ever undertaken. It changed the rights of debtors that were in place from virtually the founding of this country. Below is a systemic discussion of the important aspects of the 2005 Bankruptcy Act from which n ow serve as the basis from which all of the bankruptcy law will derive. Understanding these changes on a conceptual level is paramount to understanding how the bankruptcy law will for the foreseeable operate.

I. CREDIT COUNSELING REQUIREMENT

For the first time, debtors are now required to seek credit counseling as a precondition for filing a bankruptcy petition be it chapter 7 or Chapter 13. Before filing a bankruptcy petition, the potential debtors are now required within 180 days preceding the filing to have received an individual or group "briefing" for

credit counseling that assists the individual in performing a budget analysis. §109(h) The credit counseling may be by telephone and Internet briefings.

To prove that the counseling had occurred, the debtor must file with the Court a certificate from an approved nonprofit budget and credit counseling agency describing the services provided to the debtor along with a copy of the debt repayment plan, if any. §521(b). The Bankruptcy law now requires that the Credit Counseling Agency provide adequate counseling with respect to a client's credit problems including analysis of such client's current financial condition, factors that caused such financial condition, and how the client can develop a plan to respond to the problems. §527 §528.

Only certificates from those credit counseling agencies approved by the US Attorney and listed by the clerk of the Bankruptcy Court will be accepted by the Bankruptcy Courts. §109(h) § 111.

The official standard for the approval of the credit reporting agency is that provides qualified counselors, safeguards client funds (audits and bonding), provides adequate counseling for credit problems, and "deals responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides." The agency must have an independent board of directors, charge a reasonable fee and provide services

"without regard to ability to pay the fee."

In the event that after the credit counseling a proposed debtor decides not to file for bankruptcy relief, then the credit counseling agency is specifically barred from reporting to a credit reporting agency that a debtor has received or sought instruction. This is to protect the person's privacy and seek more use of credit counseling services.

II. NEW DUTIES IMPOSED OF DEBTORS' ATTORNEYS

A. REQUIREMENT FOR WRITTEN CONTRACT

The Bankruptcy Act imposes new disclosure rules on attorneys representing consumer debtors. Under the 2005 Act attorneys representing consumer Debtors for pay would fall in the category of "Debt Relief Agencies" as contrasted with "Credit Counseling Agencies" discussed above. Debt relief Agencies include anyone other than a credit counseling agency who provides "bankruptcy assistance to assisted persons" by definition assisted persons are consumer debtors having less than \$150,000 in nonexempt property.

The Debt Relief Agency which includes the debtor's attorney would be subject to sanctions if it:

1. fails to meet new disclosure and record keeping requirements for Debt Relief Agencies;
2. fails to comply with advertising requirements;
3. fails to perform any service that it contracted to

perform;

4. files a document that with the exercise of reasonable care it should have known was untrue and misleading; or
5. directly or indirectly misrepresents to a client or prospective client the services it provides OR the benefits and risks of bankruptcy. §526

The Act requires that the Debt Relief Agency and Debtor's Attorney execute a written contract with the debtor within five (5) business days after the first date on which any bankruptcy assistance services were rendered prior to filing a petition. The written contract with the client must explain the services that will be provided, fees and charges, and the terms of payment and the client must be given a fully executed copy of the contract.

B. NEW REQUIREMENT FOR VERIFICATION OF FACTS

Debtor's Attorney will now under the Reform Act face personal liability on a number of new factual situations such as:

1. If the trustee files a 707(b) motion for dismissal or conversion which is then granted, and the Court finds that the attorney for the debtor violated rule FRBP 9011 by filing the petition, then the Court may order the attorney to reimburse the trustee for all reasonable costs in prosecuting the motion.
§707(b)(4)(A)

2. If the court on its own motion finds that the attorney for the debtor violated FRBP rule 9011, the Court, may assess an

appropriate civil penalty against the attorney. §707(b)(4)(B)

Under FRBP 9011, the signature of an attorney on a petition, pleading, or written motion is now taken to mean that the attorney has performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion and determined that the petition, pleading, or written motion beyond that of simply relying on the statements of the debtor. Now the petition is being based solely upon the belief of the debtor's attorney that it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse. Now the attorney's signature on a pleading is a conclusive certification that the attorney has no knowledge after an inquiry that the information contained in the schedules is incorrect. §707(b)(4)(D)

As such it the attorney the attorney becomes personally liable for damages and sanctions when he has been misled by his client to the extent that he could have discovered the falsehoods had he investigated. There is no longer a good faith defense for a false petition rather the attorney must now actively prove that he could not have discovered the falsehood with normal diligence as set by the court.

C. PROHIBITED ADVICE

The Reform Act prohibits the debtor's attorney among others from going out and incurring more debt before filing bankruptcy. This has been a running sore point with credit card agencies for decades where shortly before filing a debtor went on a spending spree. The question to be determined in future case law is the extent which this prohibition can be enforced.

It has been asserted that the provision may be unconstitutional as an interference with the right of counsel as some advice in that area might be perfectly legal and enforceable. For example, an attorney might advise a client to sell a luxury vehicle and use the proceeds to pay off loans, and with the remaining proceeds out down a down payment on a reasonable family car which would be paid 100% under the new Ch 13 provisions. This advice though totally legal and beneficial to both the creditors and debtor would be in technical violation of the Act § 526(a)(4)

Common sense would seem to dictate that legal advice intended to marshall and streamline an estate rather than to create new debts will continue to be protected. Care, however, must be taken to assure when property or debts are transmuted from unprotected to protected that the proper holding periods are maintained before the filing of the petition. These periods have been extended, in some cases, years longer.

III. MULTIPLE FILINGS NO LONGER PERMITTED

The Reform Act has increased the number of years after a Ch 7 case that an individual must wait before filing another Ch 7 case has been increased from six years to eight years. § 727(A)(8). This was a major victory for credit card companies which sought a longer period before debtors could again file another bankruptcy petition. Credit Card companies, in reality, view a person who filed for bankruptcy a better risk in many situations than a person who had not filed for bankruptcy protection because they are barred from filing again, now for eight years. So for this period they can be forced by law to continue to pay their debts and they have little options whereas a debtor who never filed bankruptcy could always try to do so.

Another change in the act is that a debtor may no longer receive a discharge in a Ch 13 case if they received a discharge in a case filed under chapters 7, 11, or 12 during the 4-year period preceding the date of the order for relief in the Ch 13 case. This was once known fallaciously as a Chapter 20 petition or a SUPER DISCHARGE. In the same view, a debtor may no longer receive a discharge in a Ch 13 case if they received a discharge in a case filed under chapter 13 during the 2-year period preceding the date of the order for relief in the Chapter 13 case. §1328(f) These changes are important because they prevent a debtor from using a Chapter 7 filed after a Chapter 13 case has closed to eliminate unsecured debt not discharged in the Chapter 13 case. This was once

a very popular means to avoid such debts and was on its face contrary to the intent of the bankruptcy code. It was a testament to the slowness of Congress that it took decades of debate before the Chapter 20 was abolished.

IV. NEW NOTICE TO CREDITORS REQUIREMENT

To help assure that creditors get their proper notice, the Act requires that if within 90 days before the filing date, a creditor had supplied the debtor in two (2) or more communications with the account number and address at which such creditor requests to receive correspondence, then any required notice including the notice of filing and of the automatic stay must be sent to that address along with the account number. This helps define where a notice is to be sent for the purpose of starting a valid creditor claim period to run §342(c)(2)

When a creditor files with the bankruptcy court a notice of address, then any notice required to be provided by the court to the creditor shall be sent to that address unless the creditor files with the court and serves on a Ch 7 or Ch 13 debtor notice of a different address. §342(e)&(f)

If a notice is not sent to the designated address, it is not effective notice until brought to the attention of such creditor. If a creditor designates a person or division to be responsible for receiving bankruptcy notices, and establishes reasonable procedures

so that notices are delivered to them, then a notice has been brought to the attention of the creditor when it is received by the designated person or division. §342(g)(1)

V. AUTOMATIC STAY RULES

A. AUTOMATIC STAY LIFTING

The Reform Act made several changes in how the automatic stay is handled and when it can be lifted for instance:

1. Under the prior law, lifting the automatic stay required an affirmative act by the Court to lift it. As such, it required a motion to stay, a hearing and then an order. Now the stay will automatically be lifted sixty (60) days following a motion to stay, if no decision has been made by the Court on a request to lift the stay and it has not been extended by agreement or for by the Court for good cause. This imposes an affirmative duty on the court to timely process the such petitions or the debtor loses the protection of the stay. This raises the constitutional argument of due process if a stay is lifted simply because the court did not get around to hearing the merits of the motion. In such an event, an appellate court could find the lifting of the stay under that circumstance was a denial of due process and thus unconstitutional
2. Under §362(c)(3) & §362(c)(4), absent clear and convincing evidence to the contrary, a new bankruptcy petition is presumptively not filed in good faith as to all creditors if:
 - (A) the debtor had filed a Ch 7, 11, or 13 case is filed within one year of the dismissal of a prior case, other than a case refiled under 707(b) - the median income bankruptcy "abuse" section. In which case, the stay will be automatically lifted on the 30th day after the filing date. On the motion of a party in interest, the court may extend the stay as to any or all creditors, subject to conditions or limitations, if the party demonstrates that the current filing is in good faith as to the creditors to be stayed. §362(c)(3)
 - (B) the debtor had two or more Ch 7, 11, or 13 cases

had been pending within one year of the filing date of the current case, except for a case refiled under 707(b) - the median income bankruptcy "abuse" section. In which case, the automatic stay does not go into effect when the current case is filed. Within 30 days after filing the court may order the stay to take effect as to any or all creditors, subject to conditions or limitations, if the party demonstrates that the current filing is in good faith as to the creditors to be stayed. § 362(c)(4)

The purpose of these sections is to prevent a debtor from refiled within a year after dismissal, even if a §109(g) 180 day restriction is not in effect. It thus is critical for debtors who have filed previously to coordinate their initial filing to assure that their petitions will not be automatically vacated.

B. AUTOMATIC STAY ON REAL PROPERTY

A debtor attempting to use the automatic stay to defraud creditors may be barred from receiving protection under an automatic stay for up to two years. Under the Reform Act, if the court finds that a Debtor filed a petition to delay, hinder, and defraud creditors through a scheme to transfer real property without the consent of a secured creditor or court approval, or through filing multiple bankruptcy cases affecting the same real property, then the Court may Order that the Relief from Stay remain binding in any case filed by the Debtor over the next two years. A debtor may, within 30 days of filing a subsequent case, move for relief from such order based upon changed circumstances or for good cause shown. §362(d)(4)

If such an Order is in effect, the Act provides that in a subsequent case filed during the 2-year period there is no stay to prevent enforcement of any lien against, or security interest in, the real property. §362(b)(20)

Similarly, the Act provides that there is no stay to prevent enforcement of any lien against, or security interest in, real property where the person filing a petition is ineligible to be a Debtor because within 180 days a previous case was dismissed by the court for willful failure to abide by orders of the court or to appear, or within 180 days the debtor requested and obtained the voluntary dismissal of the case following the filing of a motion for relief from stay, or the subsequent case was filed in violation of an order prohibiting the petitioner from being a debtor in the case. §362(b)(21)

C. AUTOMATIC STAY ON SUPPORT OBLIGATIONS

The Reform Act did not change the automatic stay for voluntary and involuntary wage and other income deductions for domestic support obligations. Likewise, the automatic stay will not stay the commencement or continuation of a proceeding to

1. establish paternity; to order or modify domestic support obligations;
2. concerning child custody or visitation;
3. for the dissolution of a marriage, except determination

of division of property of the estate; regarding domestic violence;

4. to collect a domestic support obligation from property that is not property of the estate;
5. to withhold income, under a nonbankruptcy order or statute, that is property of the estate or the debtor for payment of a domestic support obligation;
6. under the SSA to withhold, suspend, or restrict a driver's, professional (physician, attorney, etc.), occupational, or recreational license;
7. under the SSA to reporting overdue support owed by a parent to a consumer reporting agency; or
8. to intercept a tax refund; or to enforce a medical obligation under the SSA. §362(b)(2)

The bankruptcy law defines Domestic Support Obligations as debts under non bankruptcy law owed to a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, responsible relative, or governmental unit in the nature of alimony, maintenance, or support without regard to whether such debt is expressly so designated, and not assigned to a non governmental entity, unless assigned voluntarily for the purpose of collecting the debt. §101(14A)

VI. MEANS TESTING FOR CHAPTER 7 ELIGIBILITY

The feature of the Reform Act is the "means test." For the time in history, a debtor can only file a Chapter 7 bankruptcy petition if the debtor passes a means test. The test is designed to

prove to the court that the debtor is so poor that it is unlikely that the debtor could make even marginal payments to the creditors. If the means test shows that the debtor is able to make some payments to the creditors then the debtor's petition for chapter 7 relief would be denied and only relief under a Chapter 13 petition would be available to the debtor.

Besides failing a means test, the Reform Act lessens the standard for a court dismissing a petition based upon abuse. The old law required a finding of substantial abuse by the bankruptcy court before dismissing a petition, that standard has now been reduced to a mere finding of abuse. This makes more likely a dismissal irrespective of a filing of the means test. Now a bankruptcy court could dismiss a Chapter 7 petition or convert it to a Chapter 13 petition under Section 707 upon a finding that granting relief would be an "abuse" of the provisions of Chapter 7 by an individual consumer debtor. What constitutes an abuse is on a case by case basis. Essentially a court would have to find based on the totality of evidence that the debtor filed the petition in bad faith. Abuse can be found without applying an income and expense "test" and may be based on non-economic factors. §707(b)(3).

There are really two tests which together determine if the Debtor is qualified to be permitted to seek Chapter 7 relief and thus may file a petition

A. MEDIAN INCOME TEST

The First test is simply to see if the Debtor's Current Monthly Income exceeds the State Median Income for a family of the same size. "Median" income for the purposes of this test means the income figures exactly in the middle for the state so that there are an equal number of incomes in the state that are higher and an equal number that are lower than the median income. The easiest way to grasp this concept is whether the debtor's family earns more than one half of the people in the state. If the debtor's family earns less than one half of the families of the same size then the test is met. For example if there are 50,000 families of four (4) in the state and 25,000 earn more than \$6,000 per month and one half (25,000) earn less than \$6,000 per month then if the debtor's family earns \$4,500 per month, the debtor qualifies under this test. This is really a quite easy test to apply as the monthly income is set for each state for each family size and the debtor will either meet it or not.

Essentially if the excess income of monthly income remaining after deducting reasonable expenses leaves enough money to be able to give a meaningful dividend to unsecured creditors, then the test is not met.

B. MEANS TEST

After passing the first test, then the second test must be

passed to be permitted to file a Chapter 7 petition. This is a means test to determine whether the Debtor's Current Monthly Income once reduced by allowed expenses would exceed a statutorily permitted amount permitted under the Act for a family of the same size. If it does not, then the Chapter 7 petition filing is approved. If the debtor's income as adjusted still exceeds the statutorily permitted amount then the Chapter 7 filing is denied. It is just that simple

The essential rules for the test are as follows;

1. If the Debtor's Current Monthly Income is less than the State Median Income, then there is NO presumption of abuse exists on which a dismissal can be based.
2. If the Debtor's Current Monthly Income is more than the State Median Income, but the Debtor's excess income is LESS than the amount allowed under the Means Test, NO Presumption of abuse exists on which a dismissal can be based. This situation would apply in a high income state where one half of the people earn lots of money and one half of people earn very little. In such an instance it would be possible for someone to earn more than one half of the people in the state and still be below the base line earning figure of the state.

Under the test, should the Debtor's Current Monthly Income is more than the State Median Income, AND the Debtor's excess income is MORE than the amount allowed under the Means Test, then a presumption of abuse exists on which a Motion to Dismiss can be based.

A motion to dismiss for abuse can be brought based upon a belief of abuse can be brought at any time by the Court or the U.S. Trustee in cases and even where the Debtor's income is LESS than the threshold amounts. The issue of abuse is separate from failure of the means test

1. Current Monthly Income

The first step in applying the means test is to calculate the Debtor's "current monthly income." This is the average monthly taxable and non-taxable income from all sources, including income attributable to a non-filing spouse unless they are separated, except Social Security payments and certain payments to victims of war crimes or terrorism, including amounts paid on a regular basis by other entities for the household expenses of the debtor or the debtor's dependents, that the debtor receives during the 6-month period ending on the last day of the calendar month immediately preceding the date of filing. If the debtor does not file the required schedule of current income then the dates for the 6-month period are determined by the Court. §101(10a)

2. State Median Income -

The next step in applying the test is to determine if the Current Monthly Income for the Debtor's family exceeds the State Median Income for a family of the same size. The Administrative Office of the U.S. Trustee will develop and maintain tables based

on U.S. Census data showing median income for each state for households with up to four family members. For example, as of October 2004, the median income for a family of four in New York State is \$65,461. The lowest four person median income was in West Virginia at \$47,550, whereas the highest at \$82,406 was in New Jersey and the national average was \$62,732. §101(39A) Under the Act, households with more than four members will receive an additional \$525 per month per individual.

WHERE THE DEBTOR'S CURRENT MONTHLY INCOME DOES NOT EXCEED THE STATE MEDIAN INCOME, THERE IS NO NEED TO APPLY THE MEANS TEST AS IT IS AUTOMATICALLY SATISFIED.

WHERE THE DEBTOR'S CURRENT MONTHLY INCOME THEN THE MEANS TEST MUST BE APPLIED WHICH REQUIRES CALCULATING MONTHLY EXPENSES. The means test is based upon disposable income. Such disposable income must be below the state median income to avoid the presumption of abuse. To determine the disposable income monthly expense must be deducted from the gross income to see if it still remains higher than the state median income.

Monthly expenses are defined in section 707 of the Reform Act. For 2005, the IRS National Standards for food, clothing, personal care and entertainment were:

One Person National
Standard based on Gross Monthly Income

<u>Item</u>	less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and over
Food	197	215	231	258	300	339	369	543
House keep-in supplies	<u>19</u>	<u>20</u>	<u>25</u>	<u>26</u>	29	36	37	51
Apparel & services	60	<u>61</u>	<u>70</u>	<u>75</u>	100	124	134	207
Personal care products & services	19	<u>24</u>	<u>26</u>	<u>27</u>	40	<u>42</u>	<u>43</u>	44
Miscellane ous	<u>108</u>	<u>108</u>	<u>108</u>	<u>108</u>	<u>108</u>	<u>108</u>	<u>108</u>	<u>108</u>
<u>Total</u>	<u>\$403</u>	<u>\$428</u>	<u>\$460</u>	<u>\$494</u>	<u>\$577</u>	<u>\$649</u>	<u>\$691</u>	<u>\$953</u>

Two Persons National
Standards based on Gross Monthly Income

<u>Item</u>	less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and over
Food	336	337	338	424	439	487	559	691
Housekeeping supplies	36	37	38	48	52	53	107	108
Apparel & services	81	88	91	95	125	132	164	276
Personal care products & services	33	34	35	43	44	51	56	71
Miscellaneous	134	134	134	134	134	134	134	134
Total	\$620	\$630	\$636	\$744	\$794	\$857	\$1,020	\$1,280

Three Persons National Standards
Based on Gross Monthly Income

Item	less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and over
Food	467	468	469	470	490	546	622	778
Housekeeping supplies	41	42	43	49	53	55	108	109
Apparel & services	132	144	157	158	159	188	204	303
Personal care products & services	34	36	37	44	45	52	61	79
Miscellaneous	161	161	161	161	161	161	161	161
Total	\$835	\$851	\$867	\$882	\$908	\$1,002	\$1,156	\$1,430

Four Persons National Standards
Based on Gross Monthly Income

Item	less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and over
Food	468	525	526	527	528	640	722	868
Housekeeping supplies	42	43	44	50	54	61	109	110
Apparel & services	146	169	170	171	174	189	217	317
Personal care products & services	37	42	43	45	46	53	62	81
Miscellaneous	188	188	188	188	188	188	188	188
Total	\$881	\$967	\$971	\$981	\$990	\$1,131	\$1,298	\$1,564

More than Four Persons National Standards
Based on Gross Monthly Income

Item	less than \$833	\$833 to \$1,249	\$1,250 to \$1,666	\$1,667 to \$2,499	\$2,500 to \$3,333	\$3,334 to \$4,166	\$4,167 to \$5,833	\$5,834 and over
For each additional person, add to four person total allowance:	\$134	\$145	\$155	\$166	\$177	\$188	<u>\$199</u>	\$209

ADDITIONALLY:: If demonstrated to be reasonable and necessary, the monthly expenses may include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories above.

In addition the Debtor can deduct expenses determined by the IRS Local Standards for transportation and housing ` Here are some of the New York state housing allowances which show the wide variance among the counties.

New York - Housing and Utilities Allowable Living Expenses

Collection Financial Standards
Financial Analysis - Local Standards: Housing and Utilities (effective 1/1/2005)

County	Maximum Monthly Allowance		
	Family of 2 or less	Family of 3	Family of 4 or more
Albany County	<u>1,217</u>	<u>1,432</u>	<u>1,647</u>
Allegheny County	<u>794</u>	<u>934</u>	<u>1,074</u>
Bronx County	<u>1,609</u>	<u>1,892</u>	<u>2,176</u>
Broome County	<u>947</u>	<u>1,114</u>	<u>1,281</u>
Cattaraugus County	<u>826</u>	<u>972</u>	<u>1,117</u>
Cayuga County	<u>971</u>	<u>1,143</u>	<u>1,314</u>
Chautauqua County	<u>858</u>	<u>1,010</u>	<u>1,161</u>
New York County	<u>3,547</u>	<u>4,173</u>	<u>4,799</u>

ADDITIONALLY: The debtor's monthly expense allowance for housing and utilities may be increased based on the Debtor's actual

reasonable and necessary expenses for home energy.

ADDITIONALLY: the IRS Transportation allowance:

Allowable Living Expenses for Transportation

Means Test, Applying the Formula - The final step that must be met to avoid the presumption of abuse is to take the debtor's current monthly income reduced by the allowed deductions times 60, that result **MUST** be less than the lesser of 25 percent of the debtor's nonpriority unsecured claims or \$6,000, whichever is greater, OR \$10,000. If it is more the presumption of abuse is not avoided.

Step by step:

(A) Multiply monthly income less deductions _____ X 60 = _____ (A)

(B) If the Amt on Line A IS GREATER THAN OR EQUAL TO \$10,000 **THE PRESUMPTION EXISTS**

(C) If the Amount on Line A IS LESS THAN \$10,000 CONTINUE

(D) Multiply the unsecured debt _____ X .25 = _____ (D)

(E) Write the GREATER of Line D or \$6000 here = _____ (E)

(F) If the Amt on Line A IS GREATER THAN OR EQUAL TO Line E **THE PRESUMPTION EXISTS**

(G) If the Amt on Line A IS LESS THAN the Amount on Line E **THE PRESUMPTION DOES NOT EXIST** § 707(b)

3. DOCUMENTS REQUIRED TO BE INCLUDED IN A PETITION

Debtors must make sure that the following information is provided to the court in their petition or within 45 days following the filing.

a. A certificate of the attorney or petition preparer or pro se debtor regarding the 342(b) notice;

B.. Copies of all "pay stubs" received within 60 days before

the filing date;

- c. An itemized statement of monthly net income;
- d. A statement disclosing reasonably anticipated increases in income or expenditures over the 12-month period following the date of filing;
- e. A statement of intention with regard to secured debt
- f. A certificate from the approved credit counseling agency;
- g. A copy of the debt repayment plan, if any;
- h. A record of any interest that the debtor has in an IRC 529(b)(1) or 530(b)(1) education individual retirement account or qualified State tuition program;

§521(a)(b)&(c)

Failure by the debtor to file all of the required information within 45 days (plus up to an additional 45 days if granted by the Court) after the date of the filing of the petition, would result in the case being automatically dismissed on the 46th day.

In addition to the above, the Debtor is required to file tax returns as well as follows:

- 1. Seven (7) days before the meeting of creditors, a Debtor in a Ch 7 case is required to provide the trustee, and any creditor who requests one, with a copy or a "transcript" of their Federal income tax return for the most recent tax year ending before the filing date for which a Federal income tax return was filed. If the Debtor fails to provide the return the court must dismiss the case unless the debtor demonstrates that the failure

was due to circumstances beyond their control.
 §521(e)(1)&(2)

2. A Chapter 13 Debtor must file at least one day before the scheduled 341 meeting with the appropriate taxing authority, all federal, state, and local tax returns due for all of the taxable periods ending during the 4-year period ending on the filing date. If the required returns have not been filed by the meeting date, the trustee may continue the meeting to allow the debtor to file the returns. The Debtor may then be required to file and provide all three years of the prepetition returns. If a missing return(s) was past due on the filing date the meeting can be continued for no more than 120 days. If the missing return(s) was not past due, the meeting can be continued for 120 days or to the date on which the return is due under the last automatic extension for filing the return, whichever is later. If the debtor demonstrates by a preponderance of the evidence that failure to file is due to circumstances beyond their control, the court may extend the filing period for a short additional period. §1308

If a post-petition return is not timely filed, or filed within 90 days of a request to file, a Tax Authority can move for dismissal or conversion of the case. § 521(I)

3. WHO CAN FILE A MOTION TO DISMISS

(A) WHEN DEBTOR'S INCOME IS LESS THAN STATE MEDIAN

The Act provides that where the Debtor's Current Monthly Income is LESS than the State Median Income, ONLY the Court or the U.S. Trustee not the Chapter 7 panel Trustee may file a Motion to

Dismiss for abuse. There is no presumption of abuse because the income is less than the median. Thus it would not be proof of bad faith nor would it be based on the totality of the circumstances of the debtor's financial situation. §707(b)(7) In such a situation third parties cannot intervene and file a motion to dismiss,

(B) WHEN DEBTOR'S INCOME EXCEEDS STATE MEDIAN

1. When the Debtor's income is LESS than the State Median Income, OR Debtor's income is MORE than the State Median Income and the Debtor's excess income is LESS than the amount allowed under the Means Test, NO presumption of abuse exists, and a Motion to Dismiss for abuse cannot be filed by anyone under the presumption of abuse provisions (Note that it can still be filed based on bad faith or totality of circumstances). §707(b)(7)

2. Where the Debtor's Current Monthly Income is MORE than the State Median Income, presumably the U.S. Trustee, Trustee, Court, or any party in interest may file a Motion to Dismiss for abuse on grounds of bad faith or based on the totality of the circumstances of the debtor's financial situation. §707(b)(1)

3. Where the Debtor's Current Monthly income is MORE than the State Median Income and the Debtor's excess income is MORE than the amount allowed under the Means Test, a presumption of abuse exists, and a Motion to Dismiss CAN be brought by the U.S. Trustee, Trustee, Court, or any party in interest under the presumption of

abuse provisions. §707(b)(2)

4. The presumption of abuse does not apply to disabled veterans where the debt was primarily acquired while they were in active service or engaged in homeland defense. §707(b)(2)(D)

The clerk of the bankruptcy court is required to notify all creditors if the presumption of abuse exists. §342(d) In addition, the U.S. Trustee is required to conduct a review of the case and file within ten (10) days following the meeting of creditors a determination as to whether the presumption of abuse exists. If the Trustee believes such a presumption of abuse exists then the Trustee, must file a motion to dismiss or an explanation why none is being filed. §704(b)(1)

A Debtor may successfully prevent a dismissal even under a presumption of abuse to the extent established establishes by a preponderance of the evidence that the case is necessary to satisfy a domestic support obligation. §707(c)(3)

VII. DOMICILE RULES FOR FILING

To avoid the past practice of forum shopping in bankruptcy by moving to another state and then filing, the Reform Act increased from 180 days to 730 (two years), the residency period for changing a domicile. So to qualify for using a State's bankruptcy Exemptions a Debtor must now live in a state for two years prior to filing the petition. If the debtor has not lived in any state for

two years before filing the petition then the state, in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day periods than in any other place. This means that a Debtor must wait at least 730 days after moving to a new state to qualify to use that State's exemptions. § 522(b)(3) so the advantage of moving to take advantage of another state's more favorable exemption schedule such as in the homestead exemption is significantly reduced.

VIII NEW RULES ON HOMESTEAD EXEMPTION.

Next to the means test, the most important changes in the Reform Act are the changes to the homestead exemption. Since a home is the largest asset in most debtors' estates, the issue of changing the homestead exemption was a major sticking point in the amendment of the Bankruptcy Act for decades. Even now the changes, while significant were still not the wide sweeping changes originally foreseen: There are three major changes in how the homestead exception works:

- 1 There is a limitation on the increase of value in a debtor's homestead prior to filing bankruptcy. Under the old law, there was no prohibition to selling nonexempt assets and adding the proceeds toward improvements or paying off the debts on the homestead to the extent of the exempt homestead amount under state law.

Now under the Reform Act, any addition to the value of a homestead made during the 10-year period before filing

by the Debtor, funded by nonexempt property, and made with the intent to hinder, delay, or defraud creditors, is NOT protected by the state homestead exemption. § 522(o). There is still significant wiggle room under this section because any improvement in the 10-year period not made with the intent to defraud or delay creditors will still be counted toward the homestead amount. Ten years seems entirely too long a period to be workable. It seems very unlikely that creditors could succeed in claiming that improvements made more than three years before filing a petition were part of a plan to defraud creditors. Improvements made closer to the filing period will start to carry such a presumption under the Act

2. The second change to the homestead act prevents adding additional value to a homestead exemption which would raise it more than \$125,000 within 1215 days (three years and four months) prior to the filing. For example, if a debtor's state exemption is \$250,000 but the debtor only has \$50,000 equity in the homestead, the debtor can only add an additional \$75,000 in value to raise the exemption amount within 1215 days of filing anything more than that will not count. However if the debtor waits more than 1215 after last adding value to the homestead, he can increase it by \$200,000

Not included in the addition to value is an interest transferred from a debtor's previous principal residence acquired prior to the beginning of the 1215-day period into the debtor's current principal residence in the same state, or the homestead is the principal residence of a family farmer. § 522(p)

3. Under the third change, there is a \$125,000 cap on the homestead exemption for debtor's found to have engaged in

certain prohibited conduct. A debtor's homestead exemption is limited to \$125,000 if a Bankruptcy Court finds that the debtor

(a) had been convicted of a felony which demonstrates bankruptcy abuse,

(b) owes a debt arising from violation of Federal or State securities laws; or any RICO civil remedy;

(c) committed any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual during the last five years. An exception to this \$125,000 limitation is allowed to the extent reasonably necessary for the support of the debtor and any dependent. § 522(q)

IX. LIEN AVOIDANCE ON HOUSEHOLD GOODS.

Under the Reform Act, a nonpossessory, nonpurchase-money security interest in household goods may be avoided only on clothing; furniture; appliances; 1 radio; 1 television; 1 VCR; linens; china; crockery; kitchenware; educational materials and equipment for minor dependents; medical equipment and supplies; furniture for children and elderly or disabled dependents; personal effects (including toys and hobby equipment of dependent children and wedding rings) of the debtor and the dependents of the debtor; and 1 personal computer and related equipment.

The definition of 'household goods' does not include most works of art; most electronic entertainment equipment; antiques with aggregate fair market value of more than \$500; jewelry with an

aggregate fair market value of more than \$500 (except wedding rings); and a computer, motor vehicle, boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.'

§ 522(f)(4)

X. PROPERTY NOT PART OF A DEBTOR'S ESTATE

A. Contributions to Educational Accounts

Contributions made to an education individual retirement account (IRC 530(b)(1)) or a qualified State tuition program (IRC 529(b)(1)(A)) are not part of the debtor's estate and thus not lost in a bankruptcy when

(a) made at least 365 days before the date of filing, and

(b) the beneficiary is a child (including an adopted or foster child), stepchild, grandchild, or step-grandchild.

The exemption is only available to the extent that the funds are not security for a loan and are not excess contributions (IRC 4973(e)). In addition, only \$5,000 of contributed funds placed in accounts between 720 days and 365 days before the filing date are exempt for a beneficiary § 541(b)(5)&(6)

B. Contributions to Employee Plans

The Reform Act codifies the US Supreme Court's holding in the Patterson vs. Shumate case that ERISA plans are not part of a bankruptcy estate. Such contributions are protected and are not

property of the estate when withheld from wages or received from employees for payment to a qualified employee benefit plan (IRC 414(d)); a deferred compensation plan (IRC 457); or a tax-deferred annuity (IRC 403(b)) (does not constitute 1325(b)(2) disposable income); or to a health insurance plan regulated by State law. § 541(b)(7) This is nothing new as it has been the case law for over a decade but now it is codified.

C. Pension and Profit Sharing Plans - 401K Loans

Retirement funds are subject to special attention under Act. There is a codification and extension of the Patterson vs. Shumate decision of the Supreme Court to the effect that tax exempt retirement funds, are not property of the estate subject to payment of debts. Likewise,

1. transfers and roll-overs, are not part of the estate up to \$1,000,000 per individual. §522(b)(4)
2. loans from these plans are specifically exempted from discharge §523(a)(18)
3. wage deductions for funding tax-deferred plans and repayment of such loans are not subject to the Automatic Stay which means the deductions can continue §362(b)(19)
4. payments are not included in "disposable income" in a Ch 13 case, and the terms of the loan cannot be materially altered by a Ch 13 plan. § 1322(f)
5. even though it is exempt property it may still be liable for a domestic support obligation. § 522(c)(1)

The effect of this favored treatment of these types of retirement loans may be that to some extent debtors may borrow money from their own account prior to the bankruptcy and then repay it to their retirement accounts during the Ch 13 case thus reducing the amounts available for repayment of creditors.

C. Transfers to Asset Protection Trusts

A few states permit self settled grantor trusts wherein a grantor can create an irrevocable spendthrift trust for the grantor. After a certain period of time under state law, the self settled spendthrift trust cannot be attached by the creditors of the grantor. Under the Reform Act, the Trustee may avoid any transfer into a self settled grantor trust within 10 years of filing where the debtor is a beneficiary and the debtor made the transfer with actual intent to hinder, delay, or defraud a current or future creditor. § 548(e) The operative provision therein is a finding that the transfer was made to hinder delay or defraud creditors. Since the purpose of such a trust is to protect the estate from creditors, it seems that nearly every such trust could be invalidated by a Trustee.

XI. DEBTS THAT ARE NOT DISCHARGEABLE

A. Student Loans

The Reform Act now makes it clear that unless the debtor can prove that repayment would create an undue hardship on the debtor and the debtor's dependents, which is very difficult to prove

absent a severe disability, all student loans are now nondischargeable. Under the Reform Act, it does not matter who makes the student loan to the debtor all such loans whether governmental, non-governmental, commercial entity are nondischargeable asset extreme hardship § 523(a)(8).

B. Taxes

Under the Reform Act, Taxes are now treated the same in a chapter 13 and they are in a Chapter 7 case. In addition, interest will continue to run on unsecured nondischargeable, taxes throughout the life of the Chapter 13 plan and continue to be subject to payment.

Priority will be given to taxes assessed within 240 days before the filing date - calculated by not counting the time which an offer in compromise was pending during the 240 days plus 30 days, and any time during which the collection of the tax debt was stayed during the 240 days plus 90 days. For example, if an offer in compromise had been pending from March 1 to May 31 for a Debtor who filed on July 1, any income tax assessed within 422 (240 + 90 days + 92 days - March to May) days of the filing date would be given the priority under Act. § 507(a)(8)

The automatic stay does not apply to a set off against an income tax refund by a government unit under nonbankruptcy law with respect to a tax period and tax liability that ended before

the date of filing, unless the set off of an income tax refund was not permitted because of a pending action, in which case the governmental unit may hold the refund pending the resolution of the action unless the Bankruptcy grants the taxing authority adequate protection. § 362(b)(26)

C. Debts for Luxury Goods & Cash Advances

To further prevent debtors from taking out last minute loans or going on a buying binge prior to filing, the Act makes nondischargeable the following debts:

1. Consumer debts incurred within 90 days before filing, totaling more than \$500, and owed to a single creditor for "luxury goods or services" which are not goods or services reasonably necessary for the support or maintenance of a debtor or dependent

2. Cash advances from a single creditor totaling more than \$750 obtained within 70 days, which are now presumed to be nondischargeable. § 523(a)(2)(C)

D. Debts Subject to Property Settlements with Former Spouses -

Under the Reform Act debts owed to a spouse, former spouse, or child of the debtor that are not domestic support obligations but that were incurred by the debtor in the course of a divorce or separation or in connection with a divorce are now nondischargeable. §523(a)(5) Under the previous law, such debts were dischargeable if the debtor did not have the ability to pay

the debts or if discharging such debt would result in a benefit to the debtor that outweighs the detrimental consequences to a spouse, former spouse, or child of the debtor.

Often in the past, under a property settlement agreement or divorce one spouse agreed or was ordered to pay joint debts. Then in the future that person filed for bankruptcy, and discharged those debts despite the agreed property agreement or court order leaving the other ex-spouse to pay the debts alone. That is now changed in that the non-filing co-debtor ex-spouse may be able to effectively block any meaningful Ch 7 bankruptcy by having a State Court order the Debtor to pay the spouse directly so they can in turn pay the Creditors. § 523(a)(5) § 523(a)(15)

XII. PREFERENCES

The Act attempts to clarify when payments on existing accounts are to be considered preferences and when they are not.

1. A transfer is not a preference to the extent it was a payment on a debt that was made in the ordinary course of business or financial affairs
2. A transfer is nor a preference if made according to ordinary business terms. § 547(c)(2)
3. A transfer is not a preference in a case filed by a debtor whose debts are not primarily consumer debts,
4. A transfer is not a preference if it totals less than \$5,000. § 547(c)(9)

5. A bona fide payment made on a domestic support obligation is not avoidable. § 547(c)(7)

If the trustee avoids a transfer, made between 90 days and 1 year before the date of filing, from the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, the transfer is avoidable only with respect to the insider. For example, if payment is made between 90 and 365 days to a third-party creditor that favors an insider by reducing the amount owed by the insider on a debt, the transfer is not recoverable from the third-party, but may be recoverable from the insider. § 547(I)

A new feature under the Act is that the trustee cannot avoid transfers made as part of a repayment schedule created by an approved credit counseling agency. § 547(h) The time allowed for a creditor to perfect a lien is increased from 10 to 30 days. § 547(e)(2)

XIII. REAFFIRMATIONS

Under the Act, a debtor may not retain possession of personal property subject to a purchase money security interest (collateral for a debt) unless the debtor, within 45 days after the first meeting of creditors either reaffirms the debt or redeems the property. If the debtor fails to either redeem or reaffirm then the stay as to that secured property is terminated. In which case, the property would no longer be part of the property of the estate, and the creditor may take action under nonbankruptcy law to recover

such property. § 521(a)(6)

Reaffirmations which are agreements by a debtor to pay for property rather than lose it in a Chapter 7 proceeding (under §524(c)) must now have, where appropriate,

1. a disclosure statement;
2. the reaffirmation agreement;
3. a statement of intent to reaffirm;
4. a declaration of the attorney (if any);
5. a Debtor's statement of support showing income and expenses and amount available to pay reaffirmed debt;
6. and an order.

The disclosure must include the "Amount Reaffirmed," which is the total amount of debt reaffirmed plus fees, and the "Annual Percentage Rate," using a Truth in Lending Act formula when available. §524(k)(1)

The Act presumes that if the amount of monthly income available to pay a reaffirmed debt is less than the payments on the reaffirmed debt (as shown on the required statement in support), then that the agreement is an undue hardship on the debtor. §524(m) This presumption lasts for up to 60 days unless extended by the Court after the reaffirmation agreement is filed with the court. The presumption may be rebutted by the debtor in a written statement that identifies additional sources of funds to make the payments. If the court is not satisfied with the explanation, then

it may disapprove the agreement after a noticed hearing before entry of a discharge.

XIV REDEMPTIONS

Redemption are agreements in which the debtor, in essence, agrees to back secured property which was otherwise to be returned to the secure creditor under the bankruptcy. Under the Act, a debtor in a redemption must make payment in full of an allowed secured claim at the time of redemption. §722 Under the previous law, a creditor was entitled to receive the amount that the creditor would have received if the secured property had been repossessed and sold minus the costs of sale. The Reform Act now holds that the value of personal property securing an allowed claim is the replacement value as of the date of filing without deduction for costs of sale or marketing. If the property is property that was acquired for personal, family, or household purposes, "replacement value" means the price a retail merchant would charge for property of that kind considering the age and condition of the property § 506(a)(2)30.

The Trustee may also redeem the property in the estate. The trustee may file a motion before the expiration of the 45-day period stating that the property is of consequential value or benefit to the estate, and the court may order adequate protection and delivery of the collateral to the trustee. § 521(a)(6) § 362(h)

The Act the debtor must file a statement of intention to redeem or reaffirm a debt within strict time periods. If the statement of intention is not timely filed, , then the automatic stay is lifted as to such secured personal property for purchase money or non-purchase money debts. Such secured property would no longer be property of the estate, or subject to an unexpired lease. If the debtor wishes to reaffirm or redeem property, then a statement of intention must be filed within 30 days of the petition filing date or as extended by the Court (or as extended by the Court for cause) after the Meeting of Creditors to file a statement of intention with respect to such personal property or within 30 days to take the action specified in such statement, unless the debtor's intention is to reaffirm and the creditor refuses to agree to the reaffirmation. § 362(h)

If the debtor fails to timely act and redeem property with respect to leased, rented, or bailed property subject to a non-voidable security interest, then just as with failing to make a reaffirmation the creditor can pursue his nonbankruptcy remedies to foreclose on the property. § 521. A secured creditor may decide not to pursue nonbankruptcy remedies as being unnecessary when the debtor continues making payments. The creditor could always do it later if payments are missed.

XV. EFFECT OF BANKRUPTCY ON DEBTOR'S LEASES

The Act governs how addresses, in part, leases for both real and personal property are handled along with when and how evictions from real property are handled

The trustee may not assume a breached executory contract of unexpired lease unless the trustee cures or provides adequate assurance that the trustee will promptly cure such default or provides adequate assurance that the trustee will promptly cure such default; other than a default arising from failure to perform nonmonetary obligations under an unexpired lease of real property that cannot be cured by the trustee, except from failure to operate in accordance with a nonresidential real property lease, such default shall be cured by performance at and after the time of assumption in accordance with such lease, and with pecuniary losses being compensated. §365(b)

An unexpired nonresidential lease of real property shall be deemed rejected if the trustee does not assume or reject the lease within 120 days after the filing or confirmation date. The court may for cause extend the period for up to 90 days without lessor consent, or more than 90 days with lessor consent. §365(d)(4)

Should a lease of personal property be rejected or not timely assumed by the trustee, the leased property is no longer property of the estate and the stay is automatically terminated. For such unassumed leases, the debtor in a case under chapter 7 may contact the creditor in writing and offer to assume the lease. A creditor

is not required to accept a debtor proposed assumption of a rejected lease. §365(p)(1).

Whether an automatic stay exists to stop eviction proceedings depends on whether there as obtained by the landlord a judgment of possession prior tot he debtor's filing for bankruptcy relief

A. JUDGMENT OF POSSESSION OBTAINED BEFORE DEBTOR'S FILING

The automatic stay will not stop evictions under state judgments received prior to the filing of the petition. Where a landlord has obtained a judgment against the debtor for possession of the Debtor's residence prior to the filing date, the Landlord can, without obtaining relief from stay, continue with the eviction proceeding.

However an exception exists staying a judgment for possession for 30 days where:

1. a debtor files with the Petition and serves on the Landlord a certification that under nonbankruptcy law there are circumstances under which the debtor would be permitted to cure the entire monetary default after the judgment and
2. the debtor has deposited with the clerk of the Bankruptcy Court any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

Should the debtor within the 30 day period then file and serve on the lessor a second certification that they have under nonbankruptcy law cured the entire monetary default then the eviction would be stayed permanently as long as rent is paid. The

landlord may file an objection to any certification and then the court must hold a hearing within 10 days to determine if the certification is true. If the landlord's objection is upheld then the stay is lifted and the landlord may immediately proceed to recover full possession of the property. § 362(b)(22)

B. NO JUDGMENT OF POSSESSION OBTAINED BEFORE DEBTOR'S FILING

Even when a landlord has not obtained a writ of possession, the landlord can still proceed with an eviction action based on

1. endangerment of the residential property or
2. the illegal use of controlled substances on the premises,

The lessor must provide the debtor with a certification that

1. an eviction action has been filed, or
2. during the 30-day period preceding the date of the filing of the certification the debtor has endangered the property or
3. debtor had illegally used or allowed to be used a controlled substance on the premises.

The landlord after waiting 15 days, can then, without obtaining relief from stay, move forward with an eviction proceeding. § 362(b)(23). However an eviction proceeding may be stayed if within the 15 day period the debtor files and serves on the lessor objections to the truth or legal sufficiency of the Landlord's certification. In which case, the court must hold a hearing within 10 days to determine the truth of the certification.

If the debtor satisfies the court that the situation did not exist or has been remedied, then the stay would remain in effect. If the debtor cannot disprove the certification, then the landlord may immediately proceed to recover full possession of the property.

A debtor is required to disclose on the Petition if a judgment for possession has been obtained and provide the name and address of the lessor so the Bankruptcy Clerk can provide required notices to them. § 362(l) § 362(m)

XVI. DEBT PRIORITY

A. Priority for Support Payments and Discharge of Property Settlements

Under the Act, first Priority status is given to allowed unsecured claims for domestic support obligations owed on the date of filing to

1. a spouse or former spouse,
- 2 child of the debtor, or such child's parent, legal guardian, or responsible relative, or
- 3 are assigned, or owed directly to or recoverable by, a governmental unit under applicable nonbankruptcy law. § 507(a)

B. Priority Claims

Under the Act the Priority Period for wages, salaries, and commissions that are owed is extended back to 180 days prior to

filing and is allowed in an amount up to \$10,000 per claim. In addition, business cases, claims for contributions owed to Employee Benefit Plans are given priority up to \$10,000 multiplied by the number of employees. A new tenth priority class of claim was created for drunk driving death or personal injuries. § 507

XVII AUDITS

The Act imposes a duty on the Attorney General and on the Judicial Conference to perform IRS like audits on not less than 1 out of every 250 randomly selected individual Chapter 7 and 13 cases, AND audits of schedules in all cases with greater than average statistical variances for the district by reason of higher income or higher expenses. Each report will be filed with the court and the U.S. trustee and will specify any material misstatement of income, expenditures, or assets. The clerk will be required to give notice of the misstatement to creditors, and the United States trustee must then report the material misstatement, if appropriate, to the U.S. Attorney and take further appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge.

Audit standards must be established within 24 months after enactment, with the audit provisions taking effect 18 months after enactment. The Act provides for revocation of Discharge if a debtor fails to satisfactorily explain a material misstatement in an audit

or to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit. Presumably a Debtor is required to keep all records relating in any way to their bankruptcy for an indefinite period after their Discharge? § 727(d)(4)

XVIII. CHAPTER 13 PLAN

A. PAYMENT OF UNSECURED DEBTS UNDER A CHAPTER 13 PLAN

The Reform Act has adopted what is called a "best efforts test" to assure that a debtor makes a good faith attempt to pay the unsecured creditors. In essence, an unsecured creditor or the trustee can object to a proposed chapter 13 payment plan and insist that the plan either pay all allowed unsecured claims in full with interest, or provide that all of the debtor's disposable income be paid into the plan for the minimum term (36 months). A debtor's disposable income is determined to be the debtor's current monthly income minus the following

1. child support payments, foster care payments, or disability payments for a dependent child reasonably necessary to be expended for such child minus amounts reasonably necessary to be expended for the maintenance or support of the debtor or a dependent, or for a domestic support obligation first payable after the filing date,
2. minus IRS deductible charitable contributions in an

amount not to exceed 15 percent of gross income for the year the contributions are actually made.

3. If the debtor has a business, disposable income is reduced by expenditures necessary for the continuation, preservation, and operation of the business. §1325(b)
4. The charitable contributions exclusion made by the debtor. Proposed contributions are deducted from the current monthly income but the contributions must be made. Failure to do so might result in both fraud being charged the debtor and the attorney himself being liable for the misrepresentation for not watching over the debtor.

Health insurance premiums are deducted from the current monthly income when they are not materially larger than previously paid or than the reasonable cost of insurance for similarly situated individuals. §1329(a)(4)

B. CHAPTER 13 PLAN LENGTH

If a Debtor's income meets or exceeds the mean's test, then any Ch 13 Plan must be for five years unless the plan provides that all allowed unsecured claims are to be paid in full which apparently would be without interest over a shorter term. §1325(b)

C. ADEQUATE PROTECTION FOR CREDITORS

An important goal of the Act is to provide Adequate Protection for the creditors of Chapter 13 cases. In that vein, the Act provides:

1. that payments on allowed secured claims made through the Plan must be in equal monthly amounts in an amount not less than sufficient to provide "adequate protection" as determined by the Court during the term of the plan. §1325(a)(5)(B)(iii).
2. that for lease obligations that become due after the order for relief, the debtor must make the adequate protection payments directly to secured creditors. This has the effect of reducing the proposed lease payments under the plan by the amount of the direct payments, and providing the trustee with proof of payment showing the amount and date. §1326(a)(1)
3. for obligations that become due after the order for relief under allowed claims secured by personal property, beginning not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, and ending with confirmation of the plan, the debtor must make adequate protection payments directly to the secured creditors and providing the trustee with proof of payment showing the amount and date. §1326(a)(1)

Under these provisions, a debtor must continue to make payments directly to creditors on leases and on installment purchases, pending confirmation of a chapter 13 plan. While the approval of the proposed plan is pending, the court could modify, increase, or reduce the payments until approval.

Thirty days after filing the proposed Plan, , the debtor must be making regular payments to the Trustee of the payments required

under the proposed Plan. However, if the Plan is not approved then the Trustee must return those payments.

These provisions may have a significant impact in many jurisdictions. It would seem that if Creditors actively seek adequate protection, Debtors will be required to make sufficient pre and post confirmation payments to keep the balance owed to each creditor less than the depreciating value of the security. While this may have been a general requirement in the past, under the Act it is given new emphasis that the Court and Trustee will need to address. It is conceivable that Trustee payments under a plan will have to favor creditors who, for example, have as security vehicles that depreciate more rapidly than the security for other claims.

D. VALUATION OF SECURITY

Valuation of security has always been an important aspect of a bankruptcy because it determines both how much a secured creditor is paid and how much a debtor must pay for the secured property. The Act has settled this area a little by holding that both in a Chapter 13 case and a Chapter 7 Redemption, the value of property securing a debt is the replacement value as of the date of filing without deduction for costs of sale or marketing. If the security is property that was acquired for personal, family, or household purposes, "replacement value" means the price a retail merchant would charge for property of that kind considering the age and condition of the property. § 506(a)(2)

E. LIEN RETENTION AND EFFECT OF CONVERSION

A secured creditor does not lose his protection or security in a Chapter 13. The plan is required to protect the Secured Creditor by

1. retaining the creditor's lien until the underlying debt is paid in full the amount that would be paid to the Creditor under nonbankruptcy law , or
- 2 the debtor receive a Ch 13 Discharge.
3. If the case is dismissed or converted the lien is retained by the Creditor to the extent recognized by nonbankruptcy law. §1325(a)(5)(B)(I)

Under the Act, two additional provisions operating together might force a debtor to complete a Chapter 13 Plan in order to get a reduction in principal and interest owed to a secured creditor. Under the Act, a debtor may no longer file a chapter 7 petition after completing a chapter 13 the option of conversion to Ch 7 where secured debts have been stripped down. Now under the Act:

1. If a case is converted from Ch 13 to Ch 7 any secured property will continue to be secured until the amount which the creditor would be entitled under nonbankruptcy law for that property has been paid in full, as set by the date of conversion. This means the amount that the debtor is paid the same amount that would have been received if no bankruptcy had been filed.
2. Unless a prepetition default has been cured in full under the plan, the default shall have the effect it would have under nonbankruptcy law.

Another quirk of the Act is that valuations of property in the Ch 13 case do not carry over to a Ch 7 case. Thus a Chapter 7 trustee is free to redetermine the asset values of a Chapter 13 case as of the date of filing. §348

F. SECURED CLAIMS- NO CRAM DOWNS

In Chapter 13 cases - a Debtor MUST pay the secured and unsecured portions of a claim in full but possibly not at the at the contract interest rate if a creditor has a purchase money security interest in a motor vehicle (acquired for the personal use of the debtor) securing a debt that was incurred within the 910-day period preceding the date of filing, or if a creditor has a purchase money security interest in collateral securing a debt that was incurred within 1 year preceding the filing date [some suggest that in the 1 year situation the language can be interpreted to include non-purchase money security interests]. §1325(a)(9)

G. CONFIRMATION OF PLAN

1. Hearing Date

The Plan confirmation hearing is to be held between 20 days and 45 days following the date of the meeting of creditors. The court can decide to hold the conformation hearing earlier if it finds that earlier hearing would be in the best interests of both the creditors and the estate and there is no objection. §1324(b)

Under the Act, the Court will not confirm a plan where the debtor until the debtor has become current with all post-petition domestic support obligations §1325(a). In addition, a final discharge will not be granted at the conclusion of the Plan until a certificate is filed with the Court stating that all post-petition domestic support obligations and pre-petition domestic support obligations under the plan have been paid. §1328(a)

If during the Plan period the court finds that a debtor is not timely making post-petition domestic support payments, the case may be dismissed or converted to a Chapter 7. All pre-petition domestic support obligations owed to third parties must be paid in full as a priority claim in a Ch 13 plan. If, however, the obligations are owed to a governmental unit, then the plan can provide for less than 100% payment in the situation where the debtor proposes to pay all of his projected disposable income in a five year plan. §1307(c)(11) §1322(a)(4)

2. Annual Reports and Privacy

Under the Act, a debtor will be required to file an annual financial statement with the court if any party in interest along or the Court requests it. Such a statement must disclose the amount and sources of the income of the debtor; the identity of any other person responsible for the support of a dependent; and the identity of and the amount contributed by any person to the

debtor's household. This provision opens up the debtor's home life to the public. §521(f)(4) §521(g)(1)

3. Interest on Non-Dischargeable Debt

If a debt is non-dischargeable interest and penalties continue to accrue. If interest is payable on a tax claim or administrative tax expense, or to enable a creditor to receive the present value of a tax claim, the rate of interest is the rate under nonbankruptcy law, and if paid under a confirmed plan, the rate is determined based on the month of confirmation. § 511 A Ch 13 plan may now provide for payment of post-petition interest on nondischargeable unsecured claims IF the plan provides for full payment of all allowed claims. §1322(b)(10)

This provision would be advantageous where creditors do not file significant amounts of dischargeable unsecured claims. In which case, the debtor's attorney should be alert to filing claims for them with interest and penalties when amounts otherwise paid to general unsecured creditors would be paid on nondischargeable debt. A debtor may file claims for a Creditor up through 90 days after the 341 meeting for general creditors and 180 days for governmental units with the exception that in a Ch 13 case a claim with respect to a prepetition tax return must be filed on or before 60 days after the date the return was filed. §502

4. Insurance

The Act extended the time for a debtor to get required rental insurance to 60 days. Now debtors must provide a lessor or secured creditor reasonable evidence of required insurance coverage no later than 60 days after the date of filing, and continue to provide proof of insurance for so long as the debtor retains possession of the property. §1326(a)(1)(B)&(C)

XIX. CHAPTER 13 DISCHARGE HEARING

1. HEARING

Under the Act for all Chapter 13 cases, there is to be held, at least 10 days before the discharge order is issued, a pre-discharge hearing to determine that:

1. that there is no reason to believe that the Debtor owes a debt for - violation of Federal or state securities laws and regulations;
2. that there is no reason to believe that the debtor engaged in fraud, deceit, or manipulation in a fiduciary capacity in connection with registered securities; a civil remedy for securities violations; any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death in the preceding 5 years, and
3. there is no pending proceeding where the Debtor may be found guilty of a felony or liable for a debt based on those acts. A pre-discharge hearing is to be held in all Chapter 13 cases. §1328(h)

2. DEBTS NOT DISCHARGEABLE UNDER CHAPTER 13

Under the Reform Act a Chapter 13 discharge can no longer discharge claims which were nondischargeable under a Chapter 7 proceeding such as resulting from:

1. Taxes owed under unfilled, late-filed within two years of the petition date, and fraudulent tax returns (willful tax evasion);
2. Taxes owed for "trust fund" taxes, income taxes for three prepetition tax years;
3. Credit received under false pretenses or representations or actual fraud other than a financial statement;
4. Credit received under a written financial statement that the Debtor made with intent to deceive that was materially false and reasonably relied on by the creditor;
5. Debts that were neither properly listed nor scheduled in the petition to permit timely filing of a proof of claim (and in the case of claims regarding luxury goods, fraud by a fiduciary, and willful injury, sufficient time to challenge dischargeability), unless the creditor had notice or actual knowledge of the case so as to permit a timely filed proof of claim;
6. fraud by a fiduciary, embezzlement, or larceny;
7. a domestic support obligation;
8. educational loans (as expanded by the Act - absent undue hardship);
9. death or personal injury caused by unlawfully operating

a motor vehicle, vessel, or aircraft under the influence of intoxicants;

10. criminal restitution or a fine included in a sentence on the debtor's conviction of a crime; and
11. civil restitution or damages as a result of willful or malicious acts resulting in personal injury or death of an individual;

Under the Act a Ch 13 Plan can still discharge three types of debt that cannot be discharged in a Ch 7 case, claims resulting from:

1. property settlements [not support obligations] (§523(a)(15) debts);
2. willful and malicious injury to property (§523(a)(6)); and
3. debts incurred to pay nondischargeable tax obligations (§523(a) §1328(a))

The Reform Act defines the nondischargeable debts using references to §§ 507 and 1322, however §1328 denies a Ch 13 discharge of civil restitution or damages resulting from "willful OR malicious" acts, while under §507 a discharge is denied when the acts are both "willful AND malicious." This language would make the Ch 13 discharge more restrictive than the Ch 7

The Act increases the time period under which a Trustee may go back and seize certain transfers are deemed to be fraudulent and recoverable by the Trustee under the Bankruptcy Code from one to two years State fraudulent conveyance laws often allow the trustee

to go back even further. § 548

The Act also provides for the dismissal of the Ch 7 case of a Debtor convicted of a crime of violence or a drug trafficking on motion of the victim when it is in the best interest of the victim. §707(c)(2)

CHAPTER I

COMMON BANKRUPTCY QUESTIONS

Bankruptcy was once considered a disgrace and a sign of utter failure. A generation ago people committed suicide rather than live with the stigma of a bankruptcy. This stigma regarding bankruptcy no longer exists and in fact is now viewed as ridiculous. Bankruptcy filings have increased astronomically: nearly a million bankruptcies are filed per year.

The bankruptcy law was enacted to give debtors hope that they could start over. The United States Congress, when it enacted the bankruptcy code, was well aware how other countries dealt with their insolvent debtors. Both Great Britain and France had debtors' prisons and penal colonies where they jailed people for no other reason than their inability to pay their debts. In one of the great advances for personal dignity, the United States created the bankruptcy code to permit debtors to start over again.

Most bankruptcies are a very sad affair. Case in point: A client was an elderly widower who had retired from the Federal Aviation Administration. His wife of 30 years had died after a long painful struggle with cancer. His wife's medical bills had erased their entire life savings. The client even sold their house to pay for his wife's treatment. After his wife's death, the client still owed over \$100,000 in debts. Bankruptcy was the only alternative.

This chapter does not deal with the entire bankruptcy code. This entire book deals only with one type of bankruptcy, a "Chapter 13 Bankruptcy."

A Chapter 13 petition is a special type of bankruptcy filing and is often called a "reorganization." This type of bankruptcy filing does not liquidate all of a debtor's non-exempt property and immediately discharge a debtor of all dischargeable debts. Instead a Chapter 13 proceeding requires the debtor to make payments, pursuant to a plan, for five years or less to the creditors. At the end of the plan, if all payments are met, all unsecured debts are discharged.

A Chapter 13 filing generally does not discharge debts owed to secured creditors unless they are judgment liens on exempt property or nonpurchase money liens on consumer goods. The liens of the secured creditors can be set aside. After a Chapter 13 bankruptcy becomes final, the debtor is released from the obligation of paying any discharged debts.

This chapter will help demystify the bankruptcy process. The question and answer format presents most of the general information regarding a Chapter 13 bankruptcy. This chapter covers the common questions asked by those considering bankruptcy. The average reader should have a better understanding of the bankruptcy process and his rights under the law after reading this chapter.

1. WHAT IS CHAPTER 7 BANKRUPTCY?

Chapter 7 bankruptcy is also called "straight bankruptcy" or "liquidation." It is the simplest and easiest form of bankruptcy proceeding. Bankruptcy per se is a federal statutory proceeding whereby qualified individuals may surrender their nonexempt property for division among their creditors. To the extent that their nonexempt property does not pay their debts completely, the debts are discharged: Forgiven.

The usual Chapter 7 bankruptcy takes between 100 and 180 days. The filing fees for a Chapter 7 bankruptcy are around \$200. Usually, the creditor has to appear only once in court: At the meeting of creditors.

Once a discharge is given by the bankruptcy court, the debtor's dischargeable debts are forgiven. The debtor will still be obligated to pay any debts that the bankruptcy court determines should not be discharged for equitable reasons or are not dischargeable under federal law.

2. WHAT IS CHAPTER 13 BANKRUPTCY?

Chapter 13 is another type of bankruptcy proceeding. Unlike Chapter 7 bankruptcy, Chapter 13 is a reorganization of the debts, not a liquidation of the debtor's property. In a Chapter 13 bankruptcy, the debtor creates a plan to pay most or all of the debts during a three to five year period. To the extent that dischargeable debts are not to be paid under the plan, the unpaid portion of the debts are forgiven.

There is no time limitation for filing a Chapter 13 petition. In fact, a Chapter 13 petition can be filed immediately after the conclusion of a Chapter 7 proceeding if the debtor so desires.

A Chapter 13 plan is not final and can be modified by the court if the debtor shows good cause, such as a reduction in earnings. The debtor may convert a Chapter 13 petition to a Chapter 7 liquidation at any time provided the debtor has not filed a previous Chapter 7 petition within the previous six years. In addition, the debtor may dismiss the Chapter 13 at any time prior to completion of the plan and be treated as though the bankruptcy had never been filed.

3. WHAT IS A BANKRUPTCY TRUSTEE?

Once a Chapter 13 bankruptcy petition is filed, the bankruptcy court appoints a person called a "trustee" to handle the normal administration and management affairs of the debtor's plan. The trustee calls and oversees the creditors' meeting where the creditors of the debtor examine the debtor in an attempt to discover the location of assets.

After court approval of the debtor's plan, it is the trustee's responsibility to establish the payments to be made to the creditors pursuant to the court approved Chapter 13 plan. These payments are then transmitted to the creditors in accordance with the payment schedule set up in the approved plan. The trustee also has the power to bring or defend lawsuits on behalf of the

bankruptcy estate.

After the plan is completely fulfilled according to its terms, the debtor is discharged from liability to pay all dischargeable debts. If the plan cannot be fully completed, the debtor can seek a partial discharge for certain debts as discussed in Chapter 13.

4. WHY DOES A PERSON FILE A CHAPTER 13 PETITION?

There are two reasons for filing a Chapter 13 petition. The first reason is that the debtor wishes to buy time to reorganize debts. Such a person intends to dismiss the petition within a period of time and pay the debts. The purpose behind filing the petition is simply to gain a breathing period and to avoid imminent foreclosures or lawsuits during the period.

The second reason for filing a Chapter 13 is the more common reason. The debtor possesses a significant amount of nonexempt property which would be lost in a Chapter 7 liquidation. To keep the property, the debtor elects to file a Chapter 13 petition and establish a plan that will pay the unsecured creditors the amount of money they would have received had the debtor filed a straight liquidation. A Chapter 13 filing allows the debtor to keep the estate intact while paying less per month than was being paid prior to the filing. Once the plan is completed, the debtor will be discharged from the unpaid portions of the unsecured debts. If the debtor is unable to complete the plan, it might still be possible for the debtor to get a partial discharge of unsecured debts from

the bankruptcy court.

5. HOW MUCH DO UNSECURED CREDITORS RECEIVE

IN A CHAPTER 13 PROCEEDING?

Under the bankruptcy code, unsecured creditors must receive, at a minimum, an amount equal to that which they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13. To determine how much the unsecured creditors receive, the debtor determines what property is exempt from unsecured creditors and what property is not exempt from unsecured creditors. The value of unsecured property is totaled, and that is the minimum value that must be split among the unsecured creditors.

Each unsecured creditor is given a minimum payment amount based upon that creditors percentage share of all creditors. Example: An unsecured creditor is owed 10% of all unsecured debts then ten percent of the value of the estate on the date of filing must be paid to the creditor.

Since the payment schedule for the plan extends over several years (no more than five years), it is permitted to pay a creditor more than the minimum amount as long as each unsecured creditor receives at least as much as the creditor would have received if a Chapter 7 petition had been filed at the beginning.

It is also permitted in a Chapter 13 proceeding to treat unsecured creditors differently. A debtor may establish classes of

unsecured creditors and treat them differently. As long as the classes are established in good faith and with a legitimate reason, the debtor may pay the creditors of one class a higher percentage of their debt than creditors of another class.

6. WHAT IS A CHAPTER 13 PLAN?

In a Chapter 13 proceeding, the debtor is required to submit for court approval a written plan for the payment of creditors over a period of several years. The plan must last for three years and with court approval may be extended to five years. In special circumstances, a plan can be approved for less than three years but generally only if the debtor proves to the court that all unsecured creditors will be paid in full under the plan.

The plan must provide payments to the unsecured creditors that will at a minimum equal the amount they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13 petition. The debtor is not required to pay all of the unsecured debts. Under the bankruptcy law, the debtor is required to pay only that percentage of debts that would have been paid had a Chapter 7 petition been filed. The plan may also provide for the payment of secured debts as well as unsecured debts. The Bankruptcy Code requires fully secured debts to be paid in full if they are included in the plan.

7. HOW ARE THE PAYMENTS OF THE PLAN MADE?

In a Chapter 13 proceeding, the debtor must make all of the payments ordered under the plan to the trustee. Upon receipt of the debtor's payments, the trustee pays the creditors the amounts designated in the plan. Generally, the trustee receives 10% of all payments received as his fee.

Payments under the plan must begin within 30 days after the filing of the plan with the court. The plan must be filed within 30 days of the filing of the Chapter 13 petition. The payments must be regularly made, usually on a monthly basis. Some bankruptcy courts will order an attachment of the debtor's wages to assure payments are made under the plan.

8. WHEN MAY A CHAPTER 13 BANKRUPTCY BE FILED?

Under the Bankruptcy Act of 2005, the presumption is that an individual filing for Bankruptcy relief will file a Chapter 13 petition instead of a Chapter 7 petition. The exception to the presumption is for an individual who is so poor that he or she fails a means test. Upon failing the means test, an individual can then file for chapter 7 relief.

The means test was formulated so that at least sixty percent of people filing for bankruptcy protection will be forced to file a Chapter 13 reorganization petition instead of Chapter 7 liquidation petition. As such, at least sixty percent of the bankruptcy filers after 2005 will be required to repay a portion of their debts to their creditors as opposed to simply writing them as

done in the past.

9. HOW IS A PLAN APPROVED?

A Chapter 13 payment plan must be approved by the bankruptcy court in order to discharge the debtor's unpaid portions of the debts. The procedure for obtaining court approval is straight forward. The debtor files a Chapter 13 petition. Notice of the petition is given to the creditors, which places an automatic stay on any collection actions by the creditors. The debtor then prepares the proposed plan, which is filed with the court and served on the trustee and all of the creditors.

A hearing date is then set for the confirmation of the plan. Any creditor having objections to the plan may file objections, which will be heard at the hearing. As long as the unsecured creditors are paid the minimum amount they would have received had a Chapter 7 petition been filed and the debt is properly dischargeable, the objections will be overruled and the plan approved.

10. HOW ARE SECURED CREDITORS TREATED?

Secured creditors are treated differently from unsecured creditors in a Chapter 13 proceeding. Secured creditors may be treated in one of four ways. First, each secured creditor is given the option of accepting a proposed payment plan. This usually means that an approving secured creditor will be paid less than he is actually owed.

Second, each secured creditor may reject the proposed payment plan and stand on his security instrument. In this instance, the creditor must be completely paid within the term of the plan. The court will not approve any plan which will not pay an objecting secured creditor within the term of the plan. Interest must be paid on all secured claims handled in the plan.

Third, the debtor may surrender the collateral to the secured creditor holding a security interest on it. In such a situation, the secured creditor becomes an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property.

The fourth way for a debtor in a Chapter 13 proceeding to deal with a secured creditor is to omit the creditor from the plan and continue to make the payments as before the filing.

When dealing with secured creditors it is important to remember that a secured creditor lien only extends to the fair market value of the security. As such, if a secured claim is handled in the plan and the creditor receives the fair market value of the collateral, the lien is discharged and the secured creditor becomes an unsecured creditor for any remaining unpaid balance.

11. HOW DOES BANKRUPTCY AFFECT CHILD OR SPOUSAL SUPPORT?

Alimony and child support obligations are not dischargeable in bankruptcy. The bankruptcy will not suspend or stop the requirement to make current court ordered payments.

The Bankruptcy Act of 1994 amended the automatic stay under section 362 to provide that collection of spousal or child support payments from property which is not property of the estate is not subject to the automatic stay. The 1994 Act also prohibited the automatic stay from blocking commencement or continuation of proceedings to enforce alimony and child support during the bankruptcy case. In a Chapter 13 case, property acquired during the life of the Chapter 13 plan is considered property of the estate.

Under the Bankruptcy Acts of 1994 and 2005, child and spousal support claims now have priority over and are to be paid before general unsecured claims and also before tax claims. In addition, the Bankruptcy Act of 1994 prohibits both the trustee and the debtor from recovering any property transferred to a spouse or to a child in connection with a divorce or separation made within one year of the filing of the bankruptcy petition. Before this amendment, the trustee and the debtor were each permitted to avoid such payments made within a year of the bankruptcy filing as a creditor preference or a payment not supported by reasonable equivalent consideration. Section 522 of the Bankruptcy Code was amended under the 1994 Bankruptcy Act to prohibit a debtor from being able to avoid a judgment lien on otherwise exempt property for child or support payments.

Even if the debts are collected during the bankruptcy, the obligation survives the bankruptcy, and the debtor must still pay the support obligation in full.

12. WHAT TYPES OF DEBTS ARE NOT DISCHARGEABLE BY LAW?

There are several types of debts that cannot be discharged under the bankruptcy law. Most important of the nondischargeable debts are:

1. Recent taxes (within three years),
2. Back child or spousal support,
3. Court-order restitution,
4. Recent student loans, and
5. Court judgments for damages caused in drunk driving.

The main exceptions to the general dischargeability of debts are discussed in detail below.

13. CAN A BANKRUPTCY COURT REFUSE TO DISCHARGE

A DEBT THAT IS OTHERWISE DISCHARGEABLE?

A bankruptcy judge may refuse to grant a discharge for a debt that is otherwise a dischargeable debt when he determines that:

1. It is a credit debt obtained by filing a false credit application.
2. The debtor committed fraud or misrepresentation to obtain the property or services from which the debt derives.
3. The debt derives from an intentional injury caused to another.
4. Property was obtained by theft, robbery or embezzlement.
5. The debtor obtained property without having any intention of paying for it.

The rule of thumb for deciding whether a Chapter 13 filing to be beneficial is whether the payments under the proposed plan would be significantly less than those being paid.

14. WHAT IS AN UNSECURED DEBT?

In a bankruptcy, debts are divided into both secured and unsecured debts. An unsecured debt is a promise or obligation to pay to another a certain amount of money which is unsecured by any collateral. The failure to pay such debt will not entitle the creditor to an immediate right to repossess real or personal property to satisfy the obligation. Most debts are unsecured. Examples of unsecured debts are credit cards, utility bills, medical bills, legal bills, rent.

In a bankruptcy, after all the debts having priority are paid, the unsecured debts are totaled. If the estate is large enough, unsecured debts are paid in full. If there are not enough assets in the estate to pay the unsecured debts, they are paid in accordance to their percentage to the amount of money available. To the extent that there are not enough assets to pay all of the unsecured debts, the portion not paid is forgiven and discharged. Example: The unsecured debts are \$200,000, but there are only enough assets to pay \$40,000 of the unsecured debts. Each unsecured creditor will be paid only 20¢ on the dollar.

15. WHAT IS EXEMPT PROPERTY?

Under both state and federal law, a person is entitled to exclude from the bankruptcy certain property. The individual is given an option of electing to take the federal exemptions or the particular state exemptions.

Both state and federal law have some of the same exemptions although they vary in amounts. Both systems provide exemptions for:

1. Motor vehicles up to a certain value.
2. Reasonable clothing.
3. Reasonable household furnishings and appliances.
4. Personal effects to a certain value.
5. Some public pensions.
6. A certain amount of equity in a home.
7. Tools of a trade or profession up to a certain amount.
8. Public benefits such as social security, welfare, or disability payments.

There are additional exemptions under both state and federal law, but these are the common exemptions. Of the above exemptions, the homeowner's exemption for equity is often the most important. The proceeds from the sale of any exempt property are not attachable by the trustee or creditors to pay debts. An exception exists if the otherwise exempt property is secured as collateral for payment of a debt. In such an event, the bankruptcy does not affect the rights of the creditor holding the security interest from repossessing the property after the bankruptcy discharge if the debt secured by the

property remains unpaid.

16. WHAT IS NON-EXEMPT PROPERTY?

Non-exempt property is property that is not exempt from attachment to pay the debtor's obligations under federal or state law. Examples of non-exempt property in a bankruptcy are:

1. Cash, stocks, bonds and investments over a certain amount.
2. A second motor vehicle.
3. Second home.
4. Family heirlooms over a certain value.
5. Collections, such as paintings, coins, stamps.
6. Expensive equipment for use in a trade or business.

If most of a debtor's estate consists of non-exempt property, a decision should be made to determine if filing for bankruptcy relief is really best since most of the debtor's estate will be taken by the trustee.

17. HOW IS PROPERTY THAT HAS NOT YET BEEN RECEIVED TREATED?

A debtor is required to disclose in the bankruptcy petition any property which the debtor has a right to receive even though it has not yet been received. Examples of such property are:

1. Unpaid wages.
2. Debts owed to the debtor.
3. A tax refund due to the debtor.

4. Property that the debtor inherited but has not yet been distributed to the debtor.
5. Benefits from a trust established for the debtor.
6. Benefits from an insurance policy on another person's life.

The purpose behind requiring such disclosure is obvious. It prevents a debtor from concealing assets by simply delaying payments of money or the delivery of property until after the petition for bankruptcy relief is filed. Any property in which the debtor has an interest, whether contingent or absolute, is required to be listed in the petition. Failure to do so will jeopardize the debtor's discharge.

18. IS PROPERTY ACQUIRED AFTER BANKRUPTCY INCLUDED IN THE ESTATE?

The general rule is that property acquired after the filing of a bankruptcy petition is not included in the bankruptcy estate. There are a few exceptions to this rule for certain property acquired within 180 days after filing bankruptcy.

The after-acquired property subject to inclusion in the bankruptcy estate is:

1. Property inherited within 180 days of the filing regardless of whether it is actually distributed.
2. Property from a property settlement in a divorce or legal separation.
3. Death benefits or life insurance proceeds on another.

The importance of such after-acquired property is that it may

affect the Chapter 13 plan and therefore require an amendment. As stated above, unsecured creditors must receive at least as much, under the plan, as they would have received had the debtor filed for a Chapter 7 discharge. Therefore, under the plan if the creditors were receiving the bare minimum based upon the assets that the debtor then possessed, the subsequent acquisition of any of the above property would require amending the plan to take into account the additional property. If, however, the debtor had been paying more than the minimum amount and even with the inclusion of the new property the creditors are still receiving more than they would had a Chapter 7 petition been filed, then no amendment of the plan is necessary. In any event, the debtor would be required to file an amended schedule to inform the trustee and the court of the additional property, even if the plan would not need to be amended.

19. SHOULD A MARRIED COUPLE FILE BANKRUPTCY TOGETHER?

There is no requirement that married couples file a joint bankruptcy petition. Each spouse may file bankruptcy separately. In addition, one spouse alone may file bankruptcy, and the other spouse may elect not to do so. Generally, if a married couple intends to file bankruptcy, it is more advantageous for them to file a joint petition rather than two separate petitions. The decision of the spouses as to how to file may be governed by the status in which they reside. The effect of state law on the classification of property as either community or separate property

may make the filing of both spouses in bankruptcy necessary to protect their rights.

20. HOW IS COMMUNITY PROPERTY TREATED IN A BANKRUPTCY?

In a community property state, all community property is included in a debtor's estate regardless of whether the debtor's spouse files a bankruptcy. Bankruptcy law states that all community property, not just the debtor's half interest, is included in the estate if the debtor's creditors can attach it under state law absent the bankruptcy.

Example: A husband and wife own a piece of real property as community property. Under state law, both spouses have equal management and control over the property as joint owners. As a result, when the husband files bankruptcy, the trustee will take all of the property and sell it to satisfy the husband's creditors, even though the wife never filed bankruptcy. For this reason, in a community property state, when one spouse files, the other spouse usually files to protect the spouse's interest in the community property.

21. HOW IS SEPARATE PROPERTY TREATED IN A BANKRUPTCY?

The separate property of the non filing spouse cannot be attached to pay the debts of the spouse filing bankruptcy. Separate property, in a community property state, is property acquired by a spouse prior to a marriage or after marriage by gift, devise or

bequest: Not through work.

Any state that is not a community property state is a separate property state. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. In a community property state the community property interest of the married, non filing spouse can be attached in the other spouse's bankruptcy. This is one of the drawbacks in having community property.

In a separate property state, the estate of a married debtor in bankruptcy consists of the debtor's separate property and only one-half of the jointly owned property with the debtor's non filing spouse. The separate property of the non filing spouse is not included in the filing spouse's bankruptcy estate.

22. HOW ARE EXEMPTIONS DETERMINED?

Exempt property is property that the debtor can keep regardless of the bankruptcy. Each state has its own set of laws that list what property is exempt in bankruptcy.

There is a federal set of exemptions that the debtor may use in the District of Columbia, Connecticut, Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Washington, Wisconsin and Vermont. The debtor cannot use the federal exemptions in addition to the state exemptions and cannot mix or match them. The election is for one set of exemptions

or the other.

In the states not listed above, the federal exemptions are not available, and the debtors can use only their state's exemptions.

23. WHAT IS THE GENERAL EXEMPTION?

It is important for a debtor to understand all exemptions that are available. It is only from the nonexempt property that the payments required under the plan are to be made. Most states provide a general exemption that a debtor can apply toward any type of property or split among several properties. The following states have a \$400 general exemption: California, Georgia, Maine, Ohio, Vermont, West Virginia. Kentucky has a \$1,000 exemption, Maryland a \$2,500, Missouri a \$1,250 and Pennsylvania a \$300 general exemption. Other states also have general exemptions but restrict their application to personal property not real property. A federal general exemption also exists for \$400.

23. HOW IS TENANCY-BY-THE-ENTIRETY HANDLED IN BANKRUPTCY?

As stated earlier, payments to unsecured creditors are made only from nonexempt property. An important exemption in some states is for tenancy-by-the-entirety property. Tenancy-by-the-entirety is a special form of ownership of property between married persons: The surviving spouse receives all of the property under a right of survivorship.

Sixteen states treat tenancy-by-the-entirety property in a different fashion from either separate property or joint property. These states will exempt all tenancy-by-the-entirety property from inclusion in a debtor's bankruptcy estate if only one spouse files bankruptcy and if the debts discharged were those owed solely by the filing spouse. If a married debtor tries to discharge joint debts in the bankruptcy, the tenancy-by-the-entirety exemption is lost.

24. CAN DEBTS BE PAID BEFORE FILING BANKRUPTCY?

Under the bankruptcy law, payments made within 90 days of filing a bankruptcy petition are considered preferential payments to creditors, and the trustee can set aside the payments and require that the creditor return the payments to the bankruptcy estate.

Payments on debts owed to a debtor's relative, friend or company in which the debtor is an officer may be recovered by the trustee if the payments were made within one year of filing for bankruptcy protection.

Payments of debts that are secured by exempt property can be a good planning tool. Paying the debts on exempt property with money that would otherwise be lost in the bankruptcy will assure that the debtor will receive the exempt property.

25. CAN NONEXEMPT PROPERTY BE CHANGED INTO EXEMPT PROPERTY

PRIOR TO FILING BANKRUPTCY?

In a Chapter 13 proceeding, the importance of having exempt property is that the amount of payments to be made to each unsecured creditor is required to be at least equal to the amount that the unsecured creditor would have received had the debtor filed a Chapter 7 petition. The more exempt property in an estate, the less the debtor has to pay the unsecured creditors to receive a discharge.

In order to increase the value of exempt property in an estate, it is possible for a debtor to sell nonexempt property prior to filing bankruptcy and use the proceeds to purchase property that will be exempt upon filing of bankruptcy.

The determination on whether the bankruptcy court will permit the newly purchased property to be exempt depends on:

1. The debtor's motive. If the motive is to acquire assets to start over and be able to earn a living, the court will usually approve the change. Example: The sale of a boat to buy equipment to earn a living. Sales of the nonexempt property for extravagant or needless purchases might be set aside even though the purchased property might be exempt under the law. Example: Selling the boat to buy exempt jewelry.
2. The amount of nonexempt property converted into exempt property. If the debtor converts a large amount of nonexempt property into exempt property and thus leaves

the unsecured creditors largely unpaid, the court might refuse to approve the exemption of the newly acquired property.

The key in determining whether the conversion of property is valid is if the purpose and effect of the conversion violates the intent of the bankruptcy act to provide the debtor a reasonable opportunity to start over again. Generally, transmuted nonexempt assets into exempt assets prior to filing a bankruptcy petition are not set aside.

26. WHERE IS THE BANKRUPTCY PETITION FILED?

Every state has at least one bankruptcy court that handles the bankruptcy filings for the state. In larger states, the state is divided into districts with each district have its own bankruptcy court. In California, there are four district bankruptcy courts for the Northern, Southern, Eastern and Central Districts.

A debtor is required to file the bankruptcy petition in the bankruptcy court that covers the debtor's district. The address of the court can usually be found in the phone book under Federal Government. The forms used in the bankruptcy court are provided by the clerk of the bankruptcy court, this book and some stationary stores. Only approved bankruptcy court forms may be used. Every few years, the bankruptcy forms are updated which makes earlier forms obsolete.

27. WHAT IS THE AUTOMATIC STAY?

Once a debtor files for bankruptcy relief, all lawsuits and legal actions against the debtor, both public and private and including foreclosures on real property, immediately stop. No state court can thereafter issue a valid civil judgment against a debtor during the pendency of the bankruptcy proceeding without first obtaining the trustee's or bankruptcy court's permission.

Furthermore, harassment of a debtor by a creditor regarding collection of a debt that is listed in the bankruptcy is against the law. Anyone harassing a debtor over a debt covered in the bankruptcy petition may be found in contempt of federal court.

28. MAY A CREDITOR ASK THE COURT TO LIFT THE AUTOMATIC STAY?

The automatic stay lasts throughout the term of the bankruptcy unless the bankruptcy court lifts it at the request of a creditor. The stay must be lifted in order for a creditor to proceed with a foreclosure on any of the debtor's property or to resume any state judicial proceedings (lawsuits) against the debtor.

In order to lift a stay, a creditor must file a motion with the bankruptcy court. The motion must state the reasons behind the request to lift the stay; a hearing on the merits is then held by the court.

If the automatic stay is lifted, state court actions that had been stayed will continue from the point that they had stopped. Once the stay is lifted, state actions are then treated as though

the bankruptcy had not been filed.

29. WHAT ARE THE GROUNDS FOR LIFTING AN AUTOMATIC STAY?

The automatic stay is the prime tool in a bankruptcy. Without the automatic stay a debtor's assets might not be kept together long enough for the trustee to accomplish the purposes of the bankruptcy. For this reason, the bankruptcy court views carefully all motions to lift the automatic stay. A court will lift the automatic stay for any of the following reasons:

1. The issue to be tried does not affect the debtor's property, such as child custody.
2. The action stayed will ultimately occur anyway because the bankruptcy will not help the debtor on that matter. For an example, assume that there is a foreclosure on real property. If there is no way that the property can ever be paid, the court is likely to lift the stay rather than force the creditor to continue to endure losses without any chance for full repayment.
3. The creditor has a security interest in property which is being harmed by the stay. For example that payments are not being paid on rental equipment.
4. The debtor really doesn't have an ownership interest in the property. If the debtor owes more on property than it is worth, the court may lift the stay because there is no point in protecting property.

Once the court lifts the stay, the creditor can pursue state remedies against the debtor but any monetary judgment the creditor acquires is treated as an unsecured debt against the estate.

30. HOW CAN A REQUEST TO LIFT AN AUTOMATIC STAY BE OPPOSED?

The bankruptcy court will not lift an automatic stay if the debtor proves that the stay is needed to preserve the debtor's general economic conditions. If lifting the stay will harm the debtor more than it would if the stay remained in force, the court will usually refuse to lift it.

The most common arguments raised against lifting an automatic stay are:

1. The fair market value of the property that the creditor seeks released from the stay is greater than the amount owed on it. Thus the creditor is ultimately assured of being with the stay in effect.
2. The debtor is willing to post a bond or cash security to offset any diminution of value in the property the secured creditor wants released from the stay.

It is the burden on the part of the creditor to prove to the bankruptcy court that lifting the stay will not impede or hinder the goal of the bankruptcy code, which is to permit the debtor to start over again.

31. CAN A BANKRUPTCY FILING STOP AN EVICTION?

A Chapter 13 bankruptcy filing will temporarily stop the debtor's eviction from real property. The operative word though is temporarily. While filing bankruptcy petitions to deter evictions have become commonplace, most bankruptcy courts will lift the

automatic stay and permit the eviction to proceed.

An important exception exists when the debtor is involved in a long term lease or (in some cases) very favorable rent control. In such cases, the debtor can argue that the obligation to pay back rent will be discharged, and the future term of the lease is a valuable asset to the estate that the debtor wishes to affirm. If the court agrees, it will not lift the stay and will keep the lease in effect provided the debtor pays the new rent as it becomes due.

32. CAN A CREDITOR OBJECT TO A DISCHARGE?

A creditor may object to a discharge. The creditor may object to discharge of specific debts or all of the debts of the debtor. Usually the creditor making the objection is an unsecured creditor, a judgment creditor or a person holding a nonpurchase security interest on consumer goods.

Only the debts of the foregoing creditors can be discharged in a bankruptcy. The bankruptcy court lacks the power to discharge the debts of secured creditors. They will seldom object to a discharge of any of the above types because the discharge will not affect the secured debts that are not dischargeable.

Any objecting creditor must file the objection to the discharge of the particular debt or debts within 60 days of the meeting of creditors. The creditor's objection is filed in a form called a "Complaint to Determine Dischargeability of Debt." The complaint must be served (delivered to the debtor and the trustee). A creditor may challenge in a discharge of any of the following in

court:

1. Debts occurring as a result of a willful or malicious act (civil tort) that causes personal or property damage.
2. Debts incurred as a result of fraud (usually obtaining credit while intending to file for bankruptcy).
3. Debts arising from theft. No one is ever permitted to keep property obtained illegally.

The debtor must defend any objection to a discharge by filing a responsive pleading called an "answer" to the allegations in the complaint. A hearing is held with the court, ruling on the appropriateness of granting a discharge.

33. CAN A CREDITOR BE FORCED TO RETURN EXEMPT PROPERTY?

A creditor may be required to return property seized or foreclosed before a bankruptcy petition was filed that would be exempt if it were in the possession of the debtor if:

1. The property was seized within one year of the debtor's filing for bankruptcy protection,
2. The property can be claimed as exempt, and
3. No attempt was made to conceal the property from the creditor before it was seized.

The process for getting the property back may be too time consuming and bothersome to be worth it. A complaint has to be filed in the bankruptcy court against the creditor and served on the creditor and the trustee. The court then holds a hearing to determine if the property should be returned to the debtor.

34. CAN A CREDITOR COLLECT A DISCHARGED DEBT?

Once debt is discharged by the bankruptcy court, the debtor no longer has any legal obligation to pay it. Creditors are prohibited by law from attempting to collect debts that have been discharged by the bankruptcy court. There are unscrupulous collection agencies that attempt to collect discharged debts by threatening to file criminal complaints or otherwise harassing the debtor. These agencies are deliberately breaking the law and hope to intimidate the debtor into paying the discharged debt.

The debtor should inform the agency that the debt is discharged and that further harassment will result in a complaint being filed with the bankruptcy court and the trustee. If this threat doesn't stop the harassment, the debtor should inform the court and let the collection agency explain its misconduct to a federal judge.

35. CAN A DISCHARGE BE REVOKED?

A discharge can be revoked after the trustee or a creditor files a complaint but only on one of the following grounds:

1. The debtor obtained the discharge as a result of fraud that was only discovered after the discharge was granted by the court.
2. The debtor refused to inform the trustee of newly acquired property or omitted property from the estate.
3. The debtor intentionally refused to obey a bankruptcy

court order or refused to cooperate with the court's administration of the estate.

A revocation proceeding is a full adversary proceeding with a formal complaint being filed. The debtor is permitted to file a responsive answer to the allegations in the complaint. The court will hold a hearing on the merits of a complaint seeking to revoke the discharge. If the revocation is granted, the debtor remains liable for all of the debts as though the bankruptcy petition had never been filed.

36. CAN THE GOVERNMENT DISCRIMINATE AGAINST A PERSON
WHO HAS FILED A BANKRUPTCY PETITION?

The government, including all state and federal agencies, is precluded under the Bankruptcy Code from discriminating against anyone who files for bankruptcy protection. Specifically, no governmental agency may:

1. Deny a license or permit because the person filed bankruptcy.
2. Base hiring, firing or promotional decisions on the fact that a person filed bankruptcy.
3. Deny or terminate public benefits because of a bankruptcy.
4. Deny any state or federal contract to a person who filed bankruptcy.
5. Deny a driver's license because of a bankruptcy.

Basically, a debtor cannot be punished for exercising the legal

right to file bankruptcy. Therefore, once a governmental debt has been legally discharged, the debtor cannot be punished for filing bankruptcy.

37. IS PRIVATE DISCRIMINATION BASED UPON FILING BANKRUPTCY LEGAL?

The Bankruptcy Code protects a person who files bankruptcy from discrimination only in the field of employment. No employer can fire, transfer, demote or base hiring decisions on the fact that an applicant filed bankruptcy.

Except for employment, the Bankruptcy Code does not ban bankruptcy discrimination in any area of the private sector. Individual state law, however, may prohibit discrimination in private matters. California, for example, has the Unruh Act which prohibits arbitrary discrimination in business. Discrimination in business based solely on an individual's personal bankruptcy is arbitrary, unreasonable and prohibited.

Questions regarding bankruptcies in a credit situation are permitted as long as the questions are narrow and tend to deal with the ability to pay a loan or make payments. Example: Whenever real property is rented, the lessors routinely ask the person whether a bankruptcy had been filed. Courts have upheld the questioning since it relates to the credit worthiness of the applicant.

38. CAN CHAPTER 7 AND CHAPTER 13 PETITIONS BE USED TOGETHER?

Prior to the Bankruptcy Reform Act of 2005, bankruptcy courts would permit a debtor to file a Chapter 13 petition immediately after receiving a Chapter 7 discharge. By using this procedure, the debtor's dischargeable debts and the personal liability for any mortgages or trust deeds on real property were discharged. Foreclosure on real property in the estate was also stopped by the automatic stay in the bankruptcy or by making the payments under the sales agreement.

The Reform Act of 2005 stopped this practice. Now debts that were discharged in a Chapter 7 proceeding cannot be discharged in a subsequent Chapter 13 case.

39. WHAT IS THE HOMESTEAD EXEMPTION?

Usually, the most important exemption that a debtor may have is the homestead exemption. The homestead exemption permits the debtor to receive a fixed amount of money free from the claims of creditors upon the bankruptcy sale of a home.

Homestead exemptions vary from state to state. The following states base their homestead exemption on the size of the acreage of the home, not the amount of the debtor's equity: Arkansas, Florida, Iowa, Kansas, Minnesota, Oklahoma, South Dakota and Texas. In addition, the states Alabama, Hawaii, Louisiana, Michigan, Mississippi, Nebraska and Oregon base their exemptions on both lot size and debtor's equity. In these states then a certain amount of equity is permitted to be shielded from creditors if the lot size

is below a fixed size. The remaining states and the Federal government use a set amount for equity permitted to be shielded from creditors regardless of the size of the debtor's property.

A debtor should always take full advantage of the homestead exemption. It might even be advantageous for a person to move to another state before filing for bankruptcy to avail himself of that state's higher homestead exemption. However under the Reform Act of 2005, if a person moves to another state, he or she must now wait 730 days (2 years) before using the new state's homestead exemption. This is an increase from the previous period which was only six months.

After the Chapter 7 discharge is granted, the debtor proceeds to file a Chapter 13 bankruptcy petition. Under the plan adopted in the Chapter 13 proceeding, the debtor pays the remaining nondischargeable debts and the liens on the home. This procedure has been attacked in some courts as not a good faith use of Chapter 13, but there is no direct prohibition against it.

40. WHAT IS A MARITAL HOMESTEAD?

When both spouses file bankruptcy, each spouse is entitled to the full value of the homestead exemption under bankruptcy law. Permitting both spouses a full homestead exemption has been known as doubling because it obviously doubles the homestead exemption.

A few states have passed laws that prohibit doubling. In these

states, there is only one homestead exemption for the couple. A few other states have adopted laws specifically permitting doubling homestead exemptions. The rest of the states do not say either way, but given the fact it is being done, the implication is that it is largely approved. Therefore, a married couple should always investigate the possibility of filing for a double homestead exemption.

41. HOW DOES CONVERSION FROM A CHAPTER 7 TO A CHAPTER 13

PETITION AFFECT A FORECLOSURE ON A DEBTOR'S HOME?

A Chapter 7 bankruptcy petition calls for the liquidation of the debtor's home if the debtor's equity exceeds the homestead exemption. A Chapter 13 bankruptcy filing permits the debtor to pay the debts without having to sell the home even if there is nonexempt equity in it.

A Chapter 13 filing carries with it advantages:

1. It permits the debtor to spread missed payments, taxes and late charges over the period of the plan (three to five years).
2. If the lender had declared the entire amount due and payable and resorted to acceleration of the debt, the Chapter 13 filing will cancel the acceleration and permit the debtor to continue making normal payments.

A Chapter 13 conversion can be made at any time during the Chapter 7 proceeding. Therefore, the debtor has a great deal of discretion

in seeking to fashion the form of bankruptcy relief that will be granted by the Court.

42. WHAT IS THE EFFECT ON THE DEBTOR'S PENSION BY FILING A
CHAPTER 13 PETITION?

A pension, including an IRA, is an asset like any other in a bankruptcy and may not necessarily be exempt. The United States Supreme Court has held that a pension qualified under ERISA (Employee Retirement Income Security Act) is not part of a bankruptcy estate and therefore is not lost in a bankruptcy. A non-ERISA plan, however, is a bankruptcy asset and must be considered an asset available for paying unsecured creditors unless it is exempt under federal or state law.

Most pensions are qualified ERISA plans. The most notable exceptions to ERISA coverage are IRA's, SEP's and KEOGH's. For these pension plans to be exempt, they must be so under the debtor's state law. Consequently, state law must be consulted when pension plans are in the estate.

43. WHAT IS LIEN AVOIDANCE?

A debtor can make a motion to the bankruptcy court to eliminate or reduce any judicial or nonpurchase money liens on exempt property. After the motion is made, a hearing is held by the court, and the lien is reduced or eliminated if appropriate. The purpose in avoiding such a lien is to change the creditor from a secured creditor to an unsecured creditor, and thereby freeing the

exempt property from attachment by the creditor.

A judicial lien is a court order that certain property of the debtor can be taken to satisfy a judgment. A nonpurchase money security lien is an interest in property given by the debtor as collateral for a loan or other promised performance.

The following states either do not allow lien avoidance or seriously restrict it when the debtor uses their state exemption: Alaska, Connecticut, Florida, Kentucky, Louisiana, Maryland, Mississippi, Ohio, Tennessee, Texas, Utah and Washington. Yet, the United States Supreme Court recently struck down the Florida law banning lien avoidance, which means that the laws in the other states are likewise invalid.

44. WHEN CAN STUDENT LOANS BE DISCHARGED?

Often one of the largest debts that a person may have is one for student loans. If a student can be discharged a major source of concern for most debtors will be eliminated. The general rule is that most student loans are nondischargeable, and that they must be paid regardless of bankruptcy discharge.

As of January 1, 1999, there is only one exception to the bar against discharging students loans. Congress amended Section 523(a) 8 of the Bankruptcy Code so as to deny the discharge of student loans except in the presence of undue hardship that would be incurred as a result of the forced repayment of the student loans.

A bankruptcy court will permit a total or partial discharge of student loans if the repayment of the loan would cause undue hardship. In determining whether undue hardship exists, the court decides whether the facts of the individual case are such that the person should be excused from repaying the loan. Most bankruptcy courts rarely grant full discharge of student loans. Usually, the court will only discharge student loan payments as they become due. Unless the lender had accelerated the student loan (declared the entire amount immediately due and payable as the result of the debtor's failure to pay) usually only the student loan payments due at the time of filing the bankruptcy petition will be discharged.

45. CAN INCOME TAXES BE DISCHARGED?

Unpaid taxes is a major source of debt in most bankruptcy estates. Appropriate discharge of taxes is of great advantage to a debtor. The bankruptcy law allows federal, state and local income taxes to be discharged if the income taxes are over three years old and proper tax returns were filed for the tax years.

Taxes can even be dismissed if the debtor is negotiating with the IRS or even before the U.S. Tax Court if the debtor has waited 240 days after the tax was assessed (claimed owed by the I.R.S. or state taxing agency) before filing bankruptcy.

Tax penalties for failing to pay state or federal taxes are also dischargeable if the taxes to which they relate are dischargeable. Example: A debtor owes taxes and penalties on back

taxes that were two and five years old respectively and proper returns were filed. The debtor can discharge the taxes and penalties for the due taxes that are five years old but not for those that are two years old.

While income taxes may be dischargeable, most other taxes are not. The following taxes are not dischargeable: Social Security taxes, payroll withholding taxes, excise taxes and sales taxes.

46. ARE PROPERTY TAXES DISCHARGEABLE?

Any personal liability for the payment of property taxes can be discharged in bankruptcy if the taxes became due more than one year before filing for bankruptcy protection (as opposed to three years for income taxes). A discharge of personal liability is usually a non-issue because the tax lien on the property is not discharged. The government taxing entity can still seize and sell the property to pay the property taxes. The tax lien remains on the property until it is paid in full.

47. WHAT ARE DEBTS FROM WILLFUL AND MALICIOUS ACTS?

Debts from willful and malicious acts are not dischargeable if the creditor properly objects to the discharge. Willful and malicious acts cover both criminal and noncriminal actions that are deliberately designed or likely to cause injury or damage to another.

For noncriminal injuries caused by a debtor, determining if

the injury was caused by the willful and malicious act of the debtor is done on a case-by-case basis. On the other hand, when the damages are caused by one of the following intentional torts (civil wrongs), the debtor is found to have committed a willful and malicious act:

1. Destruction of another's property including the destruction of the property held as collateral for a security agreement.
2. Defamation of a person's character including both libel and slander.
3. Assault, battery or infliction of emotional distress on another.

Almost all injuries arising from a debtor's criminal conduct are considered by law to be the results of willful and malicious acts and are not dischargeable debts.

48. CAN THE AVERAGE PERSON HANDLE HIS OWN BANKRUPTCY PETITION?

The filing of a Chapter 13 bankruptcy petition, while not a "walk in the park," is nonetheless well within the ability of the average person. This book is designed to give the average person all of the information and instruction needed to handle his own bankruptcy competently. Essentially, the debtor files the petition, appears at the first meeting of creditors, appears for the hearing on the confirmation of the plan and afterwards makes the payments in accordance to the terms of the plan. If there are no surprises and the payments are all made, the discharge normally is automatic

without the debtor having to do anything more. A Chapter 13 bankruptcy is really just that simple.

49. WHAT DOES A BANKRUPTCY ATTORNEY USUALLY CHARGE?

As with all other legal services, the consumer (i.e. the client) should shop for a bankruptcy attorney with whom the client is comfortable both on a professional and financial level. Attorney fees for a routine Chapter 13 petition tend to vary between \$1,000 and \$2,500. Fees may be higher or lower depending on the expertise of the individual attorney. In addition, all attorneys charge an hourly rate for additional extraordinary work (such as opposing creditor petitions). The attorney fees have to be approved by the bankruptcy court regardless of what is stated in the fee agreement. An attorney cannot excessively overcharge from the norm.

There are "typing services" and "paralegal services" for bankruptcy advice and preparation of the bankruptcy forms. In most states, this is the practice of law and is technically illegal, but it is done. Use of these services is usually not a good idea because they are not regulated or tested for the quality of their legal advice and what they charge usually is not that much less than an attorney.

50. WHAT HAPPENS IF THE DEBTOR CANNOT COMPLETE THE PLAN?

If the debtor is unable to complete the plan, he has three options. The debtor can dismiss the case and be treated by the

creditors as having never filed the petition. The debtor will owe the creditors the amount that would have been owed had the Chapter 13 petition never been filed after taking into account any payments made through the plan.

The second alternative is for the debtor to convert the plan into a Chapter 7 filing. The debtor's estate will be liquidated, and the creditors paid in accordance with the bankruptcy law pertaining to Chapter 7 cases.

The last alternative is for the debtor to seek a partial discharge of the case. A partial discharge clears the debtor of all debts except:

1. Secured debts (debts secured by collateral or liens).
2. Debts paid outside of the plan and not a part of the plan.
3. Instalment debts whose last payment is due after the completion of the plan.
4. Debts incurred while the plan was in effect.
5. Debts not dischargeable under chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts.

CHAPTER I

COMMON BANKRUPTCY QUESTIONS

Bankruptcy was once considered a disgrace and a sign of utter failure. A generation ago people committed suicide rather than live with the stigma of a bankruptcy. This stigma regarding bankruptcy no longer exists and in fact is now viewed as ridiculous. Bankruptcy filings have increased astronomically: nearly a million bankruptcies are filed per year.

The bankruptcy law was enacted to give debtors hope that they could start over. The United States Congress, when it enacted the bankruptcy code, was well aware how other countries dealt with their insolvent debtors. Both Great Britain and France had debtors' prisons and penal colonies where they jailed people for no other reason than their inability to pay their debts. In one of the great advances for personal dignity, the United States created the bankruptcy code to permit debtors to start over again.

Most bankruptcies are a very sad affair. Case in point: A client was an elderly widower who had retired from the Federal Aviation Administration. His wife of 30 years had died after a long painful struggle with cancer. His wife's medical bills had erased their entire life savings. The client even sold their house to pay for his wife's treatment. After his wife's death, the client still owed over \$100,000 in debts. Bankruptcy was the only alternative.

This chapter does not deal with the entire bankruptcy code. This entire book deals only with one type of bankruptcy, a "Chapter 13 Bankruptcy."

A Chapter 13 petition is a special type of bankruptcy filing and is often called a "reorganization." This type of bankruptcy filing does not liquidate all of a debtor's non-exempt property and immediately discharge a debtor of all dischargeable debts. Instead a Chapter 13 proceeding requires the debtor to make payments, pursuant to a plan, for five years or less to the creditors. At the end of the plan, if all payments are met, all unsecured debts are discharged.

A Chapter 13 filing generally does not discharge debts owed to secured creditors unless they are judgment liens on exempt property or nonpurchase money liens on consumer goods. The liens of the secured creditors can be set aside. After a Chapter 13 bankruptcy becomes final, the debtor is released from the obligation of paying any discharged debts.

This chapter will help demystify the bankruptcy process. The question and answer format presents most of the general information regarding a Chapter 13 bankruptcy. This chapter covers the common questions asked by those considering bankruptcy. The average reader should have a better understanding of the bankruptcy process and his rights under the law after reading this chapter.

1. WHAT IS CHAPTER 7 BANKRUPTCY?

Chapter 7 bankruptcy is also called "straight bankruptcy" or "liquidation." It is the simplest and easiest form of bankruptcy proceeding. Bankruptcy per se is a federal statutory proceeding whereby qualified individuals may surrender their nonexempt property for division among their creditors. To the extent that their nonexempt property does not pay their debts completely, the debts are discharged: Forgiven.

The usual Chapter 7 bankruptcy takes between 100 and 180 days. The filing fees for a Chapter 7 bankruptcy are around \$200. Usually, the creditor has to appear only once in court: At the meeting of creditors.

Once a discharge is given by the bankruptcy court, the debtor's dischargeable debts are forgiven. The debtor will still be obligated to pay any debts that the bankruptcy court determines should not be discharged for equitable reasons or are not dischargeable under federal law.

2. WHAT IS CHAPTER 13 BANKRUPTCY?

Chapter 13 is another type of bankruptcy proceeding. Unlike Chapter 7 bankruptcy, Chapter 13 is a reorganization of the debts, not a liquidation of the debtor's property. In a Chapter 13 bankruptcy, the debtor creates a plan to pay most or all of the debts during a three to five year period. To the extent that dischargeable debts are not to be paid under the plan, the unpaid portion of the debts are forgiven.

There is no time limitation for filing a Chapter 13 petition. In fact, a Chapter 13 petition can be filed immediately after the conclusion of a Chapter 7 proceeding if the debtor so desires.

A Chapter 13 plan is not final and can be modified by the court if the debtor shows good cause, such as a reduction in earnings. The debtor may convert a Chapter 13 petition to a Chapter 7 liquidation at any time provided the debtor has not filed a previous Chapter 7 petition within the previous six years. In addition, the debtor may dismiss the Chapter 13 at any time prior to completion of the plan and be treated as though the bankruptcy had never been filed.

3. WHAT IS A BANKRUPTCY TRUSTEE?

Once a Chapter 13 bankruptcy petition is filed, the bankruptcy court appoints a person called a "trustee" to handle the normal administration and management affairs of the debtor's plan. The trustee calls and oversees the creditors' meeting where the creditors of the debtor examine the debtor in an attempt to discover the location of assets.

After court approval of the debtor's plan, it is the trustee's responsibility to establish the payments to be made to the creditors pursuant to the court approved Chapter 13 plan. These payments are then transmitted to the creditors in accordance with the payment schedule set up in the approved plan. The trustee also has the power to bring or defend lawsuits on behalf of the

bankruptcy estate.

After the plan is completely fulfilled according to its terms, the debtor is discharged from liability to pay all dischargeable debts. If the plan cannot be fully completed, the debtor can seek a partial discharge for certain debts as discussed in Chapter 13.

4. WHY DOES A PERSON FILE A CHAPTER 13 PETITION?

There are two reasons for filing a Chapter 13 petition. The first reason is that the debtor wishes to buy time to reorganize debts. Such a person intends to dismiss the petition within a period of time and pay the debts. The purpose behind filing the petition is simply to gain a breathing period and to avoid imminent foreclosures or lawsuits during the period.

The second reason for filing a Chapter 13 is the more common reason. The debtor possesses a significant amount of nonexempt property which would be lost in a Chapter 7 liquidation. To keep the property, the debtor elects to file a Chapter 13 petition and establish a plan that will pay the unsecured creditors the amount of money they would have received had the debtor filed a straight liquidation. A Chapter 13 filing allows the debtor to keep the estate intact while paying less per month than was being paid prior to the filing. Once the plan is completed, the debtor will be discharged from the unpaid portions of the unsecured debts. If the debtor is unable to complete the plan, it might still be possible for the debtor to get a partial discharge of unsecured debts from

the bankruptcy court.

5. HOW MUCH DO UNSECURED CREDITORS RECEIVE

IN A CHAPTER 13 PROCEEDING?

Under the bankruptcy code, unsecured creditors must receive, at a minimum, an amount equal to that which they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13. To determine how much the unsecured creditors receive, the debtor determines what property is exempt from unsecured creditors and what property is not exempt from unsecured creditors. The value of unsecured property is totaled, and that is the minimum value that must be split among the unsecured creditors.

Each unsecured creditor is given a minimum payment amount based upon that creditors percentage share of all creditors. Example: An unsecured creditor is owed 10% of all unsecured debts then ten percent of the value of the estate on the date of filing must be paid to the creditor.

Since the payment schedule for the plan extends over several years (no more than five years), it is permitted to pay a creditor more than the minimum amount as long as each unsecured creditor receives at least as much as the creditor would have received if a Chapter 7 petition had been filed at the beginning.

It is also permitted in a Chapter 13 proceeding to treat unsecured creditors differently. A debtor may establish classes of

unsecured creditors and treat them differently. As long as the classes are established in good faith and with a legitimate reason, the debtor may pay the creditors of one class a higher percentage of their debt than creditors of another class.

6. WHAT IS A CHAPTER 13 PLAN?

In a Chapter 13 proceeding, the debtor is required to submit for court approval a written plan for the payment of creditors over a period of several years. The plan must last for three years and with court approval may be extended to five years. In special circumstances, a plan can be approved for less than three years but generally only if the debtor proves to the court that all unsecured creditors will be paid in full under the plan.

The plan must provide payments to the unsecured creditors that will at a minimum equal the amount they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13 petition. The debtor is not required to pay all of the unsecured debts. Under the bankruptcy law, the debtor is required to pay only that percentage of debts that would have been paid had a Chapter 7 petition been filed. The plan may also provide for the payment of secured debts as well as unsecured debts. The Bankruptcy Code requires fully secured debts to be paid in full if they are included in the plan.

7. HOW ARE THE PAYMENTS OF THE PLAN MADE?

In a Chapter 13 proceeding, the debtor must make all of the payments ordered under the plan to the trustee. Upon receipt of the debtor's payments, the trustee pays the creditors the amounts designated in the plan. Generally, the trustee receives 10% of all payments received as his fee.

Payments under the plan must begin within 30 days after the filing of the plan with the court. The plan must be filed within 30 days of the filing of the Chapter 13 petition. The payments must be regularly made, usually on a monthly basis. Some bankruptcy courts will order an attachment of the debtor's wages to assure payments are made under the plan.

8. WHEN MAY A CHAPTER 13 BANKRUPTCY BE FILED?

Under the Bankruptcy Act of 2005, the presumption is that an individual filing for Bankruptcy relief will file a Chapter 13 petition instead of a Chapter 7 petition. The exception to the presumption is for an individual who is so poor that he or she fails a means test. Upon failing the means test, an individual can then file for chapter 7 relief.

The means test was formulated so that at least sixty percent of people filing for bankruptcy protection will be forced to file a Chapter 13 reorganization petition instead of Chapter 7 liquidation petition. As such, at least sixty percent of the bankruptcy filers after 2005 will be required to repay a portion of their debts to their creditors as opposed to simply writing them as

done in the past.

9. HOW IS A PLAN APPROVED?

A Chapter 13 payment plan must be approved by the bankruptcy court in order to discharge the debtor's unpaid portions of the debts. The procedure for obtaining court approval is straight forward. The debtor files a Chapter 13 petition. Notice of the petition is given to the creditors, which places an automatic stay on any collection actions by the creditors. The debtor then prepares the proposed plan, which is filed with the court and served on the trustee and all of the creditors.

A hearing date is then set for the confirmation of the plan. Any creditor having objections to the plan may file objections, which will be heard at the hearing. As long as the unsecured creditors are paid the minimum amount they would have received had a Chapter 7 petition been filed and the debt is properly dischargeable, the objections will be overruled and the plan approved.

10. HOW ARE SECURED CREDITORS TREATED?

Secured creditors are treated differently from unsecured creditors in a Chapter 13 proceeding. Secured creditors may be treated in one of four ways. First, each secured creditor is given the option of accepting a proposed payment plan. This usually means that an approving secured creditor will be paid less than he is actually owed.

Second, each secured creditor may reject the proposed payment plan and stand on his security instrument. In this instance, the creditor must be completely paid within the term of the plan. The court will not approve any plan which will not pay an objecting secured creditor within the term of the plan. Interest must be paid on all secured claims handled in the plan.

Third, the debtor may surrender the collateral to the secured creditor holding a security interest on it. In such a situation, the secured creditor becomes an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property.

The fourth way for a debtor in a Chapter 13 proceeding to deal with a secured creditor is to omit the creditor from the plan and continue to make the payments as before the filing.

When dealing with secured creditors it is important to remember that a secured creditor lien only extends to the fair market value of the security. As such, if a secured claim is handled in the plan and the creditor receives the fair market value of the collateral, the lien is discharged and the secured creditor becomes an unsecured creditor for any remaining unpaid balance.

11. HOW DOES BANKRUPTCY AFFECT CHILD OR SPOUSAL SUPPORT?

Alimony and child support obligations are not dischargeable in bankruptcy. The bankruptcy will not suspend or stop the requirement to make current court ordered payments.

The Bankruptcy Act of 1994 amended the automatic stay under section 362 to provide that collection of spousal or child support payments from property which is not property of the estate is not subject to the automatic stay. The 1994 Act also prohibited the automatic stay from blocking commencement or continuation of proceedings to enforce alimony and child support during the bankruptcy case. In a Chapter 13 case, property acquired during the life of the Chapter 13 plan is considered property of the estate.

Under the Bankruptcy Acts of 1994 and 2005, child and spousal support claims now have priority over and are to be paid before general unsecured claims and also before tax claims. In addition, the Bankruptcy Act of 1994 prohibits both the trustee and the debtor from recovering any property transferred to a spouse or to a child in connection with a divorce or separation made within one year of the filing of the bankruptcy petition. Before this amendment, the trustee and the debtor were each permitted to avoid such payments made within a year of the bankruptcy filing as a creditor preference or a payment not supported by reasonable equivalent consideration. Section 522 of the Bankruptcy Code was amended under the 1994 Bankruptcy Act to prohibit a debtor from being able to avoid a judgment lien on otherwise exempt property for child or support payments.

Even if the debts are collected during the bankruptcy, the obligation survives the bankruptcy, and the debtor must still pay the support obligation in full.

12. WHAT TYPES OF DEBTS ARE NOT DISCHARGEABLE BY LAW?

There are several types of debts that cannot be discharged under the bankruptcy law. Most important of the nondischargeable debts are:

1. Recent taxes (within three years),
2. Back child or spousal support,
3. Court-order restitution,
4. Recent student loans, and
5. Court judgments for damages caused in drunk driving.

The main exceptions to the general dischargeability of debts are discussed in detail below.

13. CAN A BANKRUPTCY COURT REFUSE TO DISCHARGE

A DEBT THAT IS OTHERWISE DISCHARGEABLE?

A bankruptcy judge may refuse to grant a discharge for a debt that is otherwise a dischargeable debt when he determines that:

1. It is a credit debt obtained by filing a false credit application.
2. The debtor committed fraud or misrepresentation to obtain the property or services from which the debt derives.
3. The debt derives from an intentional injury caused to another.
4. Property was obtained by theft, robbery or embezzlement.
5. The debtor obtained property without having any intention of paying for it.

The rule of thumb for deciding whether a Chapter 13 filing to be beneficial is whether the payments under the proposed plan would be significantly less than those being paid.

14. WHAT IS AN UNSECURED DEBT?

In a bankruptcy, debts are divided into both secured and unsecured debts. An unsecured debt is a promise or obligation to pay to another a certain amount of money which is unsecured by any collateral. The failure to pay such debt will not entitle the creditor to an immediate right to repossess real or personal property to satisfy the obligation. Most debts are unsecured. Examples of unsecured debts are credit cards, utility bills, medical bills, legal bills, rent.

In a bankruptcy, after all the debts having priority are paid, the unsecured debts are totaled. If the estate is large enough, unsecured debts are paid in full. If there are not enough assets in the estate to pay the unsecured debts, they are paid in accordance to their percentage to the amount of money available. To the extent that there are not enough assets to pay all of the unsecured debts, the portion not paid is forgiven and discharged. Example: The unsecured debts are \$200,000, but there are only enough assets to pay \$40,000 of the unsecured debts. Each unsecured creditor will be paid only 20¢ on the dollar.

15. WHAT IS EXEMPT PROPERTY?

Under both state and federal law, a person is entitled to exclude from the bankruptcy certain property. The individual is given an option of electing to take the federal exemptions or the particular state exemptions.

Both state and federal law have some of the same exemptions although they vary in amounts. Both systems provide exemptions for:

1. Motor vehicles up to a certain value.
2. Reasonable clothing.
3. Reasonable household furnishings and appliances.
4. Personal effects to a certain value.
5. Some public pensions.
6. A certain amount of equity in a home.
7. Tools of a trade or profession up to a certain amount.
8. Public benefits such as social security, welfare, or disability payments.

There are additional exemptions under both state and federal law, but these are the common exemptions. Of the above exemptions, the homeowner's exemption for equity is often the most important. The proceeds from the sale of any exempt property are not attachable by the trustee or creditors to pay debts. An exception exists if the otherwise exempt property is secured as collateral for payment of a debt. In such an event, the bankruptcy does not affect the rights of the creditor holding the security interest from repossessing the property after the bankruptcy discharge if the debt secured by the

property remains unpaid.

16. WHAT IS NON-EXEMPT PROPERTY?

Non-exempt property is property that is not exempt from attachment to pay the debtor's obligations under federal or state law. Examples of non-exempt property in a bankruptcy are:

1. Cash, stocks, bonds and investments over a certain amount.
2. A second motor vehicle.
3. Second home.
4. Family heirlooms over a certain value.
5. Collections, such as paintings, coins, stamps.
6. Expensive equipment for use in a trade or business.

If most of a debtor's estate consists of non-exempt property, a decision should be made to determine if filing for bankruptcy relief is really best since most of the debtor's estate will be taken by the trustee.

17. HOW IS PROPERTY THAT HAS NOT YET BEEN RECEIVED TREATED?

A debtor is required to disclose in the bankruptcy petition any property which the debtor has a right to receive even though it has not yet been received. Examples of such property are:

1. Unpaid wages.
2. Debts owed to the debtor.
3. A tax refund due to the debtor.

4. Property that the debtor inherited but has not yet been distributed to the debtor.
5. Benefits from a trust established for the debtor.
6. Benefits from an insurance policy on another person's life.

The purpose behind requiring such disclosure is obvious. It prevents a debtor from concealing assets by simply delaying payments of money or the delivery of property until after the petition for bankruptcy relief is filed. Any property in which the debtor has an interest, whether contingent or absolute, is required to be listed in the petition. Failure to do so will jeopardize the debtor's discharge.

18. IS PROPERTY ACQUIRED AFTER BANKRUPTCY INCLUDED IN THE ESTATE?

The general rule is that property acquired after the filing of a bankruptcy petition is not included in the bankruptcy estate. There are a few exceptions to this rule for certain property acquired within 180 days after filing bankruptcy.

The after-acquired property subject to inclusion in the bankruptcy estate is:

1. Property inherited within 180 days of the filing regardless of whether it is actually distributed.
2. Property from a property settlement in a divorce or legal separation.
3. Death benefits or life insurance proceeds on another.

The importance of such after-acquired property is that it may

affect the Chapter 13 plan and therefore require an amendment. As stated above, unsecured creditors must receive at least as much, under the plan, as they would have received had the debtor filed for a Chapter 7 discharge. Therefore, under the plan if the creditors were receiving the bare minimum based upon the assets that the debtor then possessed, the subsequent acquisition of any of the above property would require amending the plan to take into account the additional property. If, however, the debtor had been paying more than the minimum amount and even with the inclusion of the new property the creditors are still receiving more than they would had a Chapter 7 petition been filed, then no amendment of the plan is necessary. In any event, the debtor would be required to file an amended schedule to inform the trustee and the court of the additional property, even if the plan would not need to be amended.

19. SHOULD A MARRIED COUPLE FILE BANKRUPTCY TOGETHER?

There is no requirement that married couples file a joint bankruptcy petition. Each spouse may file bankruptcy separately. In addition, one spouse alone may file bankruptcy, and the other spouse may elect not to do so. Generally, if a married couple intends to file bankruptcy, it is more advantageous for them to file a joint petition rather than two separate petitions. The decision of the spouses as to how to file may be governed by the status in which they reside. The effect of state law on the classification of property as either community or separate property

may make the filing of both spouses in bankruptcy necessary to protect their rights.

20. HOW IS COMMUNITY PROPERTY TREATED IN A BANKRUPTCY?

In a community property state, all community property is included in a debtor's estate regardless of whether the debtor's spouse files a bankruptcy. Bankruptcy law states that all community property, not just the debtor's half interest, is included in the estate if the debtor's creditors can attach it under state law absent the bankruptcy.

Example: A husband and wife own a piece of real property as community property. Under state law, both spouses have equal management and control over the property as joint owners. As a result, when the husband files bankruptcy, the trustee will take all of the property and sell it to satisfy the husband's creditors, even though the wife never filed bankruptcy. For this reason, in a community property state, when one spouse files, the other spouse usually files to protect the spouse's interest in the community property.

21. HOW IS SEPARATE PROPERTY TREATED IN A BANKRUPTCY?

The separate property of the non filing spouse cannot be attached to pay the debts of the spouse filing bankruptcy. Separate property, in a community property state, is property acquired by a spouse prior to a marriage or after marriage by gift, devise or

bequest: Not through work.

Any state that is not a community property state is a separate property state. The community property states are Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. In a community property state the community property interest of the married, non filing spouse can be attached in the other spouse's bankruptcy. This is one of the drawbacks in having community property.

In a separate property state, the estate of a married debtor in bankruptcy consists of the debtor's separate property and only one-half of the jointly owned property with the debtor's non filing spouse. The separate property of the non filing spouse is not included in the filing spouse's bankruptcy estate.

22. HOW ARE EXEMPTIONS DETERMINED?

Exempt property is property that the debtor can keep regardless of the bankruptcy. Each state has its own set of laws that list what property is exempt in bankruptcy.

There is a federal set of exemptions that the debtor may use in the District of Columbia, Connecticut, Hawaii, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, Pennsylvania, Rhode Island, Texas, Washington, Wisconsin and Vermont. The debtor cannot use the federal exemptions in addition to the state exemptions and cannot mix or match them. The election is for one set of exemptions

or the other.

In the states not listed above, the federal exemptions are not available, and the debtors can use only their state's exemptions.

23. WHAT IS THE GENERAL EXEMPTION?

It is important for a debtor to understand all exemptions that are available. It is only from the nonexempt property that the payments required under the plan are to be made. Most states provide a general exemption that a debtor can apply toward any type of property or split among several properties. The following states have a \$400 general exemption: California, Georgia, Maine, Ohio, Vermont, West Virginia. Kentucky has a \$1,000 exemption, Maryland a \$2,500, Missouri a \$1,250 and Pennsylvania a \$300 general exemption. Other states also have general exemptions but restrict their application to personal property not real property. A federal general exemption also exists for \$400.

23. HOW IS TENANCY-BY-THE-ENTIRETY HANDLED IN BANKRUPTCY?

As stated earlier, payments to unsecured creditors are made only from nonexempt property. An important exemption in some states is for tenancy-by-the-entirety property. Tenancy-by-the-entirety is a special form of ownership of property between married persons: The surviving spouse receives all of the property under a right of survivorship.

Sixteen states treat tenancy-by-the-entirety property in a different fashion from either separate property or joint property. These states will exempt all tenancy-by-the-entirety property from inclusion in a debtor's bankruptcy estate if only one spouse files bankruptcy and if the debts discharged were those owed solely by the filing spouse. If a married debtor tries to discharge joint debts in the bankruptcy, the tenancy-by-the-entirety exemption is lost.

24. CAN DEBTS BE PAID BEFORE FILING BANKRUPTCY?

Under the bankruptcy law, payments made within 90 days of filing a bankruptcy petition are considered preferential payments to creditors, and the trustee can set aside the payments and require that the creditor return the payments to the bankruptcy estate.

Payments on debts owed to a debtor's relative, friend or company in which the debtor is an officer may be recovered by the trustee if the payments were made within one year of filing for bankruptcy protection.

Payments of debts that are secured by exempt property can be a good planning tool. Paying the debts on exempt property with money that would otherwise be lost in the bankruptcy will assure that the debtor will receive the exempt property.

25. CAN NONEXEMPT PROPERTY BE CHANGED INTO EXEMPT PROPERTY

PRIOR TO FILING BANKRUPTCY?

In a Chapter 13 proceeding, the importance of having exempt property is that the amount of payments to be made to each unsecured creditor is required to be at least equal to the amount that the unsecured creditor would have received had the debtor filed a Chapter 7 petition. The more exempt property in an estate, the less the debtor has to pay the unsecured creditors to receive a discharge.

In order to increase the value of exempt property in an estate, it is possible for a debtor to sell nonexempt property prior to filing bankruptcy and use the proceeds to purchase property that will be exempt upon filing of bankruptcy.

The determination on whether the bankruptcy court will permit the newly purchased property to be exempt depends on:

1. The debtor's motive. If the motive is to acquire assets to start over and be able to earn a living, the court will usually approve the change. Example: The sale of a boat to buy equipment to earn a living. Sales of the nonexempt property for extravagant or needless purchases might be set aside even though the purchased property might be exempt under the law. Example: Selling the boat to buy exempt jewelry.
2. The amount of nonexempt property converted into exempt property. If the debtor converts a large amount of nonexempt property into exempt property and thus leaves

the unsecured creditors largely unpaid, the court might refuse to approve the exemption of the newly acquired property.

The key in determining whether the conversion of property is valid is if the purpose and effect of the conversion violates the intent of the bankruptcy act to provide the debtor a reasonable opportunity to start over again. Generally, transmuted nonexempt assets into exempt assets prior to filing a bankruptcy petition are not set aside.

26. WHERE IS THE BANKRUPTCY PETITION FILED?

Every state has at least one bankruptcy court that handles the bankruptcy filings for the state. In larger states, the state is divided into districts with each district have its own bankruptcy court. In California, there are four district bankruptcy courts for the Northern, Southern, Eastern and Central Districts.

A debtor is required to file the bankruptcy petition in the bankruptcy court that covers the debtor's district. The address of the court can usually be found in the phone book under Federal Government. The forms used in the bankruptcy court are provided by the clerk of the bankruptcy court, this book and some stationary stores. Only approved bankruptcy court forms may be used. Every few years, the bankruptcy forms are updated which makes earlier forms obsolete.

27. WHAT IS THE AUTOMATIC STAY?

Once a debtor files for bankruptcy relief, all lawsuits and legal actions against the debtor, both public and private and including foreclosures on real property, immediately stop. No state court can thereafter issue a valid civil judgment against a debtor during the pendency of the bankruptcy proceeding without first obtaining the trustee's or bankruptcy court's permission.

Furthermore, harassment of a debtor by a creditor regarding collection of a debt that is listed in the bankruptcy is against the law. Anyone harassing a debtor over a debt covered in the bankruptcy petition may be found in contempt of federal court.

28. MAY A CREDITOR ASK THE COURT TO LIFT THE AUTOMATIC STAY?

The automatic stay lasts throughout the term of the bankruptcy unless the bankruptcy court lifts it at the request of a creditor. The stay must be lifted in order for a creditor to proceed with a foreclosure on any of the debtor's property or to resume any state judicial proceedings (lawsuits) against the debtor.

In order to lift a stay, a creditor must file a motion with the bankruptcy court. The motion must state the reasons behind the request to lift the stay; a hearing on the merits is then held by the court.

If the automatic stay is lifted, state court actions that had been stayed will continue from the point that they had stopped. Once the stay is lifted, state actions are then treated as though

the bankruptcy had not been filed.

29. WHAT ARE THE GROUNDS FOR LIFTING AN AUTOMATIC STAY?

The automatic stay is the prime tool in a bankruptcy. Without the automatic stay a debtor's assets might not be kept together long enough for the trustee to accomplish the purposes of the bankruptcy. For this reason, the bankruptcy court views carefully all motions to lift the automatic stay. A court will lift the automatic stay for any of the following reasons:

1. The issue to be tried does not affect the debtor's property, such as child custody.
2. The action stayed will ultimately occur anyway because the bankruptcy will not help the debtor on that matter. For an example, assume that there is a foreclosure on real property. If there is no way that the property can ever be paid, the court is likely to lift the stay rather than force the creditor to continue to endure losses without any chance for full repayment.
3. The creditor has a security interest in property which is being harmed by the stay. For example that payments are not being paid on rental equipment.
4. The debtor really doesn't have an ownership interest in the property. If the debtor owes more on property than it is worth, the court may lift the stay because there is no point in protecting property.

Once the court lifts the stay, the creditor can pursue state remedies against the debtor but any monetary judgment the creditor acquires is treated as an unsecured debt against the estate.

30. HOW CAN A REQUEST TO LIFT AN AUTOMATIC STAY BE OPPOSED?

The bankruptcy court will not lift an automatic stay if the debtor proves that the stay is needed to preserve the debtor's general economic conditions. If lifting the stay will harm the debtor more than it would if the stay remained in force, the court will usually refuse to lift it.

The most common arguments raised against lifting an automatic stay are:

1. The fair market value of the property that the creditor seeks released from the stay is greater than the amount owed on it. Thus the creditor is ultimately assured of being with the stay in effect.
2. The debtor is willing to post a bond or cash security to offset any diminution of value in the property the secured creditor wants released from the stay.

It is the burden on the part of the creditor to prove to the bankruptcy court that lifting the stay will not impede or hinder the goal of the bankruptcy code, which is to permit the debtor to start over again.

31. CAN A BANKRUPTCY FILING STOP AN EVICTION?

A Chapter 13 bankruptcy filing will temporarily stop the debtor's eviction from real property. The operative word though is temporarily. While filing bankruptcy petitions to deter evictions have become commonplace, most bankruptcy courts will lift the

automatic stay and permit the eviction to proceed.

An important exception exists when the debtor is involved in a long term lease or (in some cases) very favorable rent control. In such cases, the debtor can argue that the obligation to pay back rent will be discharged, and the future term of the lease is a valuable asset to the estate that the debtor wishes to affirm. If the court agrees, it will not lift the stay and will keep the lease in effect provided the debtor pays the new rent as it becomes due.

32. CAN A CREDITOR OBJECT TO A DISCHARGE?

A creditor may object to a discharge. The creditor may object to discharge of specific debts or all of the debts of the debtor. Usually the creditor making the objection is an unsecured creditor, a judgment creditor or a person holding a nonpurchase security interest on consumer goods.

Only the debts of the foregoing creditors can be discharged in a bankruptcy. The bankruptcy court lacks the power to discharge the debts of secured creditors. They will seldom object to a discharge of any of the above types because the discharge will not affect the secured debts that are not dischargeable.

Any objecting creditor must file the objection to the discharge of the particular debt or debts within 60 days of the meeting of creditors. The creditor's objection is filed in a form called a "Complaint to Determine Dischargeability of Debt." The complaint must be served (delivered to the debtor and the trustee). A creditor may challenge in a discharge of any of the following in

court:

1. Debts occurring as a result of a willful or malicious act (civil tort) that causes personal or property damage.
2. Debts incurred as a result of fraud (usually obtaining credit while intending to file for bankruptcy).
3. Debts arising from theft. No one is ever permitted to keep property obtained illegally.

The debtor must defend any objection to a discharge by filing a responsive pleading called an "answer" to the allegations in the complaint. A hearing is held with the court, ruling on the appropriateness of granting a discharge.

33. CAN A CREDITOR BE FORCED TO RETURN EXEMPT PROPERTY?

A creditor may be required to return property seized or foreclosed before a bankruptcy petition was filed that would be exempt if it were in the possession of the debtor if:

1. The property was seized within one year of the debtor's filing for bankruptcy protection,
2. The property can be claimed as exempt, and
3. No attempt was made to conceal the property from the creditor before it was seized.

The process for getting the property back may be too time consuming and bothersome to be worth it. A complaint has to be filed in the bankruptcy court against the creditor and served on the creditor and the trustee. The court then holds a hearing to determine if the property should be returned to the debtor.

34. CAN A CREDITOR COLLECT A DISCHARGED DEBT?

Once debt is discharged by the bankruptcy court, the debtor no longer has any legal obligation to pay it. Creditors are prohibited by law from attempting to collect debts that have been discharged by the bankruptcy court. There are unscrupulous collection agencies that attempt to collect discharged debts by threatening to file criminal complaints or otherwise harassing the debtor. These agencies are deliberately breaking the law and hope to intimidate the debtor into paying the discharged debt.

The debtor should inform the agency that the debt is discharged and that further harassment will result in a complaint being filed with the bankruptcy court and the trustee. If this threat doesn't stop the harassment, the debtor should inform the court and let the collection agency explain its misconduct to a federal judge.

35. CAN A DISCHARGE BE REVOKED?

A discharge can be revoked after the trustee or a creditor files a complaint but only on one of the following grounds:

1. The debtor obtained the discharge as a result of fraud that was only discovered after the discharge was granted by the court.
2. The debtor refused to inform the trustee of newly acquired property or omitted property from the estate.
3. The debtor intentionally refused to obey a bankruptcy

court order or refused to cooperate with the court's administration of the estate.

A revocation proceeding is a full adversary proceeding with a formal complaint being filed. The debtor is permitted to file a responsive answer to the allegations in the complaint. The court will hold a hearing on the merits of a complaint seeking to revoke the discharge. If the revocation is granted, the debtor remains liable for all of the debts as though the bankruptcy petition had never been filed.

36. CAN THE GOVERNMENT DISCRIMINATE AGAINST A PERSON
WHO HAS FILED A BANKRUPTCY PETITION?

The government, including all state and federal agencies, is precluded under the Bankruptcy Code from discriminating against anyone who files for bankruptcy protection. Specifically, no governmental agency may:

1. Deny a license or permit because the person filed bankruptcy.
2. Base hiring, firing or promotional decisions on the fact that a person filed bankruptcy.
3. Deny or terminate public benefits because of a bankruptcy.
4. Deny any state or federal contract to a person who filed bankruptcy.
5. Deny a driver's license because of a bankruptcy.

Basically, a debtor cannot be punished for exercising the legal

right to file bankruptcy. Therefore, once a governmental debt has been legally discharged, the debtor cannot be punished for filing bankruptcy.

37. IS PRIVATE DISCRIMINATION BASED UPON FILING BANKRUPTCY LEGAL?

The Bankruptcy Code protects a person who files bankruptcy from discrimination only in the field of employment. No employer can fire, transfer, demote or base hiring decisions on the fact that an applicant filed bankruptcy.

Except for employment, the Bankruptcy Code does not ban bankruptcy discrimination in any area of the private sector. Individual state law, however, may prohibit discrimination in private matters. California, for example, has the Unruh Act which prohibits arbitrary discrimination in business. Discrimination in business based solely on an individual's personal bankruptcy is arbitrary, unreasonable and prohibited.

Questions regarding bankruptcies in a credit situation are permitted as long as the questions are narrow and tend to deal with the ability to pay a loan or make payments. Example: Whenever real property is rented, the lessors routinely ask the person whether a bankruptcy had been filed. Courts have upheld the questioning since it relates to the credit worthiness of the applicant.

38. CAN CHAPTER 7 AND CHAPTER 13 PETITIONS BE USED TOGETHER?

Prior to the Bankruptcy Reform Act of 2005, bankruptcy courts would permit a debtor to file a Chapter 13 petition immediately after receiving a Chapter 7 discharge. By using this procedure, the debtor's dischargeable debts and the personal liability for any mortgages or trust deeds on real property were discharged. Foreclosure on real property in the estate was also stopped by the automatic stay in the bankruptcy or by making the payments under the sales agreement.

The Reform Act of 2005 stopped this practice. Now debts that were discharged in a Chapter 7 proceeding cannot be discharged in a subsequent Chapter 13 case.

39. WHAT IS THE HOMESTEAD EXEMPTION?

Usually, the most important exemption that a debtor may have is the homestead exemption. The homestead exemption permits the debtor to receive a fixed amount of money free from the claims of creditors upon the bankruptcy sale of a home.

Homestead exemptions vary from state to state. The following states base their homestead exemption on the size of the acreage of the home, not the amount of the debtor's equity: Arkansas, Florida, Iowa, Kansas, Minnesota, Oklahoma, South Dakota and Texas. In addition, the states Alabama, Hawaii, Louisiana, Michigan, Mississippi, Nebraska and Oregon base their exemptions on both lot size and debtor's equity. In these states then a certain amount of equity is permitted to be shielded from creditors if the lot size

is below a fixed size. The remaining states and the Federal government use a set amount for equity permitted to be shielded from creditors regardless of the size of the debtor's property.

A debtor should always take full advantage of the homestead exemption. It might even be advantageous for a person to move to another state before filing for bankruptcy to avail himself of that state's higher homestead exemption. However under the Reform Act of 2005, if a person moves to another state, he or she must now wait 730 days (2 years) before using the new state's homestead exemption. This is an increase from the previous period which was only six months.

After the Chapter 7 discharge is granted, the debtor proceeds to file a Chapter 13 bankruptcy petition. Under the plan adopted in the Chapter 13 proceeding, the debtor pays the remaining nondischargeable debts and the liens on the home. This procedure has been attacked in some courts as not a good faith use of Chapter 13, but there is no direct prohibition against it.

40. WHAT IS A MARITAL HOMESTEAD?

When both spouses file bankruptcy, each spouse is entitled to the full value of the homestead exemption under bankruptcy law. Permitting both spouses a full homestead exemption has been known as doubling because it obviously doubles the homestead exemption.

A few states have passed laws that prohibit doubling. In these

states, there is only one homestead exemption for the couple. A few other states have adopted laws specifically permitting doubling homestead exemptions. The rest of the states do not say either way, but given the fact it is being done, the implication is that it is largely approved. Therefore, a married couple should always investigate the possibility of filing for a double homestead exemption.

41. HOW DOES CONVERSION FROM A CHAPTER 7 TO A CHAPTER 13

PETITION AFFECT A FORECLOSURE ON A DEBTOR'S HOME?

A Chapter 7 bankruptcy petition calls for the liquidation of the debtor's home if the debtor's equity exceeds the homestead exemption. A Chapter 13 bankruptcy filing permits the debtor to pay the debts without having to sell the home even if there is nonexempt equity in it.

A Chapter 13 filing carries with it advantages:

1. It permits the debtor to spread missed payments, taxes and late charges over the period of the plan (three to five years).
2. If the lender had declared the entire amount due and payable and resorted to acceleration of the debt, the Chapter 13 filing will cancel the acceleration and permit the debtor to continue making normal payments.

A Chapter 13 conversion can be made at any time during the Chapter 7 proceeding. Therefore, the debtor has a great deal of discretion

in seeking to fashion the form of bankruptcy relief that will be granted by the Court.

42. WHAT IS THE EFFECT ON THE DEBTOR'S PENSION BY FILING A
CHAPTER 13 PETITION?

A pension, including an IRA, is an asset like any other in a bankruptcy and may not necessarily be exempt. The United States Supreme Court has held that a pension qualified under ERISA (Employee Retirement Income Security Act) is not part of a bankruptcy estate and therefore is not lost in a bankruptcy. A non-ERISA plan, however, is a bankruptcy asset and must be considered an asset available for paying unsecured creditors unless it is exempt under federal or state law.

Most pensions are qualified ERISA plans. The most notable exceptions to ERISA coverage are IRA's, SEP's and KEOGH's. For these pension plans to be exempt, they must be so under the debtor's state law. Consequently, state law must be consulted when pension plans are in the estate.

43. WHAT IS LIEN AVOIDANCE?

A debtor can make a motion to the bankruptcy court to eliminate or reduce any judicial or nonpurchase money liens on exempt property. After the motion is made, a hearing is held by the court, and the lien is reduced or eliminated if appropriate. The purpose in avoiding such a lien is to change the creditor from a secured creditor to an unsecured creditor, and thereby freeing the

exempt property from attachment by the creditor.

A judicial lien is a court order that certain property of the debtor can be taken to satisfy a judgment. A nonpurchase money security lien is an interest in property given by the debtor as collateral for a loan or other promised performance.

The following states either do not allow lien avoidance or seriously restrict it when the debtor uses their state exemption: Alaska, Connecticut, Florida, Kentucky, Louisiana, Maryland, Mississippi, Ohio, Tennessee, Texas, Utah and Washington. Yet, the United States Supreme Court recently struck down the Florida law banning lien avoidance, which means that the laws in the other states are likewise invalid.

44. WHEN CAN STUDENT LOANS BE DISCHARGED?

Often one of the largest debts that a person may have is one for student loans. If a student can be discharged a major source of concern for most debtors will be eliminated. The general rule is that most student loans are nondischargeable, and that they must be paid regardless of bankruptcy discharge.

As of January 1, 1999, there is only one exception to the bar against discharging students loans. Congress amended Section 523(a) 8 of the Bankruptcy Code so as to deny the discharge of student loans except in the presence of undue hardship that would be incurred as a result of the forced repayment of the student loans.

A bankruptcy court will permit a total or partial discharge of student loans if the repayment of the loan would cause undue hardship. In determining whether undue hardship exists, the court decides whether the facts of the individual case are such that the person should be excused from repaying the loan. Most bankruptcy courts rarely grant full discharge of student loans. Usually, the court will only discharge student loan payments as they become due. Unless the lender had accelerated the student loan (declared the entire amount immediately due and payable as the result of the debtor's failure to pay) usually only the student loan payments due at the time of filing the bankruptcy petition will be discharged.

45. CAN INCOME TAXES BE DISCHARGED?

Unpaid taxes is a major source of debt in most bankruptcy estates. Appropriate discharge of taxes is of great advantage to a debtor. The bankruptcy law allows federal, state and local income taxes to be discharged if the income taxes are over three years old and proper tax returns were filed for the tax years.

Taxes can even be dismissed if the debtor is negotiating with the IRS or even before the U.S. Tax Court if the debtor has waited 240 days after the tax was assessed (claimed owed by the I.R.S. or state taxing agency) before filing bankruptcy.

Tax penalties for failing to pay state or federal taxes are also dischargeable if the taxes to which they relate are dischargeable. Example: A debtor owes taxes and penalties on back

taxes that were two and five years old respectively and proper returns were filed. The debtor can discharge the taxes and penalties for the due taxes that are five years old but not for those that are two years old.

While income taxes may be dischargeable, most other taxes are not. The following taxes are not dischargeable: Social Security taxes, payroll withholding taxes, excise taxes and sales taxes.

46. ARE PROPERTY TAXES DISCHARGEABLE?

Any personal liability for the payment of property taxes can be discharged in bankruptcy if the taxes became due more than one year before filing for bankruptcy protection (as opposed to three years for income taxes). A discharge of personal liability is usually a non-issue because the tax lien on the property is not discharged. The government taxing entity can still seize and sell the property to pay the property taxes. The tax lien remains on the property until it is paid in full.

47. WHAT ARE DEBTS FROM WILLFUL AND MALICIOUS ACTS?

Debts from willful and malicious acts are not dischargeable if the creditor properly objects to the discharge. Willful and malicious acts cover both criminal and noncriminal actions that are deliberately designed or likely to cause injury or damage to another.

For noncriminal injuries caused by a debtor, determining if

the injury was caused by the willful and malicious act of the debtor is done on a case-by-case basis. On the other hand, when the damages are caused by one of the following intentional torts (civil wrongs), the debtor is found to have committed a willful and malicious act:

1. Destruction of another's property including the destruction of the property held as collateral for a security agreement.
2. Defamation of a person's character including both libel and slander.
3. Assault, battery or infliction of emotional distress on another.

Almost all injuries arising from a debtor's criminal conduct are considered by law to be the results of willful and malicious acts and are not dischargeable debts.

48. CAN THE AVERAGE PERSON HANDLE HIS OWN BANKRUPTCY PETITION?

The filing of a Chapter 13 bankruptcy petition, while not a "walk in the park," is nonetheless well within the ability of the average person. This book is designed to give the average person all of the information and instruction needed to handle his own bankruptcy competently. Essentially, the debtor files the petition, appears at the first meeting of creditors, appears for the hearing on the confirmation of the plan and afterwards makes the payments in accordance to the terms of the plan. If there are no surprises and the payments are all made, the discharge normally is automatic

without the debtor having to do anything more. A Chapter 13 bankruptcy is really just that simple.

49. WHAT DOES A BANKRUPTCY ATTORNEY USUALLY CHARGE?

As with all other legal services, the consumer (i.e. the client) should shop for a bankruptcy attorney with whom the client is comfortable both on a professional and financial level. Attorney fees for a routine Chapter 13 petition tend to vary between \$1,000 and \$2,500. Fees may be higher or lower depending on the expertise of the individual attorney. In addition, all attorneys charge an hourly rate for additional extraordinary work (such as opposing creditor petitions). The attorney fees have to be approved by the bankruptcy court regardless of what is stated in the fee agreement. An attorney cannot excessively overcharge from the norm.

There are "typing services" and "paralegal services" for bankruptcy advice and preparation of the bankruptcy forms. In most states, this is the practice of law and is technically illegal, but it is done. Use of these services is usually not a good idea because they are not regulated or tested for the quality of their legal advice and what they charge usually is not that much less than an attorney.

50. WHAT HAPPENS IF THE DEBTOR CANNOT COMPLETE THE PLAN?

If the debtor is unable to complete the plan, he has three options. The debtor can dismiss the case and be treated by the

creditors as having never filed the petition. The debtor will owe the creditors the amount that would have been owed had the Chapter 13 petition never been filed after taking into account any payments made through the plan.

The second alternative is for the debtor to convert the plan into a Chapter 7 filing. The debtor's estate will be liquidated, and the creditors paid in accordance with the bankruptcy law pertaining to Chapter 7 cases.

The last alternative is for the debtor to seek a partial discharge of the case. A partial discharge clears the debtor of all debts except:

1. Secured debts (debts secured by collateral or liens).
2. Debts paid outside of the plan and not a part of the plan.
3. Instalment debts whose last payment is due after the completion of the plan.
4. Debts incurred while the plan was in effect.
5. Debts not dischargeable under chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts.

CHAPTER 2

WHAT A CHAPTER 13 BANKRUPTCY AND THIS BOOK

CAN AND CANNOT DO

I. INTRODUCTION

A. WHO CAN FILE

Filing a Chapter 13 bankruptcy petition is a big deal. Before filing the bankruptcy petition, the debtor must understand what a Chapter 13 discharge will do and what it will not do.

A Chapter 13 petition is a reorganization of debts for individuals. The debtor creates a plan which must be approved by the court; some of the debts are discharged (in whole or part), and the remaining debts are paid over a period of time (usually three to five years). A Chapter 13 proceeding is commonly called a "reorganization," which is a correct name. A bankruptcy petition filed under Chapter 13 of the Bankruptcy Code permits the debtor to establish a payment schedule over a period of time (between three and five years) for the payment of unsecured debts. Those unsecured debts that are completely paid during the term of the plan will have their balances discharged. By comparison, a bankruptcy proceeding filed under Chapter 7 is a liquidation of the debtor's estate with the proceeds being distributed among the debtor's creditors.

What has to be borne in mind when considering the filing for bankruptcy relief is that as a result of the Bankruptcy Reform Act of 2005 a person must file a Chapter 13 petition for reorganization unless a means test shows that he or she is incapable of paying a small amount back to creditors. Many people will feel that filing Chapter 13 petition is not very beneficial if they still must pay a large amount back to creditors. This of course is what Congress wanted, a disincentive to file for bankruptcy relief.

In a Chapter 13 proceeding, the debtor's estate is not sold or liquidated. The debtor keeps all the assets of the estate. The Chapter 13 payment plan requires the debtor to pay the unsecured creditors a minimum amount equal to that which would have been received had the debtor filed a Chapter 7 bankruptcy petition. The dischargeable debts owed the debtor's unsecured creditors are thereafter discharged and forgiven to the extent they remain unpaid in the plan: The debtor will not have to pay them.

Not all debts are dischargeable in a bankruptcy proceeding, regardless of whether a Chapter 7 or a Chapter 13 petition is filed. A debtor should know what type of debts cannot be discharged. It is possible that a bankruptcy filing might not help a debtor because the majority of his debts may not be dischargeable. There are certain debts that Congress has made nondischargeable in bankruptcy as a matter of public policy. There are other debts that are nondischargeable only if the creditor objects. It is very important for a person considering filing for

bankruptcy protection to know what debts are dischargeable and what debts are nondischargeable. Filing a Chapter 13 petition may be of little assistance where most of a debtor's debts are nondischargeable. This chapter identifies and explains which debts are nondischargeable under the bankruptcy code.

B. THE PURPOSE OF THIS BOOK, AND WHO SHOULD USE IT

This book is designed to offer a practical, easy-to-understand and easy-to-use "How To" book for the average Chapter 13 proceeding. This book was written to be used by an individual for personal bankruptcy or by an individual engaged in a small service or retail business with few assets or inventory. A Chapter 13 proceeding permits the debtor to keep the bankruptcy estate as long as the debtor makes payments to the unsecured creditors which are at least equal to the amount that the unsecured creditors would have received had the debtor instead filed a Chapter 7 liquidation proceeding.

This book explains in detail the exemptions available to a person filing for bankruptcy protection. A person using this book will calculate the exemption available to that person and check the bankruptcy code to see if any new exemptions have been added. The amount of exempt property in an estate will generally determine the type of bankruptcy petition to file.

This book can easily be used by married couples, and in fact a joint filing by married couples provides the following advantages in the vast majority of cases:

1. The spouses are permitted to double (claim twice the state's permitted exemption amount) the exemption for specified exemptions In many states.
2. The cost is less than separate filings.
3. It is usually quicker to get a decision on a joint petition rather than two separate ones.

Yet there can be situations where filing jointly may not be best. Before filing a joint petition, a couple should consult an attorney specializing in bankruptcy and the bankruptcy code to determine any recent changes in the exemption law when the following exists:

1. The couple owns property with the title being taken in the name of tenancy-by-the-entirety. The title will be reflected in the deed of title document in the form "Jane Doe and John Doe, husband and wife as tenants by the entirety." In a few states property held as tenants in common will not be included in the estate of a spouse filing separately if the other spouse is not liable for the debt. This can be extremely important if the couple has such property. A consultation on this issue may cost \$250, but it can save tens of thousands of dollars in exempt property. Even with the consultation fee, it will still be cheaper for a person to prepare his own bankruptcy petition (See Chapter 6 for a fuller discussion).
2. The couple has ERISA qualified pensions. In recent years the United States Supreme Court has made several rulings that seriously affect the exemption for ERISA pensions. These exemptions are discussed in the Chapter on Pensions. In some circumstances it may be beneficial for a couple to move to another state and use the federal pension exemption and the federal homestead exemption there.

This book does not cover nor should it be used for the following matters:

1. Chapter 11 Reorganization. A business reorganization of debts is governed by Chapter 11 of the Bankruptcy Code. Such a bankruptcy uses an entirely different set of procedures. Through this type of bankruptcy, the business is allowed to continue operating while restructuring its debt.
2. Chapter 12 Farm Reorganization. Chapter 12 of the Bankruptcy Code is special reorganization that exists only for use by farmers. As with all reorganizations some debts are discharged and the payment schedules of others are altered. A farmer considering bankruptcy should consult a bankruptcy attorney to determine whether a Chapter 7 or Chapter 12 petition is best.

II. NONDISCHARGEABLE DEBTS

The Bankruptcy Code has 10 separate categories of debts which are non-dischargeable in a Chapter 7 or a Chapter 13 proceeding. Of the 10 categories, seven represent debts that cannot be discharged unless those debts fall into narrowly defined exceptions. The remaining three categories of debts are dischargeable UNLESS THE CREDITOR files timely objections to their discharge. Those nondischargeable debts are discussed below:

A. DEBTS NOT DISCHARGEABLE UNLESS

AN EXCEPTION EXISTS TAXES

Under section 523(a)(1), a debt is not discharged if it is:

"(1) For a tax or customs duty,

- (A) Of the kind and for the periods specified in section 507(a)(2) of this title, whether or not a claim for such tax was filed or allowed,
- (B) With respect to which a return, if required;

- (i) was not filed, or
 - (ii) was filed after the date on which such return was last due under applicable law or under any extension, and after two years before the date of the filing of the petition, or
- (C) With respect to which the debtor made a fraudulent return or willfully attempted in any manner to evade or defeat such tax."

a. INCOME TAXES

Generally, income taxes can be discharged provided the following conditions are met:

1. The taxes are over three years old,
2. The assessment for the taxes was made over 8 months prior to filing of the bankruptcy petition,
3. The tax return was timely filed, (for taxes relating to a late return, the tax debt is not excepted unless the required return was due, after any extensions, within two years of the filing), and
4. The debtor did not file a fraudulent return or wilfully attempt to avoid paying the taxes.

Under the bankruptcy code, tax assessments made against a debtor within 8 months of filing a bankruptcy petition are non-dischargeable even if the taxes are over three years old. The debtor must wait more than eight months after any tax assessment to be able to discharge those back taxes even if the other requirements for a valid discharge are met.

When all of the above conditions are met, the back taxes may be discharged. Penalties assessed for late filing or nonpayment are dischargeable if the taxes to which they relate are dischargeable. If the taxes are not dischargeable, neither are the penalties.

b. PROPERTY TAXES

Property taxes that are less than one year old are nondischargeable. Yet from a practical sense it makes no difference. Property taxes are almost always assessed against the property and not the owner. The taxing agency usually imposes a statutory tax lien against the property to secure payment of the lien (see Chapter 9, Lien Avoidance). Therefore, in truth of fact property taxes are not dischargeable because they must be paid if the debtor wishes to keep the property to which they are attached.

2. UNLISTED DEBTS

A creditor's debt will not be discharged pursuant to section 523(a)(3) unless the creditor was either duly listed as a creditor with the court or had actual notice of the bankruptcy filing. It is the clerk of the bankruptcy court who sends the notice of the bankruptcy filing to the creditors. A creditor who is not properly listed will not receive notice of the bankruptcy action and be unable to protect his interest.

The purpose of this exception to a discharge is obvious. There is an affirmative duty on the part of the debtor to notify the creditors of the bankruptcy. The bankruptcy system will not function as intended if debtors are permitted to exclude creditors and not give them an opportunity to participate in the proceeding. In addition, the discharge of any unnoticed creditor would probably be unconstitutional as a violation of due process.

If the creditor never had knowledge of the debtor's

bankruptcy, the creditor's debt is not discharged. The debtor then remains liable for repayment of the debt even though the other debts of the debtor have been discharged.

In the case of an omitted creditor, the debtor may petition the court to list the creditor. Reopening the case is rare, but the procedure is covered in the Chapter 13. Absent reopening the case, the debtor remains liable for repayment of the debts of any creditor who was omitted on the petition and had no knowledge of the action.

3. SPOUSAL AND CHILD SUPPORT

Under section 523(a)(5), court-ordered payments for the support of a child or former spouse are non-dischargeable. Yet there are variations on this theme of which a debtor must be aware. A debtor should consult an attorney where back child support is at issue because it might be a criminal act, not to have paid it, quite apart from the bankruptcy law.

Once a court orders a parent to make child support payments, the obligation to make those payments then becomes nondischargeable (In re Harrell 33 B.R. 989; 1983. The obligation to make child support payments ordered by a court is not discharged even if it is assigned to a state or governmental agency. If a county or state agency provides benefits to a family because of the debtor's failure to make court-ordered support payments, the state or other governmental agency is assigned the right to receive reimbursement. That right to receive reimbursement for the support payments made

by the state for the support of the debtor's child cannot be discharged (as it once was) by the debtor's subsequent bankruptcy.

The general rule is that claims of third parties for property or services provided for a child's support are dischargeable by a parent (*In re Lo Grasso*, 23 F.Supp. 340). There is, however, case law that holds that where a parent deserts or neglects the children, the debts for the property or services which have been provided by third parties are not dischargeable (*In re Meyers* 12 F.2d 938).

If there is be a court order requiring the support payments to be made the debt for child support to be non-dischargeable. All states have laws that impose a duty to support a child on the parent. In addition, the parent can be sued for the value of the child support provided by third parties. Yet these debts are dischargeable unless reduced to a judgment prior to the debtor-parent filing for bankruptcy protection. Example: A mother deserts her children and the father raises them. The father is entitled to reimbursement from the mother for her share of the child support. If the mother files for bankruptcy relief before the father gets a judgment for reimbursement, the obligation to reimburse the father for the back child support is discharged. If the father obtains a court order requiring the mother to reimburse him for the back support, the debt for back support is not dischargeable.

Spousal support, also known as alimony, requires either a

court order or an agreement obligating the debtor to make support payments to the spouse to make the payment obligation not be dischargeable. The debtor may agree to make spousal support payments through a marital agreement or a property settlement agreement, and such support payments are nondischargeable. Without either a court judgment ordering a debtor to make spousal support payments or an agreement requiring them to be made, the debtor's obligation to make support payments can be terminated in a bankruptcy.

Where parties are not married, unless the relationship qualifies as a common law marriage, the debtor may be discharged from any obligation to make support payments to the other party through a bankruptcy proceeding.

The Bankruptcy Act of 1994 amended the automatic stay under Section 362 to provide that collection of spousal or child support payments from property that is not property of the estate is not subject to the automatic stay. The 1994 Act also prohibited the automatic stay from blocking commencement or continuation of proceedings to enforce alimony and child support during the bankruptcy case. In a Chapter 13 case, property acquired during the life of the Chapter 13 plan is considered property of the estate. Under the Bankruptcy Act of 1994, child and spousal support claims now have priority over and are to be paid before general unsecured claims and even before tax claims. In addition, the Bankruptcy Act of 1994 prohibits both the trustee and the debtor from the recovery

of any property transferred to spouse or child in connection with a divorce or separation made within one year of the filing of the bankruptcy petition. Before this amendment, the trustee and the debtor were each permitted to avoid such payments made within a year of the bankruptcy filing as a creditor preference or a payment not supported by reasonable equivalent consideration.

Section 522 of the Bankruptcy Code was amended by the 1994 Bankruptcy Act to prohibit a debtor from being able to avoid a judgment lien on otherwise exempt property for child or support payments.

4. FINES, PENALTIES AND FORFEITURES

Section 523(a)(7) exempts from discharge those debts incurred as fines or penalties deriving from the debtor's violation of the law. This exception from discharge is firmly based on the belief that approving such a discharge would be an implicit approval of criminal or civil misbehavior. Therefore, all governmental sanctions, whether by a court or agency, for a violation of any rule, statute or law are not dischargeable.

The only penalties not completely excepted from discharge under this chapter are tax penalties if the tax itself can be discharged under section 523(a)(1) as discussed above. Some additional tax penalties can be discharged even if the tax is not dischargeable if the transaction giving rise to the tax occurred three or more years prior to the filing of the bankruptcy petition.

5. STUDENT LOANS

The general rule is that most student loans are nondischargeable, and that they must be paid regardless of bankruptcy discharge. As of January 1, 1999, there is only one exception to the bar against discharging students loans. Congress amended Section 523(a) 8 of the Bankruptcy Code so as to deny the discharge of student loans except in the presence of undue hardship that would be incurred as a result of the forced repayment of the student loans.

A bankruptcy court will permit a total or partial discharge of student loans if the repayment of the loan would cause undue hardship. In determining whether undue hardship exists, the court decides whether the facts of the individual case are such that the person should be excused from repaying the loan. Most bankruptcy courts rarely grant full discharge of student loans. Usually, the court will only discharge student loan payments as they become due. Unless the lender had accelerated the student loan (declared the entire amount immediately due and payable as the result of the debtor's failure to pay) usually only the debtor's student loan payments due at the time of filing the bankruptcy petition will be discharged.

In order to get a discharge for student loans, the debtor must convince the court that the debtor will suffer undue hardship from being required to make the payments on the student loan (In re Rice 4 C.B.C.2d 134; 1981). The second Circuit Court of Appeals (Brunner vs. New York State Higher Educational Service Corp. 831 F.2d 385;

1987) has stated that the debtor has to show all the following to prove undue hardship:

1. The debtor cannot maintain, based on current income and expenses, a minimal standard of living for self and dependents if forced to repay the loans,
2. Additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment of the student loan, and
3. The debtor has made a good faith effort to repay the student loans.

When the court is granting a discharge for undue hardship, the court may grant only a partial discharge of the student loans. It is rare that a court will grant a complete discharge based on undue hardship.

A special type of student loan is the Health Education Assistance Loan for use by those obtaining a medical education. This type of student loan was held not to be dischargeable unless the debtor could show a greater burden than just an undue hardship in being forced to repay the loan (In re Hines 15 C.B.C.2d 959 and Columbus College vs. Shore 707 F2d. 1337; 1983). For all intents and purposes, such loans should be considered and treated by a debtor as nondischargeable except in extreme cases.

6. DEBTS INCURRED FROM DRIVING WHILE INTOXICATED

Debts incurred as a result of an episode of intoxicated driving are not dischargeable under section 523(a)(9). If a debtor

is driving while intoxicated and causes an accident, the debtor can no longer avoid the liability of paying for the damages caused by the escapade by filing a bankruptcy petition. Prior to the enactment of this section, such debts arising from damages caused by intoxicated driving were dischargeable unless the debtor had been driving in such a reckless manner as to make the conduct almost willful and thus nondischargeable under section 523(a)(6) discussed below.

Now, the damages caused by a person's intoxicated driving will not be discharged if the following requirements are met:

1. The debt arose from a court decree or judgment against the debtor for damages caused by the debtor's intoxicated driving,
2. The court found the debtor to be legally intoxicated, and
3. The court rendering the judgment was a court in the state where the damage caused by the debtor's intoxicated driving occurred.

These requirements must be met in order for an intoxicated driving debt not to be discharged. In other words, a court for the state where the accident occurred must find the debtor legally drunk or under the influence of drugs and order the debtor to pay compensatory damages to the injured parties (fines payable to a state as punishment are already nondischargeable under paragraph 4 above).

Intoxication means that at the time of the incident, the debtor was operating the vehicle while under the influence of either alcohol or drugs to such an extent as to be unable to

operate it safely. In addition, many states have enacted laws that specifically make it a crime for a person to operate a vehicle with a blood alcohol level above a certain level. In California, for instance, the legal level above which no person can operate a vehicle is a blood alcohol level of .08%. A person involved in an accident while having a blood alcohol level over the legal level is guilty of driving while intoxicated, and the resulting damages are not dischargeable.

Generally, if a debtor files for bankruptcy relief prior to a state court issuing its judgment, the debtor's debts are discharged. Yet some courts will not discharge drunk driving debts if a judgment is obtained after the filing of the petition (In re Thomas 51 B.R. 187; 1985). The Ninth Circuit Court of Appeals (In re Hudson 859 F.2d 1418) denied a debtor's discharge for a drunk driving debt stating:

"Since enactment of Section 523(a)(9) bankruptcy courts have consistently held and litigants relying on those opinions have assumed that its language includes claims against drunk driver bankrupts reduced to judgment after commencement of the case. We are not inclined to disturb the consistent body of law which Congress apparently acquiesces."

A person with drunk driving debts that have not been reduced to a judgment should consult a bankruptcy attorney. It might be possible to avoid payment of the intoxicated debts by filing for bankruptcy relief prior to a state court judgment being rendered. This might mean having to move to a state whose federal bankruptcy disagrees with and is not governed by the above Ninth Circuit Court's case.

7. PREVIOUSLY UNDISCHARGED DEBTS

Under section 523(a)(10), if a debtor had an earlier bankruptcy petition dismissed in its entirety because of substantial misconduct or fraud by the debtor, none of the debts that could have been listed in that earlier dismissed case can be discharged in a subsequent bankruptcy case. In the same vein, if the debtor waived a discharge in an earlier case, the debtor cannot seek a discharge in a subsequent case as to that debt.

The exception to discharge under this section does not apply to technical dismissal of the earlier case. Example: Dismissals based upon a failure to pay a filing fee or a dismissal based upon the fact that a previous discharge had been obtained after six years.

B. DEBTS THAT WILL BE DISCHARGED UNLESS A CREDITOR OBJECTS

There are other Section 523 types of debts that may be nondischargeable under certain circumstances. These debts are:

1. Section 523(a)(2)(A) and (B). Debts deriving from fraudulent acts by the debtor.
2. Section 523(a)(2)(C). Debts for luxury goods in excess of \$1,000 and cash advances incurred within 60 days of the bankruptcy filing by the debtor.
3. Section 523(a)(6). Debts deriving from the debtor's willful or malicious acts which injure another person or cause damage to another's property.
4. Section 523(a)(4). Debts deriving from a debtor's breach of a fiduciary relationship, embezzlement or larceny.

Under 523(c)(1), the debts will be discharged unless the creditor files an objection with the court seeking to have the above debts declared nondischargeable.

Condominium common charges which accrue while the debtor is living on the property or subletting are not dischargeable.

Bankruptcy Rule 4007(c) governs the procedure by which a creditor may object to the discharge of any of the above debts. Rule 4007(c) requires the creditor who holds the debt to file a complaint seeking to have the debt declared nondischargeable within 60 days of the first meeting of creditors in order to have any of the above debts declared nondischargeable. If the creditor does not file this complaint within the allotted time, the debts will be discharged.

1. FRAUDULENT DEBTS

What constitutes a fraudulent debt is liberally construed. The operative word is fraud. By definition fraud is the intentional making of a misrepresentation (false statement) about a material fact on which another party reasonably relies to his detriment. If a debtor tricks another person of cash or property by false statements, that is a fraud.

Fraud also includes obtaining loans by making false statements, such as obtaining a loan based on false statements of credit worthiness. Fraud also exists whether the debtor obtained property by false pretenses, such as agreeing to hold property for another but instead taking the property for one's own use.

The most common type of fraud involves credit cards. A court will not permit a discharge of credit card bills if they were incurred with the deliberate intent to have them discharged in

bankruptcy. It is a common misconception that credit card debts are always dischargeable. Consequently, debtors will max their cards (charge to the maximum of the line of credit) prior to filing for bankruptcy relief. The court will not discharge the charges that are out of the ordinary. Example: Mary normally charges \$500 per month and has a \$5,000 line of credit. Mary charges \$5,000 on the card one week before files her bankruptcy petition. The creditor can object to the discharge of the credit card debts because it is clear from the facts that Mary deliberately made the charges with the intent to have the debt discharged.

Fraud requires an intent to deceive at the time the contract or representation is made. If a debtor enters a contract with the intent of performing it, there is no fraud and debt for failure to perform the contract is dischargeable. On the other hand, if the debtor enters a contract with no intent of ever performing it, the debtor is not discharged from paying those debts deriving from the breach of the contract or misrepresentation.

2. DEBTS FOR WILLFUL AND MALICIOUS ACTS

A debt deriving from a willful or malicious act that injures another person or property is not dischargeable if the creditor objects. A crime that injures a person or property is a willful and malicious act under bankruptcy code, and the debts deriving are not dischargeable. Example: A debtor attacks an innocent person and puts the victim in the hospital. The debtor's liability to pay the medical bills is not discharged by a bankruptcy. Also as

discussed earlier, debts incurred from damages caused by the debtor's intoxicated driving have been held by some courts not to be dischargeable regardless of whether or not they can be discharged under section 523(a)(9).

Debts that do not derive from criminal acts may nonetheless be nondischargeable if the act was malicious. To be malicious, the act must be one that a reasonable person would believe to be highly likely to cause injury to another or property. Example: The reckless operation of a power saw that cuts another person. There was no intent to cause the injury, but a reasonable person could see that playing with a power saw could cause that injury. The damages caused by the reckless operation of the saw are not dischargeable.

3. EMBEZZLEMENT, LARCENY OR BREACH OF A FIDUCIARY DUTY

Larceny and embezzlement are just different forms of theft. If the debtor steals property from a fiduciary position of trust, it is embezzlement. If the debtor steals the property from people at large, it is larceny. In either case, the debts deriving from the thefts, either the obligation to pay for the property or to return it, are not discharged by the bankruptcy if the creditor objects. This seems rather straight forward. Otherwise, a person stealing a million dollars would not have to pay it back.

A fiduciary duty is the obligation imposed by law on a person in a position of trust to act reasonably. A fiduciary is liable for any damages caused by the breach of this duty to act reasonably.

If the fiduciary acts irresponsibly and injures the person required to be protected, the debts deriving from the breach of duty are not discharged. Example: A person is the guardian of another and invests that person's assets in risky investments (in which a reasonable person would not invest). The guardian is liable to replace any losses. The debts for breach of a fiduciary duty will not be discharged provided the creditor (the person injured or the representative) objects.

CHAPTER 3

STEPS IN A BANKRUPTCY ACTION

A Chapter 13 bankruptcy proceeding is methodical, procedural and entirely predictable. The steps begin with finding the correct court and end with receiving the final discharge. Throughout, the case is a logical progression from one step to another. Once the debtor understands the steps that will occur in the ordinary Chapter 13 case, the debtor will appreciate the orderly nature of the bankruptcy procedure and feel be more at ease.

1. SELECTING THE PROPER BANKRUPTCY COURT

Every state has at least one bankruptcy court. Some states have divide into judicial districts and have a bankruptcy court for each judicial district. The debtor is required to file the bankruptcy petition with the bankruptcy court covering the debtor's home state. If there is more than one bankruptcy, he files with the court in whose judicial district he has lived the most in the last six months (in other words more than 180 days before filing the petition).

With more than one bankruptcy court in a state, the bankruptcy court closest to the debtor's home is probably the one where the debtor should file. A list of the bankruptcy courts is at the end of this chapter. To be sure that a court is the proper one, the

debtor can call the court and ask the clerk if the debtor's home is covered by that bankruptcy court.

II. GETTING THE RULES AND FORMS

Once the proper court has been determined, the debtor should call the clerk and ask the following questions:

1. If the debtor sends a check and a large self-addressed envelope, will they send the following to him:

- a. The local rules of court,
- b. A fee schedule for all court filings, and
- c. Copies of all local forms.

Many Courts have adopted their own local forms to be filed in addition to the official forms contained in this book. Those local forms will have be filed as well. Usually the local forms are merely information forms that are easy to complete.

2. Ask the clerk whether the court requires blue backing on the pleading and what must be typed on it. This information is also included in the local rules. Some courts, in order to make the petition more recognizable in a file cabinet, require that the petition be stapled to a stiff blue sheet of paper (obtainable from any office supply or art store) usually an inch longer than the petition. On the inch that overlaps the court usually requires the name of the case be typed. Most courts don't require a backing.

3. Ask the clerk whether the court uses the standard creditor matrix (the form with the many blocks). If not, the debtor will have to request it in the letter to the clerk.

The forms contained in this book are based upon the Official Bankruptcy Forms as prescribed by the Judicial Conference of the United States. These forms will remain valid for upcoming years even if there are changes made to them. Under the Bankruptcy Rules, as long as a form contains the basic information required on the official form, it can be used even though it has been superseded by another form. To be certain that the forms will be accepted, the clerk can be asked if the court will accept a specific form. If the answer is no, the reader will have to purchase the new official form from the court or a stationary or office supply store for about \$20.

Calculate the amount of money all this will require and send a check in that amount to the clerk in a self-addressed envelope. Given the work load of most courts, the reader should not be surprised if the line is busy or if the clerk will not answer questions (they do not have to do it). The alternative is to drive to the courthouse and get this information in person.

Each court can adopt its own rules of procedure within the confines of the Bankruptcy Code passed by the U.S. Congress and the Bankruptcy Rules adopted by the U.S. Supreme Court. Anyone filing a bankruptcy petition must comply with all rules and procedures adopted by the court in which the petition is filed. The debtor must get a copy of the local rules. Usually, the local rules are no more than a statement of the general bankruptcy rules. The advice in this book is directed for compliance with the general rules and

should usually comply with most local rules.

III. EMERGENCY FILINGS

There are occasionally situations where the debtor does not have the time to complete the full petition before some type of foreclosure act of a creditor occurs. Bankruptcy Rule 1007 (c) provides a possible method to file just the petition along with a list of creditors to get an immediate automatic stay.

The debtor will have 15 days to file the missing schedules and statements. If the omitted schedules are not filed within the 15 days, the court will dismiss the petition unless the debtor obtains an extension from the Court. If the petition is dismissed, the debtor can refile but will have lost the entire filing fee already paid.

The emergency filing requires that the debtor file at least the following:

1. The voluntary Chapter 13 petition, and
2. The list of all the creditors, as known by the debtor (especially listed must be the creditor whose collection is forcing the emergency filing).

The list of creditors must be put in the form approved by the local rules of court. Not all courts use the creditor matrix (the sheet with blocks for the typed names of creditors). Whatever form for the list of creditors the court requires is the form that the debtor must use.

IV. THE PREPARATION AND FILING OF THE PETITION

Once all the appropriate forms are obtained, the debtor

determines the size, manner and type of the debts in the estate. There is a worksheet for the debtor to list the assets and liabilities of the debtor's estate following this chapter to help in organizing the estate.

After completing the worksheet, the debtor can use it to determine what debts are nondischargeable and what debts are dischargeable. The debtor should review Chapters 2, 6, 7, 8, and 9 for the state of the law.

Once the debts have been divided into the various categories, the debtor can decide if there are any liens on exempt property which may be avoided (removed) in accordance with the Bankruptcy Code (see Chapter 9). Once the above decisions are made, the debtor is ready to complete the schedules, the statement of intention and summary of debts and property.

The remaining acts to be done prior to filing are completion of the creditor matrix, statement of the debtor engaged or not engaged in business and cover sheets for the petition. When everything is complete, the debtor is ready to file the petition (see Chapter 4).

The total filing fees are payable in full at the filing. It may seem a bit strange that a bankrupt debtor must find the filing fee somewhere in order to seek relief under the bankruptcy code. Bankruptcy Rule 1006(b)(1) permits a debtor to pay the fee by installments over four months if the court approved Application to Pay Filing Fee in Installments is filed with the petition. No

installment plan will be given to a debtor who has previously paid an attorney for consultation or assistance in preparing the bankruptcy petition. The Official Form 3: Application to Pay Filing Fee in Installments is included in this book.

V. MEETING OF CREDITORS

Soon after the petition for bankruptcy is filed with the court, the clerk of the court will schedule a meeting of creditors. The clerk will send notice of the hearing to all of the creditors named in the petition. Even though the court will notify the creditors of the bankruptcy, the debtor should send a letter immediately to the creditors informing them of the bankruptcy petition, the court where it was filed and the case number.

The purpose behind the debtor giving this notice is simply to avoid possible hassles. Under the bankruptcy law, once the debtor files the bankruptcy petition, there is an automatic stay on debt collection and foreclosure proceedings against the debtor. Yet unless a creditor knows of the bankruptcy, collection proceedings may go forward. Even though they will be subsequently set aside, there's no reason to go through the hassle and bother of doing so when a quick letter from the debtor early in the case would prevent that from happening.

Shortly after the petition is filed, the court appoints the trustee to handle the case. The trustee will preside over the creditor meeting. The judge will not be there. The trustee and then

the creditors will question the debtor about the location of property in the estate and the debtors intent to set aside any liens on secured property.

VI. TRUSTEE'S MANAGEMENT OF THE ESTATE

Once a Chapter 13 bankruptcy petition is filed, the bankruptcy court appoints a person called a trustee to handle the normal administration and management affairs of the debtor's plan. The trustee calls and oversees the creditors' meeting where the creditors examine the debtor discover the location of assets.

There is a hearing to confirm the debtor's Chapter 13 plan following the meeting of creditors. This hearing can be set by the court to immediately follow the meeting of creditors or may be set for another date. If the debtor files his proposed plan when he files his petition, the confirmation hearing will probably be held at the same time as the meeting of creditors.

Once the court has approved a debtor's plan, the trustee is responsible for receiving the debtor's payments as ordered by the plan. The trustee then makes the payments to the debtor's creditors pursuant to the court approved Chapter 13 plan. Generally, the trustee receives 10% of all payments as the Trustee's fee.

Payments under the plan must begin within 30 days after the filing of the plan with the court. The plan must be filed within 30 days of the filing of the Chapter 13 petition. The payments must be regularly made, usually on a monthly basis. Some bankruptcy courts will order an attachment of the debtor's wages to assure payments

are made under the plan.

These payments are then transmitted to the creditors in accordance with the payment schedule in the approved plan. The trustee also has the power to bring or defend lawsuits on behalf of the bankruptcy estate.

Once the plan has been completely fulfilled, the debtor is discharged of all dischargeable debts. If the plan cannot be fully completed, the debtor can seek a partial discharge for certain debts as discussed in Chapter 12.

VII. THE CHAPTER 13 PLAN

In a Chapter 13 proceeding, the debtor is required to submit to the court for approval a written plan for the payment of creditors. The plan must last for three years and may be extended to five years with court approval. The plan must provide payments to the unsecured creditors that will at a minimum equal the amount that they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13 petition. The debtor is not required to pay all of the unsecured debts.

To determine how much the unsecured creditors will receive, the debtor determines what property is exempt and what property is not exempt from unsecured creditors. The value of nonexempt unsecured property is totalled, and that is the minimum value that must be split among the unsecured creditors. Each unsecured creditor is given a minimum payment amount based upon that creditor's debt percentage of all creditors debts. Example: An

unsecured creditor is owed 10% of all unsecured debts. Then 10% of the value of the estate on the date of filing must be paid to the creditor. Since the payment schedule for the plan extends over several years (no more than five years), it is permitted to pay a creditor more than the minimum amount as long as each unsecured creditor receives at least as much as he would have received if a Chapter 7 petition had been filed at the beginning. To determine the minimum amount to pay the unsecured creditors, the debtor must first determine what property is exempt in the estate. The nonexempt property will then be used to calculate the amount to be paid to the unsecured creditors.

It is also permitted in a Chapter 13 proceeding to treat unsecured creditors differently. The Bankruptcy Code permits a debtor to establish classes of unsecured creditors and treat them differently with regard to the percentage of their debts which are paid. As long as the classes are established in good faith and with a legitimate reason, the debtor may pay the creditors of one class a higher percentage of their debt than creditors of another class.

The plan may also provide for the payment of secured debts as well as unsecured debts. Under the Bankruptcy Code, fully secured debts must be paid in full if they are included in the plan. If secured creditors are not fully paid in the plan, they can object, and no discharge will be granted as to their debts. A debtor is not required to deal with secured creditors in the plan and may continue to deal with them outside the plan. The main reason for

listing a secured creditor is to stave off a foreclosure. As long as the plan provides for the curing of a default and the resumption of normal payments in a responsible time, the court will prevent the secured creditor from proceeding with a foreclosure action. If the debtor cannot cure the default and resume payments within the plan, the court will release the debt from the automatic stay and permit the creditor to foreclose on the property. The debtor is required to pay interest on the debt of any creditor covered under the plan.

Secured creditors are treated in one of four ways. In the first instance, each secured creditor is given the option of accepting a proposed payment plan. This usually means that an agreeing secured creditor will be paid less than the creditor is actually owed under the security agreement.

Second, each secured creditor may reject the proposed payment plan and stand on his security instrument. The creditor must be completely paid within the term of the plan. The court will not approve any plan which will not pay an objecting secured creditor within the term of the plan. Interest must be paid on all secured claims handled in the plan.

In the third case, the debtor may surrender the collateral to the secured creditor holding a security interest on it. In such a situation, the secured creditor would become an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property.

The last way for a debtor in a Chapter 13 proceeding to deal with a secured creditor is to omit the creditor from the plan and continue to make the payments as required before the filing.

When dealing with secured creditors it is important to remember that a secured creditor's lien only extends to the fair market value of the security. If a secured claim is listed in the plan, the lien is discharged once the creditor receives the fair market value of the collateral, and the secured creditor becomes an unsecured creditor for any remaining unpaid balance.

A Chapter 13 payment plan must be approved by the bankruptcy court in order to discharge the debtor of unpaid portions of the debts. The procedure for obtaining court approval is straight forward. The debtor files the Chapter 13 petition and notice of the petition is given to the creditors, thereby placing an automatic stay on any collection actions by the creditors. The debtor then prepares and files the proposed plan with the court, and the court serves it upon the trustee and all the creditors.

A hearing date is then set for the confirmation of the plan. Any creditor having objections to the plan may file objections, and they will be heard at the hearing. As long as the unsecured creditors are paid the minimum amount they would have received if a Chapter 7 petition been filed and the debt is properly dischargeable, objections will be overruled and the plan approved.

A Chapter 13 plan is not final and can be modified by the court if the debtor shows good cause, such as a reduction in

earnings. The debtor may convert a Chapter 13 petition to a Chapter 7 liquidation at any time provided the debtor has not filed a Chapter 7 petition within the previous six years. In addition, the debtor may dismiss the Chapter 13 at any time prior to completion of the plan and thereafter be treated as though the bankruptcy petition had never been filed.

VIII. MOTION TO SET ASIDE A LIEN

The Bankruptcy Code gives the debtor the right to set aside judicial or judgment liens against exempt property. The procedure for setting aside a judicial lien calls for the debtor to file a motion with the court and give notice of the motion to the creditor possessing the lien.

A judicial lien is a lien placed against exempt property by a monetary judgment resulting from a lawsuit against the debtor. A judicial lien is quite different from a statutory lien created by operation of law. A statutory lien cannot be avoided by a debtor although it might under some circumstances be avoided by the trustee, usually not benefitting the debtor.

The procedure for avoiding a judicial lien is discussed in Chapter 9.

IX. CREDITOR'S MOTION TO SET ASIDE THE AUTOMATIC STAY

Once a debtor files for bankruptcy relief, there is an automatic stay on all proceedings against the debtor's estate. All lawsuits (including collection and repossession proceedings against the debtor) are automatically stayed for the duration of the

bankruptcy case. The automatic stay remains in effect against all of the debtor's creditors; although it can be lifted upon request by individual creditors under certain circumstances.

To get the automatic stay lifted the creditor must file a complaint to lift the automatic stay with the court and serve it on both the trustee and the debtor. The debtor is not required to file a response to the complaint unless the local rules require it. The creditor is required to convince the court that the automatic stay should be lifted as to that particular creditor. The debtor, whether a response is filed or not, must explain to the court why the stay should not be lifted.

After hearing both sides, the court will decide whether to lift the stay and permit a creditor to foreclose against secured property in the estate or maintain a lawsuit for damages against the debtor.

X. DISCHARGE HEARING

If the plan has been fully performed and no objections to discharge have been filed, most courts will not hold a discharge hearing because there is nothing to be accomplished by the hearing. Instead, the debtor is mailed an order stating that the final discharge is granted. The case is then over for almost all intents and purposes.

A complete Chapter 13 discharge is granted under section 1328 (a) and is broader than a Chapter 7 discharge. A discharge under section 1328(a) discharges the debtor from all but the following

debts:

1. Any debt not covered in the plan.
2. Debts for alimony or spousal support.
3. Student loans unless grounds for discharge are met.
4. Debts resulting from injuries caused while driving intoxicated.
5. Restitution for criminal offenses.
6. Debts in which the last payment is due after the date of the final payment of the plan, and
7. Postpetition debts that were not allowed under section 1305, also allowed postpetition consumer debts that required prior trustee approval that was practicable but not obtained, and
8. Priority claims, including tax claims, refund claims, wage claims, salaries, commissions and employee benefits that are dischargeable. Still, section 1322(a)(2) requires that priority claims be paid in full under the plan unless the creditor agrees otherwise: Priority claims usually must be paid in full under the plan.

If the debtor is unable to complete the plan, the debtor has three options. The debtor can dismiss the case and be treated by the creditors as having never filed the petition. The debtor will owe the creditors the amount that would have been owed had the Chapter 13 petition never been filed after taking into account any payments that were made through the plan.

The second alternative is for the debtor to convert the plan into a Chapter 7 filing. The debtor's estate will be liquidated, and the creditors will be paid in accordance with the bankruptcy law pertaining to Chapter 7 cases.

The third alternative is for the debtor to seek a partial discharge of the case under section 1328(b). A partial discharge relieves the debtor from all debts except:

1. Secured debts (debts secured by collateral or liens),
2. Debts paid outside of the plan and not a part of the plan,
3. Instalment debts whose last payment is due after the completion of the plan,
4. Debts incurred while the plan was in effect,
5. Debts not dischargeable under chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts.

To obtain a section 1328(b) discharge, the debtor must file a motion requesting a partial discharge. Upon filing the motion, at least 30 days notice must be given to the applicable creditors so they can file their objections to the partial discharge. A hearing is then held on the granting of the discharge. If no complaint is filed against the discharge, the debtor usually does not have to appear. If a complaint is filed, a hearing is held on the matter. To receive a section 1328(b) discharge, the debtor must have paid each unsecured creditor at least as much as the creditor would have

received had the debtor filed a Chapter 7 petition instead of the Chapter 13 petition.

XI. DEBTOR'S REOPENING OF THE ESTATE

The bankruptcy court has full discretion to reopen a case when good cause is shown. Any interested party, creditor, debtor or trustee may ask the court to reopen the case for cause (see Section 350[a]). There is no definition of cause. It is left to the court to decide when the circumstances of the case are such that the court feels that its sense of justice requires the case to be reopened.

There is no express time limitation for making a motion to reopen an estate for cause. The motion must state those facts giving rise for the reopening of the case. The court will hear the arguments, both pro and con, for reopening the case. After the hearing on the motion, the court will render its order. If the motion is granted, the order cannot be attacked in a collateral action.

The reopening does not automatically reinstate the trustee. A court will not reinstate the trustee unless it finds the reappointment to be necessary to protect the interests of both the creditors and the debtor or the trustee is needed to administer the estate.

Generally, it is difficult for a debtor to convince a court to reopen a case, the debtor must do everything possible to assure that all creditors and property are duly listed.

UNITED STATES BANKRUPTCY COURTS

ALABAMA

P. O. Box 1805, 122 U.S. Courthouse, Anniston, AL 36201,
205-237-5631

500 S. 22nd St., Birmingham, AL 35233, 205-731-1615

P. O. Box 1289, 222 Federal Courthouse, Decatur, AL 35601,
205-353-2817

P. O. Box 228265, Mobile, AL 36652, 205-694-2390

P. O. Box 1248, Suite 127, Montgomery, AL 36192, 205-832-7250

P. O. Box 3226, 351 Federal Building, 1118 24th Avenue, Tuscaloosa,
AL, 205-752-5966

ALASKA

P. O. Box 47, Federal Building, 701 "C" St., Anchorage, AK 99513,
907-271-5232

ARIZONA

U.S. Courthouse, 230 North First Avenue, Phoenix, AZ 85205, 602-
261-6965

2nd Floor, Acapulco Building, 120 W. Broadway, Tucson, AZ 85701,
602-629-6304

ARKANSAS

P. O. Drawer 2381, 600 W. Capitol, Little Rock, AR72203,
501-378-6357

CALIFORNIA

235 Pine St., San Francisco, CA 94104, 415-556-2250

99 South E Street, Santa Rosa, CA 95403, 707-5258-8539

1300 Clay St., #300, Oakland, CA 94604, 510-273-7212

280 South 1st St., #3035, San Jose, CA 95113, 408-291-7286

2656 U.S. Courthouse, 1130 "O" St., Fresno, CA 93721, 209-487-5217

312 N. Spring St., Los Angeles, CA 90012, 213-844-3118

222 E. Carillo St., Rm. 104, Santa Barbara, CA 93101

699 N. Arrowhead, #105, San Bernardino, CA 92401, 714-383-5717

137

P. O. Box 12600, Santa Ana, CA 92712, 714-836-2993
940 Front St., #5N26, San Diego, CA 92189, 619-557-5620

COLORADO

1845 Sherman St., 400 Columbine Building, Denver, CO 80203,
303-844-4045

CONNECTICUT

915 Lafayette Blvd., Bridgeport, CT 06604, 203-579-5808
Room 712, U.S. Courthouse, 450 Main St., Hartford, CT 06103, 203-
722-2733

DELAWARE

Lockbox 38, 844 King St., Federal Building, Wilmington, DE 19801,
302-573-6174

DISTRICT OF COLUMBIA

Room 1130, U.S. Courthouse, 3rd & Connecticut Aves., NW,
Washington, DC 20001, 202-535-7385

FLORIDA

Room 206A, 299 E. Broward Blvd., Ft. Lauderdale, FL 33301,
305-527-7224
P. O. Box 559, 24 U.S. Post Office & Courthouse, 311 West Monroe
St., Jacksonville, FL 32201, 904-791-2852
1401 Federal Building, 51 SW First Ave., Miami, FL 33130,
305-536-5216
598 Federal Courthouse Building, 80 N. Hughey Ave., Orlando, FL
32801, 305-648-6365
Room 3120, 227 N. Bronough St., Tallahassee, FL 32301, 904-681-7500
Room 708, 700 Twiggs St., Tampa, FL 33602, 813-228-2115
701 Clanatis St., West Palm Beach, FL 33401, 305-655-6774

GEORGIA

Room 1340, R.B. Russell Building, 75 Spring St. SW, Atlanta, GA
30303, 404-331-6490
P. O. Box 2147, 233 12th St., 904 Corporate Center, Columbus, GA,

31902, 404-527-1556

P. O. Box 90, 126 U.S. Courthouse, Macon, GA 31202, 912-746-2406

P. O. Box 2328, Newnan, GA 30264, 404-251-5583

P. O. Box 5231, Rome, GA 30161, 404-291-5639

P. O. Box 8347, 213 U.S. Courthouse, Savannah, GA 31412,
912-944-4105

HAWAII

P. O. Box 50121, New Federal Building, Honolulu, HI 96850,
808-546-2180

IDAHO

P. O. Box 2600, 304 N. 18th St., Boise, ID 83701, 208-334-1074

ILLINOIS

U.S. Courthouse, 219 S. Dearborn St., Chicago, IL 60604,
312-435-5587

P. O. Box 585, 302 Federal Building, 201 N. Vermilion St.,
Danville, IL 61832, 217-442-0660

P. O. Box 309, 750 Missouri Ave., 1st Floor, East St. Louis, IL
62202, 618-482-9365

Federal Building, 100 NE Monroe St., Peoria, IL 61602, 309-671-7035
211 S. Court St., Rockford, IL 61101, 815-987-4202

P. O. Box 2438, 327 U.S. Courthouse, 600 E. Monroe St.,
Springfield, IL 62705, 217-492-4550

INDIANA

352 Federal Building, Evansville, IN 47708, 812-465-6440

221 Federal Building, 610 Connecticut St., Gary, IN 46402,
219-981-3335

123 U.S. Courthouse, 46 E. Ohio St., Indianapolis, IN 46204,
317-269-6710

222 U.S. Courthouse, 204 S. Main St., South Bend, IN 46601-2196,
219-236-8247

IOWA

P. O. Box 4371, Federal Building & U.S. Courthouse, 1st Floor,

Cedar Rapids, IA, 52470, 319-399-2473

3118 U.S. Courthouse, Des Moines, IA 50309, 515-2184-6230

KANSAS

155 Federal Building, L812 N. 7th St., Kansas City, KS 66101,
816-374-4741

325 SE Quincy St., Topeka, KS 66683, 913-295-2750

401 N. Market St., Wichita, KS 67202, 316-269-6486

KENTUCKY

P. O. Box 1050, Lexington, KY 40588, 606-233-2608

414 U.S. Courthouse, 601 W. Broadway, Louisville, KY 40202,
502-582-5145

LOUISIANA

Room 301, 352 Florida St., Baton Rouge, LA 70801, 504-389-0211

Room C-104, 500 Camp St., New Orleans, LA 70130, 504-389-6506

252 Federal Building, Corner of Union & Vine, Opelousas, LA 70570,
318-948-3451

4A18 Federal Building, 500 Fannin St., Shreveport, LA 71101, 318-
226-5267

MAINE

P. O. Box 1109, 331 U.S. Courthouse, 202 Harlow St., Bangor, ME
04401, 207-945-0348

156 Federal St., U.S. Courthouse, Portland, ME 04112, 207-780-3482

MARYLAND

U.S. Courthouse, 101 W. Lombard St., Baltimore, MD 21201,
301-962-2688

451 Huntingford Dr., Rockville, MD 20850, 301-443-7010

MASSACHUSETTS

212 John McCormick, Post Office & Courthouse, Boston, MA 02109,
617-223-2937

512 Federal Building, 595 Main St., Worcester, MA 01601,
617-793-0518

MICHIGAN

P. O. Box X911, 100 Washington Bay City, MI 48707, 517-892-1506
1060 U.S. Courthouse, 231 W. Lafayette, Detroit, MI 48226,
313-226-7064

102A Federal Building, 600 Church St., Flint, MI 48502,
313-234-5621 ex 311

P. O. Box 3310, 792 Federal Building, 110 Michigan St., NW, Grand
Rapids, MI, 49501, 616-456-2693

221 W. Washington St., Marquette, MI 49855, 906-226-2117

MINNESOTA

416 U.S. Post Office & Courthouse, Duluth, MN 55802, 218-727-6692
204 U.S. Post Office, 118 S. Mills St., Fergus Falls, MN 56537,
218-739-4671

600 Galaxy Bldg, 330 Second Ave., So., Minneapolis, MN 55401,
612-349-5155

629 Federal Building, 316 N. Robert St., St. Paul, MN 55101,
612-725-7184

MISSISSIPPI

P. O. Drawer 867, Aberdeen, MS 39730--867, 601-965-5301

P. O. Box 1280, 231 Main St., Biloxi, MS 39533, 601-432-5542

P. O. Drawer 2448, Jackson, MS 39205, 601-965-5301

MISSOURI

U.S. Courthouse, 811 Grand Ave., Kansas City, MO 64106,
816-374-3321

730 U.S. Courthouse, 1114 Market St., St. Louis, MO 63101,
314-425-4222

MONTANA

Room 111, Federal Building, 400 N. Main St., Butte, MT 59701,
406-782-3354

Room 25, Great Falls Post Office Building, 215 First Ave. North,
Great Falls, MT 59401, 406-781-3811

NEBRASKA

P. O. Box 428 Downtown Sta., 215 N. 17th St., New Federal Building,
Omaha, NE, 58101, 402-221-4687

NEVADA

Room 300, U.S. Courthouse, 300 Las Vegas Blvd., South, Las Vegas,
NV 89101, 702-388-6257

4050 Federal Building & Courthouse, 300 Booth St., Reno, NV 89509,
702-784-5559

NEW HAMPSHIRE

275 Chestnut St., Manchester, NH 03101, 603-666-7532

NEW JERSEY

401 Market St., Camden, NJ 08101, 609-757-5023

970 Broad St., Newark, NJ 07102, 201-645-2630

U.S. Post Office & Courthouse, 402 E. State St., Trenton, NJ 08608,
609-989-2126

NEW MEXICO

P. O. Box 546, 9th Floor, 500 Gold Ave., Albuquerque, NM 87103,
505-766-2051

NEW YORK

P. O. Box 398, Albany, NY 12201-0398, 518-472-4226

75 Clinton St., Brooklyn, NY 11201, 718-330-2188

Room 310, U.S. Courthouse, 68 Court St., Buffalo, NY 14202,
716-846-4130

601 Veteran's Hwy, Mauppauge, NY 11787, 516-361-8601

Room 230, 40 Foley Square, New York, NY 10007, 212-791-0143

P. O. Box 1000, 176 Church St., Poughkeepsie, NY 12602,
914-452-4200

234 Federal Building, Rochester, NY 14614, 716-263-3148

311 U.S. Courthouse, Utica, NY 13501, 315-793-8176

1635 Privado Rd., Westbury, NY 11590, 516-832-8801

101 E. Post Rd., White Plains, NY 10601, 914-683-9755

NORTH CAROLINA

401 W. Trade St., Charlotte, NC 28202, 704-371-6103
P. O. Box 26100, Greensboro, NC 27420-6100, 919-333-5647
P. O. Drawer 2807, Wilson, NC 27834-2807, 919-333-5647

NORTH DAKOTA

P. O. Box 1110, Fargo, ND 58107, 701-237-5771 ex 120

OHIO

2 S. Main St., Akron, OH 44308, 216-375-5766
107 F.T. Bow Building, 201 Cleveland Ave. SW, Canton, OH 44702,
216-489-4426
735 U.S. Courthouse, 100 E. 5th St., Cincinnati, OH 45202,
513-684-2572
Room 427, U.S. Courthouse, Public Square & Superior Ave.,
Cleveland, OH 44114 216-522-7555

OKLAHOMA

Old Post Office Building, 7th Floor, 201 Dean A. McGee Ave.,
Oklahoma City, OK 73102, 405-231-5143
P. O. Box 1347, U.S. Post Office & Federal Building, Okmulgee, OK
74447, 918-758-0126
4-540 U.S. Courthouse, 333 W. 4th St., Tulsa, OK 74103,
918-581-7181

OREGON

P. O. Box 1335, 404 Federal Building, 211 E. 7th St., Eugene, OR
97401, 503-687-6448
900 Orbanco Building, 101 SW 5th Ave., Portland, OR 97204,
503-221-2231

PENNSYLVANIA

P. O. Box 1755, 314 U.S. Courthouse, Erie, PA 16507, 814-453-7580
P. O. Box 908, Federal Bldg, 3rd & Walnut St., Harrisburg, PA
17108, 717-782-2260
3726 U.S. Courthouse, 601 Market St., Philadelphia, PA 19105,
215-597-1644
4108 E. Shore Office Bldg, 45 S. Front St., Reading, PA 19602,

143

215-375-0930

217 Federal Building, 197 S. Main St., Wilkes-Barre, PA 18701,
717-826-6450

RHODE ISLAND

380 Westminster Mall, Federal Center, Providence, RI 02903,
401-528-4477

SOUTH CAROLINA

P. O. Box 1448, Columbia, SC 29202, 803-765-5211

SOUTH DAKOTA

Federal Bldg & Courthouse, 400 S. Phillips Ave., Sioux Falls, SD
57102, 605-336-9903

TENNESSEE

P. O. Box 1189, Corner of Martin Luther King Blvd. & Georgia Ave.,
Chattanooga, TN 37401, 615-266-2126

Ste. 1501, 15th Floor, Plaza Tower, Knoxville, TN 37929,
615-673-4525

P. O. Box 1527, Jackson, TN 38302, 901-424-9751

969 Madison Ave., #1200, Memphis, TN 38104, 901-521-3204

207 Customs House, 701 Broadway, Nashville, TN 37203, 615-736-5590

TEXAS

200 W. 8th St., Austin, TX 78701, 512-482-5237

521 Starr, Room 101, Corpus Christi, TX 78401, 512-888-3142

14A7 U.S. Courthouse, 1100 Commerce St., Dallas, TX 75242,
214-767-0814

P. O. Box 1349, Del Rio, TX 78840, 512-775-2021

511 E. San Antonio St., El Paso, TX 79901, 915-541-7810

504 U.S. Courthouse, Fort Worth, TX 76102, 817-334-3269

U.S. Courthouse, 515 Rusk Ave., Houston, TX 77002, 713-221-9590

C-110 Federal Building, 1205 Texas Ave., Lubbock, TX 79401,
806-743-7336

P. O. Box 10708, Midland, TX 79702, 915-683-2001

P. O. Box 191, Pecos, TX 79772, 915-445-4228

P. O. Box 1439, Post Office Building, 1615 E. Houston St., Alamo Plaza, San Antonio, TX 78295, 512-229-6720
211 W. Ferguson St., Tyler, TX 75702, 215-592-1212
P. O. Box 608, Waco, TX 76703, 817-756-0307

UTAH

350 S. Main St., Salt Lake City, UT 84101, 801-524-5157

VERMONT

P. O. Box 865, Opera House, Rutland, VT 05701, 802-773-0219

VIRGINIA

Suite 408 City Bank & Trust Building, 206 N. Washington St., Alexandria, VA 22314, 703-557-1716

P. O. Box 1326, Federal Building, Hansonburg, VA 22801,
703-434-8327

205 Federal Building, Lynchburg, VA 24505, 904-845-0317

P. O. Box 497, Newport News, VA 23607, 804-247-0196

414 U. S. Courthouse, Norfolk, VA 23510, 804-441-6651

P. O. Box 676, 1100 E. Main St., Room 324, Richmond, VA 23206,
804-771-2878

P. O. Box 2390, New Federal Building, 2nd St. & Franklin Rd. SW,
Roanoke, VA 24010, 703-982-6391

WASHINGTON

220 U.S. Courthouse, 1010 5th Ave., Seattle, WA 98104, 206-442-2751

P. O. Box 2164, U.S. Courthouse, Room 321, 904 W. Riverside Ave.,
Spokane, WA 92201, 509-456-3830

P. O. Box 1797, 224 Post Office Building, Tacoma, WA 98402, 206-
593-6310

WEST VIRGINIA

P. O. Box 3924, Charleston, WV 25339, 304-347-5114

P. O. Box 70, 12th & Chapline St., Wheeling, WV 26003, 304-233-1655

WISCONSIN

510 S. Barstow St., Eau Claire, WI 54701, 715-834-3941

P. O. Box 548, 120 N. Henry, Madison, WI 53701, 608-264-5178
216 Federal Building, 517 E. Wisconsin Ave., Milwaukee, WI 53202,
414-291-3293

WYOMING

111 S. Wolcott St., Casper, WY 82601, 307-261-5440
P. O. Box 1107, New Post Office & Courthouse, 2120 Capitol Avenue,
Cheyenne, WY 82003, 307-722-2191

BANKRUPTCY QUESTIONNAIRE

A. BACKGROUND INFORMATION

1. Name (include all other names once used i.e. maiden)

2. Address and Phone Number (home and business) _____

3. Employer's name, address and phone number: _____

4. Spouse's employer's name, address and phone number: _____

5. Occupation: _____

6. Spouse's occupation: _____

7. Social Security Number: _____

8. Spouse's Social Security Number: _____

9. Former military service (branch and dates of service):

10. Date and Place of Birth: _____

11. Name of Spouse: _____

12. Date and Place of Spouse's Birth: _____

13. Date and Place of Marriage: _____

14. Length of Residency in the State: _____

15. Previous marriages for each spouse: _____

16. Children: _____

17. Children of spouse (step-children): _____

18. Deceased Children: _____

19. Grandchildren: _____

20. Grandchildren of spouse: _____

21. Parents and addresses: _____

22. Parents of spouse and addresses: _____

B. PROPERTY

1. Real Property (for each piece of real property state):

a. (1) Type of property: _____

a. (2) Location of property: _____

a. (3) Holder and amount of liens on the property: _____

a. (4) Fair market value of the property not deducting for the liens:

a. (5) Date of purchase and original amount:

a. (6) How is title to the property taken? (What does it say on the deed - separate property, joint tenancy, tenancy by the entireties, tenancy in common?):

b. (1) Type of property: _____

b. (2) Location of property: _____

b. (3) Holder and amount of liens on the property: _____

b. (4) Fair market value of the property not deducting for the liens:

b. (5) Date of purchase and original amount:

b. (6) How is title to the property taken? (What does it say on the deed - separate property, joint tenancy, tenancy by the entireties, tenancy in common?):

c. (1) Type of property: _____

c. (2) Location of property: _____

c. (3) Holder and amount of liens on the property: _____

c. (4) Fair market value of the property not deducting for the liens:

c. (5) Date of purchase and original amount:

c. (6) How is title to the property taken? (What does it say on the deed - separate property, joint tenancy, tenancy by the entireties, tenancy in common?):

2. Bank Accounts (including savings and loans and credit unions):

a. Name, address and account number:

b. Name, address and account number:

c. Name, address and account number:

3. Stocks and Bonds:

a. Type and Company issuing: _____

b. Amount: _____

c. Date and manner of acquisition (purchase, gift or inheritance):

d. Fair Market Value: _____

e. Basis (purchase price or basis on date of gift or inheritance):

4. Insurance:

a. Type: _____

b. Group, term or whole life: _____

c. Company and policy number: _____

d. Amount: _____

e. Beneficiaries: _____

5. Safety Deposit Boxes:

a. Location: _____

b. Box number: _____

c. Contents: _____

6. Tangible personal property (list all property worth over \$100.00 such as jewelry, tools, cars, boats, etc):

7. Intangible personal property: (list all intangible property such as money owed, royalties, copyrights and other interests not previously listed:

a. Loans:

(1) (a) Name and address of debtor: _____

(1) (b) Amount of loan outstanding: _____

(1) (c) Security for loan (deed of trust, mortgage, collateral: _____

(2) (a) Name and address of debtor: _____

(2) (b) Amount of loan outstanding: _____

(2) (c) Security for loan (deed of trust, mortgage, collateral: _____

(3) (a) Name and address of debtor: _____

(3) (b) Amount of loan outstanding: _____

(3) (c) Security for loan (deed of trust, mortgage, collateral: _____

(4) (a) Name and address of debtor: _____

(4) (b) Amount of loan outstanding: _____

(4) (c) Security for loan (deed of trust, mortgage, collateral: _____

b. Other Interests:

1. Type of Interest: _____

2. Date and manner of acquisition (gift, purchase or inheritance): _____

3. Basis (purchase price or value or basis at time of gift or inheritance): _____

4. Pensions, IRA's, SEP's, Death and Retirement Benefits (list location, account number and amount of each plan or account): _____

5. Expectancies (list any property that is expected to be received in the future along with the source for inheritances, property settlements or insurance proceeds): _____

6. Debts and Liabilities (list all debts and liabilities along with whether or not the obligation is secured):

a. Secured debts:

(1) (a) Creditor and address: _____

(1) (b) Account number and outstanding balance: _____

(1) (c) Nature of Collateral: _____

(2) (a) Creditor and address: _____

(2) (b) Account number and outstanding balance: _____

(2) (c) Nature of Collateral: _____

(3) (a) Creditor and address: _____

(3) (b) Account number and outstanding balance: _____

(3) (c) Nature of Collateral: _____

b. Judgment Creditor:

b. 1. Case number and amount of lien: _____

b. 2. Property which lien attaches: _____

c. Unsecured debts:

c. 1. Debts owed under contractual or leasehold agreements:

c. 2. Pending lawsuits: _____

c. 3. Unsecured loans: _____

c. 4. Damages caused to others: _____

c. 5. Other liabilities: _____

C. BANKRUPTCY

1. Date and court where previous petition filed:

2. Type of bankruptcy (Chapter 7 or Chapter 13):

3. If a Chapter 13, has the plan been completed? If not what remains to complete the plan?

4. If a Chapter 7, are there any debts being redeemed ratified or affirmed in the bankruptcy action?

5. If married, has your spouse filed a bankruptcy petition? If so, where?_____

6. What property in the estate is exempt under the federal exemption?

7. What property is exempt under state exemptions?

8. What property and its value in the estate is not exempt?

9. What is the total of unsecured claims owed?

10. What is the total owed to each unsecured creditor?

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

11. What is each unsecured creditor's percentage in the estate? Divide each creditor's amount stated in number 10 by the figure in 9 (number 10/number 9)

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

12. What is the minimum amount that must be paid to each unsecured creditor? Multiply the percentage for each unsecured creditor as calculated in number 11 by the value of nonexempt estate listed in number 8.

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

Creditor: _____

CHAPTER 4

PREPARATION OF THE PETITION

I. INTRODUCTION

A Chapter 13 proceeding begins with the filing of a petition seeking relief under Chapter 13 of the Bankruptcy Code. A Chapter 13 petition is a formal document which consists of many schedules, statements and forms, all of which must be filed. The Bankruptcy Code requires all of its mandated official forms, even though some of the forms may not be applicable for a particular case. When a form contains a question which is inapplicable to a debtor, the debtor must nonetheless answer even if it means writing "N/A," "not applicable" or "none" where appropriate.

Sometimes a situation arises where the debtor needs immediate relief from the bankruptcy court. This situation usually arises where a debtor is facing an immediate or imminent foreclosure of property. An immediate filing is necessary to initiate the automatic stay provisions and stop the foreclosure or sale.

An emergency filing is accomplished through the use of Rule 1007(c). The petition and list of creditors are filed without the accompanying schedules. The schedules must be filed within 15 days or the debtor's bankruptcy petition will be dismissed. The debtor could refile again ,but that will mean paying a new filing fee.

Usually, an emergency filing is only necessary when a creditor is about to sell debtor's property that, was security for a debt or was an attachment to pay a court judgment.

Before the forms are prepared the debtor should complete the worksheet contained in this book and carefully review the material contained in this the book. He should pay particular attention to the discussion on exemptions, nondischargeable debts, lien avoidance, pensions and homestead in order to make the following determinations:

1. What schedule of exemptions will be used,
2. What property will be claimed as exempt,
3. What debts will be discharged, and
4. What debts secured by exempt property will be avoided.

These determinations must be made before the case can proceed.

The debtor must prepare an objective and a plan on how to proceed even before the petition can be prepared. Once the debtor has decided what the objective and the plan are, he is able to complete the forms. A bankruptcy proceeding is a statutorily created action; it is therefore procedurally governed by statute and is very technical in nature. If the proper forms are filed, no one objects, debts are not nondischargeable by law, and the debtor completes the plan, the court must grant the final discharge. The point to bear in mind is that the function of the bankruptcy court is to help the debtor, not the creditor. The Bankruptcy Code was enacted to help a debtor, heavily laden with debt, to start with a new life. A debtor should not be fearful and apprehensive over

the process.

Any mistakes that a debtor makes during the term of the plan can always be corrected before the court grants the final discharge. The debtor will not be punished for an innocent mistake. The biggest fear that a person has in filing his own petition is that some mistake will be made that will irreparably harm the case. Such a mistake cannot happen. The case is always under the management of the trustee and overseen by the court. Any mistakes that a debtor honestly makes can be corrected by filing amendments to the petition with the court before the final discharge. Mistakes uncovered after the final discharge can also be addressed through a motion to the court to reopen the case.

Self-employed debtors are usually permitted to continue to operate their business as set forth in section 1304. Without court approval a self-employed debtor who continues to operate a business cannot use, sell or lease "cash collateral" or obtain credit other than unsecured credit in the ordinary course of business. "Cash collateral" is cash, or it is property equivalent to cash in which a secured creditor has a security interest. Debtors continuing a business will be required to prepare and file any required business reports that the court, trustee, or government tax entity may require. In addition to filing a Chapter 13 petition, a debtor continuing a business must file a complete inventory of the business within 30 days of filing the petition unless the inventory was included in the petition.

Many bankruptcy courts have special local rules regarding debtors continuing a business. Local rules should be consulted before filing the petition if the debtor wishes to continue to operate a business. Unless the court rules otherwise, the trustee is required to make a report following an investigation on the debtor's business and the debtor's management.

The entire petition consists of the following forms:

1. The Voluntary Petition. This form specifically asks that the court grant the debtor a bankruptcy. It is little more than a cover sheet and the signature page for the petition;
2. The Application to Pay The Filing Fee in Installments. This form can only be used where the debtor has not paid an attorney or typing service for advice.
3. The Statement of Financial Affairs. This form simply gives the court the debtor's background so it can understand the financial situation afflicting the debtor.
4. Schedule A is a list of the debtor's real property along with any lien on it.
5. Schedule B is a list of the debtor's personal property along with its current market value.
6. Schedule C is a list of the property claimed as exempt by the debtor.
7. Schedule D is a list of the creditors holding secured claims
8. Schedule E is a list of the creditors holding unsecured priority claims.
9. Schedule F is a list of the creditors holding unsecured nonpriority claims.
10. Schedule G: Executory Contracts and Unexpired

Leases. This form is used to report all unexpired leases on either real or personal property.

11. Schedule H: Codebtors. This is a list of all persons who share liability with the debtor on the debts listed in the schedules.
12. Schedule I is a list of the current income of the debtor.
13. Schedule J is a list of the current expenditures of the debtor.
14. Summary of Schedules is just as the name implies, a summary of the foregoing schedules.
15. The List of Creditors. In many bankruptcy courts, the mailing matrix (the sheet of blocks) is used. Some courts use a different form for listing creditors. The debtor should ask the clerk or read the local rules to discover how the list of creditors is handled.
16. Notice to Consumer Debtor. The clerk is required to give notice of the different types of bankruptcy proceedings stated in the Bankruptcy Code. The debtor must sign the form and file it with the court.
17. Any special local forms. Each court has the authority to create any additional forms that it feels helpful in administering a case. The debtor should consult the local rules or speak with a clerk to determine if any special forms are employed by the court.

All of the above forms must be completed and filed with the court before the chapter 13 proceeding can commence. If all of the forms are not filed within a 15 day period, the court will dismiss the action. It is the filing of the Voluntary Petition along with the schedule of creditors that starts the case. An automatic stay immediately comes into effect to protect the estate of the debtor.

IMPORTANT NOTE: UNDER THE BANKRUPTCY CODE ALL PLEADINGS FILED WITH THE COURT MUST HAVE TWO STANDARD HOLES PREPUNCHED IN THE TOP IN ORDER FOR THE CLERK TO ACCEPT THEM FOR FILING. THE HOLES ARE REQUIRED SO THAT THE CLERK CAN PUT THE PLEADINGS IN THE FILE. (THE CLERK USE TO PUNCH THE HOLES). A punch can be purchased inexpensively at all office supply store. Also, most public libraries have such punches and would allow the public to them for the minutes or so it would take to punch the holes in the petition.

Following the filing of the petition, the clerk will schedule the creditors' meeting. At the creditors' meeting, the debtor will be examined to determine his assets and the debtor's intentions. After the creditor's meeting, the debtor will schedule any motions for lien avoidance.

The debtor must submit a plan for the payment of the debts to be administered by the court. If the plan is submitted to the court at the same time that the petition is filed, the court can set the hearing to confirm the plan to follow the meeting of creditors. This is a great convenience to the debtor because it relieves the debtor of having to make a second appearance before the court at a later date.

If the plan is not filed with the petition, then the hearing to confirm the plan will be held at a date after the meeting of creditors. Any creditor objecting to the plan has an opportunity to come forward to explain why the creditor feels the plan should not

be approved. As a practical matter, the objections of unsecured creditors will not prevent a plan from being approved if:

1. The unsecured creditors receive under the plan at least as much as they would have received had the debtor filed a Chapter 7 petition instead, and
2. The debts seeking to be discharged are not nondischargeable under the Bankruptcy Code.

Even if a debt is nondischargeable, the plan can nonetheless structure payments for that debt during the plan's term. If the debt is not fully paid in the bankruptcy proceeding, the debtor remains liable for payment of the balance after the plan has been completed.

In the same vein as nondischargeable debts are debts with priority claims. Section 1322(a) requires that a Chapter 13 plan provide for full payment in deferred cash of all priority claims unless the holder of the claim agrees otherwise (agrees to take less than the holder owes or agrees to take payments outside the plan or after the plan has been completed). Priority claims are defined under section 507(a) as being:

1. Administrative expenses such as the trustee's fee and the debtor's attorney fee,
2. Unpaid taxes,
3. Unpaid wages, salaries, commissions earned by the creditor within 90 days of filing the petition or of the date of cessation of the debtor's business (but only to the extent of \$4,000 per person),
4. Unsecured claims on contributions to employee benefit plans within stated limits,

5. Unsecured claims of \$2,000 or less per person on fishermen and persons engaged in raising grain,
 6. Unsecured claims of less than \$1,800 each on deposits for purchases, rentals or services which were not delivered.
- Priority claims are listed on Schedule E.

Once the plan has been approved, all that remains is for the debtor to make the payments ordered under the plan to the trustee along with costs of the plan. The major cost of the plan is the trustee's fee: Equal to 10% of all the money paid to the trustee. Because the trustee fee is based upon the amount of the money paid to the trustee, secured debts which are not in default are usually not included in the plan. In such a situation, the debtor makes the payments outside the plan and does not have to pay a 10% trustee fee for having the payments transmitted to the secured creditor. Where the debtor is in default of a debt with a secured creditor, the debt is handled in the plan so that the secured creditors cannot foreclose on the property securing the debt. In that instance, the debtor must pay the trustee fee on the payments going to the secured creditor pursuant to the terms of the plan.

If the plan has been fully performed and no objections to discharge have been filed, most courts will not hold a discharge hearing because there is nothing to be accomplished. The discharge is in this instance is basically automatic. Instead of holding a discharge hearing, the court simply mails an order to the debtor stating that the final discharge has been granted. The case is then over for all intents and purposes.

A complete Chapter 13 discharge is granted under section 1328 (a) and is broader than a Chapter 7 discharge. A discharge under section 1328(a) discharges the debtor from the obligation to pay all but the following debts:

1. Any debt not covered in the plan,
2. Debts for alimony or spousal support,
3. Student loans unless grounds for discharge are met,
4. Debts resulting from injuries caused while driving intoxicated,
5. Restitution for criminal offenses,
6. Debts for which the last payment is due after the date of the final payment of the plan, and
7. Postpetition debts that were not allowed under section 1305, plus allowed postpetition consumer debts, the prior trustee approval for which was practicable but not obtained,
8. Priority claims (including tax claims), refund claims, wage claims, salaries, commissions and employee benefits are dischargeable. Section 1322(a)(2) priority claims must be paid in full under the plan unless the creditor agrees otherwise. Priority claims usually are paid in full under the plan.

In the situation where the debtor is unable to complete the plan, he has three options. First choice, the debtor can dismiss the case and be treated by the creditors as having never filed the petition. The debtor will owe the creditors the amount he would have owed had the Chapter 13 petition never been filed less any payments made through the plan. A form for a "Motion to Dismiss a Case under Section 1307(b)" is included in Chapter 12.

Second alternative, the debtor can convert the plan into a Chapter 7 filing. The debtor's estate will be liquidated and the creditors paid in accordance with the bankruptcy law pertaining to Chapter 7 cases. A form for a "Notice for Conversion of A Case To Chapter 7" is included in Chapter 12.

Third alternative, the debtor can seek a partial discharge of the case under Section 1328(b). A partial discharge discharges the debtor from all debts except:

1. Secured debts (debts secured by collateral or liens),
2. Debts paid outside of the plan and not a part of the plan,
3. Instalment debts with last payment due after completion of the plan,
4. Debts incurred while the plan was in effect, and
5. Debts not dischargeable under Chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts. To obtain a Section 1328(b) discharge, the debtor must file a motion requesting a partial discharge. A form for a motion for partial discharge is included in Chapter 12.

Before completing a bankruptcy petition, if living with a person of the opposite sex, the debtor must disclose if a common law marriage exists. If a common law marriage does exist, it must be disclosed in the bankruptcy petition even if the other person does not join the bankruptcy petition.

Several states recognize common law marriages. If the couple live together as man and wife for a period of time continuously in

such a state (usually five years), the couple is legally married. A couple married by common law can file a joint petition. The states permitting common law marriages are:

Alabama	Colorado	Idaho	Kansas
Montana	Ohio pre 1991	Oklahoma	Pennsylvania
Rhode Island	S. Carolina	Texas	District of Columbia

If an unmarried couple live in a common law state and wish to file bankruptcy, they should check the law of the state to determine if they are legally married. If so, they can file jointly and usually save money and possibly increase their exemptions.

I. REQUIREMENT FOR CREDIT COUNSELING

Under the Bankruptcy Reform Act of 2005, for the first time, debtors are now required to seek credit counseling as a precondition for filing a bankruptcy petition be it chapter 7 or Chapter 13. Before filing a bankruptcy petition, the potential debtors are now required within 180 days preceding the filing to have received an individual or group "briefing" for credit counseling that assists the individual in performing a budget analysis. §109(h) The credit counseling may be by telephone and Internet briefings.

To prove that the counseling had occurred, the debtor must file with the Court a certificate from an approved nonprofit budget

and credit counseling agency describing the services provided to the debtor along with a copy of the debt repayment plan, if any. §521(b). The Bankruptcy law now requires that the Credit Counseling Agency provide adequate counseling with respect to a client's credit problems including analysis of such client's current financial condition, factors that caused such financial condition, and how the client can develop a plan to respond to the problems. §527 §528. The certificate is set forth below and included in the Official Forms included in this book.

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

DEBTOR'S CERTIFICATION OF COMPLETION OF INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

[Complete one of the following statements.]

☐ I/We, _____, the debtor(s) in the above-
(Printed Name(s) of Debtor and Joint Debtor, if any)
styled case hereby certify that on _____ I/we completed an instructional
(Date)
course in personal financial management provided by _____,
(Name of Provider)
an approved personal financial management instruction provider. If the provider furnished a
document attesting to the completion of the personal financial management instructional
course, a copy of that document is attached.

☐ I/We, _____, the debtor(s) in the above-
styled
(Printed Names of Debtor and Joint Debtor, if any)
case, hereby certify that no personal financial management course is required because:

[Check the appropriate box.]

- ☐ I am/We are incapacitated or disabled, as defined in 11 U.S.C. § 109(h);
☐ I am/We are on active military duty in a military combat zone; or
☐ I/We reside in a district in which the United States trustee (or bankruptcy administrator) has
determined that the approved instructional courses are not adequate at this time to serve the
additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: _____

Date: _____

Signature of Joint Debtor: _____

Date: _____

II. MEANS TESTING REQUIREMENT

The most unique feature of the Reform Act is the "means test." For the time in history, a debtor can only file a Chapter 7 bankruptcy petition if the debtor passes a means test. The test is designed to prove to the court that the debtor is so poor that it is unlikely that the debtor could make even marginal payments to the creditors. If the means test shows that the debtor is able to make some payments to the creditors then the debtor's petition for chapter 7 relief would be denied and only relief under a Chapter 13 petition would be available to the debtor.

There are really two tests which together determine if the Debtor is qualified to be permitted to seek Chapter 7 relief and thus may file a petition

A. MEDIAN INCOME TEST

The First test is simply to see if the Debtor's Current Monthly Income exceeds the State Median Income for a family of the same size. "Median" income for the purposes of this test means the income figures exactly in the middle for the state so that there are an equal number of incomes in the state that are higher and an equal number that are lower than the median income. The easiest way to grasp this concept is whether the debtor's family earns more than one half of the people in the state. If the debtor's family earns less than one half of the families of the same size

then the test is met. For example if there are 50,000 families of four (4) in the state and 25,000 earn more than \$6,000 per month and one half (25,000) earn less than \$6,000 per month then if the debtor's family earns \$4,500 per month, the debtor qualifies under this test. This is really a quite easy test to apply as the monthly income is set for each state for each family size and the debtor will either meet it or not.

Essentially if the excess income of monthly income remaining after deducting reasonable expenses leaves enough money to be able to give a meaningful dividend to unsecured creditors, then the test is not met.

B. MEANS TEST

After passing the first test, then the second test must be passed to be permitted to file a Chapter 7 petition. This is a means test to determine whether the Debtor's Current Monthly Income once reduced by allowed expenses would exceed a statutorily permitted amount permitted under the Act for a family of the same size. If it does not, then the Chapter 7 petition filing is approved. If the debtor's income as adjusted still exceeds the statutorily permitted amount then the Chapter 7 filing is denied. It is just that simple

The essential rules for the test are as follows;

1. If the Debtor's Current Monthly Income is less than the State Median Income, then there is NO presumption of abuse exists on which a dismissal can be based.
2. If the Debtor's Current Monthly Income is more than the State Median Income, but the Debtor's excess income is LESS than the amount allowed under the Means Test, NO Presumption of abuse exists on which a dismissal can be based. This situation would apply in a high income state where one half of the people earn lots of money and one half of people earn very little. In such an instance it would be possible for someone to earn more than one half of the people in the state and still be below the base line earning figure of the state.

Under the test, should the Debtor's Current Monthly Income is more than the State Median Income, AND the Debtor's excess income is MORE than the amount allowed under the Means Test, then a presumption of abuse exists on which a Motion to Dismiss can be based.

1. Current Monthly Income

The first step in applying the means test is to calculate the Debtor's "current monthly income." This is the average monthly taxable and non-taxable income from all sources, including income attributable to a non-filing spouse unless they are separated, except Social Security payments and certain payments to victims of war crimes or terrorism, including amounts paid on a regular basis by other entities for the household expenses of the debtor or the

debtor's dependents, that the debtor receives during the 6-month period ending on the last day of the calendar month immediately preceding the date of filing. If the debtor does not file the required schedule of current income then the dates for the 6-month period are determined by the Court. §101(10a)

2. State Median Income -

The next step in applying the test is to determine if the Current Monthly Income for the Debtor's family exceeds the State Median Income for a family of the same size. The Administrative Office of the U.S. Trustee will develop and maintain tables based on U.S. Census data showing median income for each state for households with up to four family members. For example, as of October 2004, the median income for a family of four in New York State is \$65,461. The lowest four person median income was in West Virginia at \$47,550, whereas the highest at \$82,406 was in New Jersey and the national average was \$62,732. §101(39A) Under the Act, households with more than four members will receive an additional \$525 per month per individual.

WHERE THE DEBTOR'S CURRENT MONTHLY INCOME DOES NOT EXCEED THE STATE MEDIAN INCOME, THERE IS NO NEED TO APPLY THE MEANS TEST AS IT IS AUTOMATICALLY SATISFIED.

WHERE THE DEBTOR'S CURRENT MONTHLY INCOME THEN THE MEANS TEST MUST BE APPLIED WHICH REQUIRES CALCULATING MONTHLY EXPENSES. The

means test is based upon disposable income. Such disposable income must be below the state median income to avoid the presumption of abuse. To determine the disposable income monthly expense must be deducted from the gross income to see if it still remains higher than the state median income.

Monthly expenses are defined in section 707 of the Reform Act. For 2005, the IRS National Standards for food, clothing, personal care and entertainment and set forth in the summary of the 2005 Bankruptcy Act in this book's Introduction.

3. DOCUMENTS REQUIRED TO BE INCLUDED IN A PETITION

Debtors must make sure that the following information is provided to the court in their petition or within 45 days following the filing.

- a. A certificate of the attorney or petition preparer or pro se debtor regarding the 342(b) notice;
- b. Copies of all "pay stubs" received within 60 days before the filing date;
- c. An itemized statement of monthly net income;
- d. A statement disclosing reasonably anticipated increases in income or expenditures over the 12-month period following the date of filing;
- e. A statement of intention with regard to secured debt
- f. A certificate from the approved credit counseling agency;

- g. A copy of the debt repayment plan, if any;
 - h. A record of any interest that the debtor has in an IRC 529(b)(1) or 530(b)(1) education individual retirement account or qualified State tuition program;
- §521(a)(b)&(c)

Failure by the debtor to file all of the required information within 45 days (plus up to an additional 45 days if granted by the Court) after the date of the filing of the petition, would result in the case being automatically dismissed on the 46th day.

Only if this test is met can a debtor file for Chapter 7 relief. If the test is satisfied, the debtor can go forward with filing the Chapter 7 petition by completing the forms below.

The Official Forms for the Means Test forms for Chapter 7 and Chapter 13 filings are set forth hereinafter.

Form B22A (Chapter 7) (10/05)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

☐ **The presumption arises.**

☐ **The presumption does not arise.**

(Check the box as directed in Parts I, III, and VI of this statement.)

STATEMENT OF CURRENT MONTHLY INCOME AND MEANS TEST CALCULATION
FOR USE IN CHAPTER 7 ONLY

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS

1	<p>If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Veteran's Declaration. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
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Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</p> <p>d. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>		Column A Debtor's Income	Column B Spouse's Income									
3	Gross wages, salary, tips, bonuses, overtime, commissions.		\$	\$									
4	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>		a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$											
b.	Ordinary and necessary business expenses	\$											
c.	Business income	Subtract Line b from Line a											
5	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 40%;">Gross receipts</td> <td style="width: 15%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rental income</td> <td>Subtract Line b from Line a</td> </tr> </table>		a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$											
b.	Ordinary and necessary operating expenses	\$											
c.	Rental income	Subtract Line b from Line a											
6	Interest, dividends and royalties.		\$	\$									
7	Pension and retirement income.		\$	\$									
8	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.		\$	\$									

9	Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:			
	Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	
				\$
10	Income from all other sources. If necessary, list additional sources on a separate page. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount.			
	a.		\$	
	b.		\$	
	Total and enter on Line 10			
				\$
11	Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).			
				\$
12	Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.			
				\$

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.	\$
14	Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	
	a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
15	Application of Section 707(b)(7). Check the applicable box and proceed as directed.	
	<input type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII.	
	<input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	Enter the amount from Line 12.	\$
17	Marital adjustment. If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT regularly contributed to the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	\$
18	Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.	\$

Part V. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
20A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size.	\$

	(This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).											
20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$										
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$										
c.	Net mortgage/rental expense	Subtract Line b from Line a.										
21	<p>Local Standards: housing and utilities; adjustment. if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>		\$									
22	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>		\$									
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$										
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$										
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.										
24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$										
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$										
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.										
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>											
26	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>		\$									

27	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
28	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 44.	\$
29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
30	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
31	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 34.	\$
32	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
33	Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 19-32

34	Health Insurance, Disability Insurance and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
		Total: Add Lines a, b and c		
35	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.		\$	
36	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.		\$	
37	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
38	Education expenses for dependent children less than 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$	
39	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$	
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40		\$	

Subpart C: Deductions for Debt Payment

42	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.			
	Name of Creditor	Property Securing the Debt	60-month Average Payment	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b and c.	\$
43	Past due payments on secured claims. If any of the debts listed in Line 42 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			
	Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b and c	\$
44	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.			\$
45	Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.			
	a.	Projected average monthly Chapter 13 plan payment.	\$	
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	
	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$
46	Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.			\$
Subpart D: Total Deductions Allowed under § 707(b)(2)				
47	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.			\$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$

52	<input type="checkbox"/> Initial presumption determination. Check the applicable box and proceed as directed.
	<input type="checkbox"/> The amount on Line 51 is less than \$6,000 Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.
	<input type="checkbox"/> The amount set forth on Line 51 is more than \$10,000. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.
	<input type="checkbox"/> The amount on Line 51 is at least \$6,000, but not more than \$10,000. Complete the remainder of Part VI (Lines 53 through 55).
53	Enter the amount of your total non-priority unsecured debt <div style="float: right; border: 1px solid black; width: 100px; text-align: center;">\$</div>
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result. <div style="float: right; border: 1px solid black; width: 100px; text-align: center;">\$</div>
55	Secondary presumption determination. Check the applicable box and proceed as directed.
	<input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.
	<input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.

Part VII: ADDITIONAL EXPENSE CLAIMS

56	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.															
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 60%;">Expense Description</th> <th style="width: 35%;">Monthly Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Total: Add Lines a, b and c</td> <td style="text-align: center;">\$</td> </tr> </tbody> </table>		Expense Description	Monthly Amount	a.		\$	b.		\$	c.		\$	Total: Add Lines a, b and c		\$
	Expense Description	Monthly Amount														
a.		\$														
b.		\$														
c.		\$														
Total: Add Lines a, b and c		\$														

Part VIII: VERIFICATION

57	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i>
	<div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> Date: _____ </div> <div style="width: 45%;"> Signature: _____ <div style="text-align: center; font-size: small;">(Debtor)</div> </div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;"> Date: _____ </div> <div style="width: 45%;"> Signature: _____ <div style="text-align: center; font-size: small;">(Joint Debtor, if any)</div> </div> </div>

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

☐ The applicable commitment period is 3 years.

☐ The applicable commitment period is 5 years.

☐ Disposable income is determined under § 1325(b)(3).

☐ Disposable income is not determined under § 1325(b)(3).

(Check the boxes as directed in Lines 17 and 23 of this statement.)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME														
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.			Column A Debtor's Income	Column B Spouse's Income									
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center; padding: 2px;">a.</td> <td style="width: 45%; padding: 2px;">Gross receipts</td> <td style="width: 50%; padding: 2px;">\$</td> </tr> <tr> <td style="text-align: center; padding: 2px;">b.</td> <td style="padding: 2px;">Ordinary and necessary business expenses</td> <td style="padding: 2px;">\$</td> </tr> <tr> <td style="text-align: center; padding: 2px;">c.</td> <td style="padding: 2px;">Business income</td> <td style="padding: 2px;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
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b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center; padding: 2px;">a.</td> <td style="width: 45%; padding: 2px;">Gross receipts</td> <td style="width: 50%; padding: 2px;">\$</td> </tr> <tr> <td style="text-align: center; padding: 2px;">b.</td> <td style="padding: 2px;">Ordinary and necessary operating expenses</td> <td style="padding: 2px;">\$</td> </tr> <tr> <td style="text-align: center; padding: 2px;">c.</td> <td style="padding: 2px;">Rental income</td> <td style="padding: 2px;">Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rental income	Subtract Line b from Line a												
5	Interest, dividends, and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$									
8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 40%; padding: 2px;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 30%; padding: 2px;">Debtor \$ _____</td> <td style="width: 30%; padding: 2px;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____												
9	Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%; text-align: center; padding: 2px;">a.</td> <td style="width: 45%; padding: 2px;"></td> <td style="width: 50%; padding: 2px;">\$</td> </tr> <tr> <td style="text-align: center; padding: 2px;">b.</td> <td style="padding: 2px;"></td> <td style="padding: 2px;">\$</td> </tr> </table>			a.		\$	b.		\$	\$	\$			
a.		\$												
b.		\$												
10	Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$	\$									
11	Total. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.			\$										

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	Enter the amount from Line 11.	
13	Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	
14	Subtract Line 13 from Line 12 and enter the result.	
15	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	Enter the amount from Line 11.	\$
19	Marital adjustment. If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.	
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$
22	Applicable median family income. Enter the amount from Line 16.	\$
23	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts IV, V, or VI.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)**Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)**

24	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
25A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	\$

25B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Housing and Utilities Standards; mortgage/rent Expense</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net mortgage/rental expense</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
26	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/> <hr/>	\$									
27	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Transportation Standards, Ownership Costs, First Car</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net ownership/lease expense for Vehicle 1</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 28.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Transportation Standards, Ownership Costs, Second Car</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net ownership/lease expense for Vehicle 2</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
31	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									

32	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
33	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 49.	\$
34	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
36	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 39.	\$
37	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
38	Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
				Total: Add Lines a, b, and c
40	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 34.		\$	
41	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.		\$	
42	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
43	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$	
44	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
45	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$	
46	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 39 through 45.		\$	

Subpart C: Deductions for Debt Payment

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt</th> <th style="width: 30%;">60-month Average Payment</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b, and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt	60-month Average Payment	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b, and c	\$
	Name of Creditor	Property Securing the Debt	60-month Average Payment																			
a.			\$																			
b.			\$																			
c.			\$																			
			Total: Add Lines a, b, and c																			
48	Past due payments on secured claims. If any of the debts listed in Line 47 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt in Default</th> <th style="width: 30%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b, and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b, and c	\$
	Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount																			
a.			\$																			
b.			\$																			
c.			\$																			
			Total: Add Lines a, b, and c																			
49	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$																				
50	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td>Total: Multiply Lines a and b</td> </tr> </tbody> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$											
a.	Projected average monthly Chapter 13 plan payment.	\$																				
b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x																				
c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																				
51	Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.	\$																				
Subpart D: Total Deductions Allowed under § 707(b)(2)																						
52	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 38, 46, and 51.	\$																				

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53	Total current monthly income. Enter the amount from Line 20.	\$
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
55	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.	\$
57	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, and 56 and enter the result.	\$
58	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 57 from Line 53 and enter the	\$

result. **Part VI: ADDITIONAL EXPENSE CLAIMS**

Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

59

	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
	Total: Add Lines a, b, and c	\$

Part VII: VERIFICATION

60

I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)

III. THE CHAPTER 7 PETITION

Once the mean test has been met, the debtor eligibility to file for chapter 7 relief is set. The debtor's entire chapter 7 petition will consist in addition to the above discussed forms the following forms:

1. The Voluntary Petition. This form specifically asks that the court grant the debtor a bankruptcy. It is little more than a cover sheet and the signature page for the petition.
2. The Application to Pay The Filing Fee in Installments. This form can only be used if the debtor has not paid a typing service for typing or an attorney for advice.
3. The Statement of Financial Affairs. This form simply gives the court the debtor's background to better understand the financial situation afflicting the debtor.
4. Schedule A is a list of the debtor's real property and any liens on it.
5. Schedule B is a list of the debtor's personal property and its current market value.
6. Schedule C is a list of the property claimed as exempt by the debtor.
7. Schedule D is a list of the creditors holding secured claims.
8. Schedule E is a list of the creditors holding unsecured priority claims.
9. Schedule F is a list of the creditors holding unsecured nonpriority claims.

10. Schedule G "Executory Contracts and Unexpired Leases." This form is used to report all unexpired leases on either real or personal property.
11. Schedule H "Co-debtors" is a list of all persons who share liability with the debtor for the debts listed in the schedules.
12. Schedule I is a list of the current income of the debtor.
13. Schedule J is a list of the current expenditures of the debtor.
14. Summary of Schedules is, as the name implies, a summary of the foregoing schedules.
15. The list of creditors. In many bankruptcy courts, the mailing matrix (the sheet of blocks) is used. Some courts use a different form for listing creditors. The debtor must ask the clerk or read the local rules to determine how the list of creditors is handled.
16. Any special local forms. Each court has the authority to create any additional forms it feels help in administering a case. The debtor should consult the local rules or speak with a clerk to determine what special forms are employed by the court.

IMPORTANT NOTE: THE BANKRUPTCY CODE REQUIRES THAT ALL DOCUMENTS TO BE FILED WITH THE COURT MUST HAVE STANDARD DOUBLE HOLES PUNCHED AT THE TOP FOR INSERTION INTO FILES. Documents without the pre-punched holes will no longer be accepted. The forms in this book have not had the double holes pre-punched into them because of the practical difficulty in doing so. A double hole punch can be purchased, inexpensively, at any stationary store.

Also, most public libraries will have double hole punches and will allow their use for the few pages of forms that must be punched.

When all of the above forms are completed, the petition is ready for filing. The bankruptcy proceeding begins once the petition is filed. The first thing that will happen is the automatic stay immediately starts to protect the estate of the debtor. Next the clerk will schedule the creditor's meeting. After the creditor's meeting the debtor will schedule any motions for lien avoidance or redemptions. If no creditor files an objection to discharge, and if the debtor seeks to reaffirm a debt a final discharge hearing will be scheduled. In the event a debtor does not seek to ratify a debt, a discharge will probably not be held. If after the discharge hearing, or if one is not held, the court grants the discharge (a court can only refuse a discharge based on cause). It will mail the order of final discharge for the dischargeable debts to the debtor within a few days. The whole bankruptcy process usually is completed within 5 months of the filing of the petition.

Several states recognize common law marriages. If a couple lives together as man and wife for a period of time (usually five years) continuously in these states, the couple is legally married. A couple married by common law can file a joint petition. The jurisdictions permitting common law marriages are:

Alabama	Colorado	Idaho	Kansas
Montana	Ohio (pre 1991)	Oklahoma	Pennsylvania
Rhode Island	South Carolina	Texas	District of Columbia

If a couple with no formal marriage license or certificate live together in a common law state and wish to file bankruptcy, they should check the law of the state to determine if they are legally married. If so, they can file jointly and usually save money and possibly increase their exemptions.

II. PREPARATION OF THE VOLUNTARY PETITION

The voluntary petition is the easiest form to complete. For each debtor filing for bankruptcy relief, type the following information in the appropriate boxes:

1. Name of the debtor. If married and filing jointly, the names of both spouses are placed in the appropriate boxes.
2. Residence and mailing address of each debtor.
3. Social Security Number of each debtor.
4. The address where most of the property of the estate is located.

The debtors must check the following boxes as appropriate:

1. The type of debtor (whether individual, a married couple filing jointly, a corporation or a partnership). This book is directed toward individuals and married couples petitioning bankruptcy; so one of those boxes should be checked.

2. The Chapter 7 box should be checked for the type of petition being filed.
3. If the debtor does not have an attorney representing, check the box stating debtor not represented by an attorney. The debtor should type N/A in the box entitled name and address of law firm or attorney.
4. The debtor must check the boxes estimating the amount of money that will remain for division to the creditors. The debtor must also check the appropriate boxes for the estimated value of the estate and the estimated amount of the debts owed (This information is obtained from the Summary Schedule that will be attached to the petition).
5. The debtor must check the venue stating that the debtor has resided in the judicial district of the court for over 90 days. This book is not directed toward petitions by a corporation or a general partner engaged in business; so the second box under the VENUE heading should not be checked.
6. If the debtor has filed a previous bankruptcy petition, even if later dismissed, it must be stated. Otherwise type N/A.
7. If a debtor's spouse or partner has a separate petition pending, it must be stated. Otherwise type N/A.
8. Each debtor will sign twice. The debtors will each sign as an individual along with any joint debtor also seeking a discharge in this action (usually a spouse). In addition, a debtor with primarily consumer debts (to whom this book is addressed) is required to sign under the statement that the debtor is aware that relief under Chapters 7, 11, 12, and 13 might be available but is

choosing to use Chapter 7. Signing here completes the Voluntary Petition.

A completed example for a bankruptcy under the laws of California is set forth for reference just to an idea as to how the information is reported. While some of the forms in the sample are for the pre-2005 Act, the changes in the forms are slight, often only being social security numbers and the current form follows so that a good idea can be obtained as how the completed form should appear.

Sample Petition

**For Reference Consult State and Federal Law For Exemptions
Available.**

FORM 1. VOLUNTARY PETITION

United States Bankruptcy Court <u>NORTHERN</u>				District of <u>CALIFORNIA</u>				Voluntary Petition	
Name of Debtor (if individual, use Last, First, Middle): SMITH, JOHN LESTER				Name of Joint Debtor (Spouse) (Last, First, Middle): SMITH, JANE ALICE					
All Other Names used by the Debtor in the last 6 years (include married, maiden, and trade names): NONE				All other Names used by the Joint Debtor in the last 6 years (include married, maiden, and trade name): NONE					
Soc./Sec/Tax I.D.No. (If more than one, state all): 291-52-7868				Soc./Sec/Tax I.D.No. (If more than one, state all): 524-45-7687					
Street Address of Debtor (No. & Street, City, State & Zip Code) 504 C LOW GAP ROAD UKIAH, CA 95482				Street Address of Joint Debtor (No. & Street, City, State & Zip Code) 504 C LOW GAP ROAD UKIAH, CA 95482					
County of Residence or of the Principal Place of Business: MENDOCINO				County of Residence or of the Principal Place of Business: MENDOCINO					
Mailing Address of Debtor (if different from street address):				Mailing Address of Debtor (if different from street address):					
Location of Principal Area of Business Debtor (if different from street address above):									
Information Regarding the Debtor (Check the Applicable Boxes).									
Venue (Check any applicable box) <input checked="" type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District. <input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.									
Type of Debtor (Check all boxes that apply) <input checked="" type="checkbox"/> Individual(s) <input type="checkbox"/> Railroad <input type="checkbox"/> Corporation <input type="checkbox"/> Stockbroker <input type="checkbox"/> Partnership <input type="checkbox"/> Commodity Broker <input type="checkbox"/> Other _____					Chapter or Section of Bankruptcy Code Under Which the Petition is Filed (Check one Box) <input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input checked="" type="checkbox"/> Chapter 13 <input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 Sec. 304 - Case ancillary to foreign proceeding				
Nature of Debts (Check one box) <input checked="" type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business					Filing Fee (Check one box) <input type="checkbox"/> Full Filing Fee attached <input checked="" type="checkbox"/> Filing Fee to be paid in installments. (Applicable to individuals only.) Must attach signed application for the court's consideration certifying that the debtor is unable to pay fee except in installments. Rule 1006(b). See Official Form No. 3.				
Chapter 11 Small Business (Check all boxes that apply) <input type="checkbox"/> Debtor is a small business as defined in 11 U.S.C. § 101 <input type="checkbox"/> Debtor is and elects to be considered a small business under 11 U.S.C. § 1121(e) (Optional)									
Statistical/Administrative Information (Estimates only) <input checked="" type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors. <input type="checkbox"/> Debtor estimates that, after any exempt property is excluded and administrative expenses paid, there will be no funds available for distribution to unsecured creditors.								This Space for Court Use Only	
Estimated Number of creditors 1-15 16-49 50-99 100-199 200-999 1000-over <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>									
Estimated Assets \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>									
Estimated Debts \$0 to \$50,000 \$50,001 to \$100,000 \$100,001 to \$500,000 \$500,001 to \$1 million \$1,000,001 to \$10 million \$10,000,001 to \$50 million \$50,000,001 to \$100 million More than \$100 million <input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>									

Voluntary Petition (This page must be completed and filed in every case.)		Name of Debtor(s): Form 1, Page 2	
Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)			
Location Where Filed: NONE		Case Number: Date Filed:	
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor: NONE		Case Number: Date Filed:	
District:		Relationship: Judge:	
Signatures			
<p style="text-align: center;">Signature(s) of Debtor(s) (Individual/Joint)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct.</p> <p>(If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7) I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.</p> <p>I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X JOHN LESTER SMITH</p> <hr/> <p>Signature of Debtor</p> <p>X JANE ALICE SMITH</p> <hr/> <p>Signature of Joint Debtor</p> <p>(650) 367-8739</p> <hr/> <p>Telephone Number (If not represented by attorney)</p> <p>MARCH 19, 2002</p> <hr/> <p>Date</p>		<p style="text-align: center;">Exhibit C</p> <p>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent harm to public health or safety?</p> <p>[] YES, and Exhibit C is attached and made a part of this petition</p> <p>[XX] NO</p> <hr/> <p style="text-align: center;">Signature of Debtor (Corporation/Partnership)</p> <p>I declare under penalty of perjury that the information provided in this petition is true and correct and that I have been authorized to file this petition on behalf of the debtor.</p> <p>The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.</p> <p>X</p> <hr/> <p>Signature of Authorized Individual</p> <hr/> <p>Printed Name of Authorized individual</p> <hr/> <p>Title of Authorized Individual</p> <hr/> <p>Date</p>	
<p style="text-align: center;">Signature of Attorney</p> <p>X</p> <hr/> <p>Signature of Attorney For Debtor(s)</p> <hr/> <p>Printed Name of Attorney for Debtors(s)</p> <hr/> <p>Firm Name</p> <hr/> <p>Address</p> <hr/> <p>Telephone Number</p> <hr/> <p>Date</p>		<p style="text-align: center;">Signature of Non-Attorney Petition Preparer</p> <p>I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.</p> <hr/> <p>Printed Name of Bankruptcy Petition Preparer</p> <hr/> <p>Social Security Number</p> <hr/> <p>Address</p> <hr/> <p>Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:</p> <p>If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.</p> <p>X</p> <hr/> <p>Signature of Bankruptcy Petition Preparer</p> <hr/> <p>Date</p> <p>A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.</p>	
<p style="text-align: center;">Exhibit A</p> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under Chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>			
<p style="text-align: center;">Exhibit B</p> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that (he or she) may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.</p> <p>X</p> <hr/> <p>Signature of Attorney for Debtor(s) Date</p>			

III. STATEMENT OF FINANCIAL AFFAIRS

This form is required to be completed by all debtors. An individual debtor engaged in business as a sole proprietor (the only type of debtor engaged in business that this book addresses) must provide all of the information requested concerning the business as well as that concerning the debtor's personal affairs.

Each question must be answered. If the answer is "none" or the question is not applicable, it must be so stated. The questions are written in such a way that their answers will furnish information. Both the court and trustee will use this furnished information to evaluate the debtor's eligibility to receive a discharge of debts. If more space is needed to answer the questions, continuation sheets may be attached.

Questions 1 through 15 must be answered by all debtors. Questions 16 through 21 are only to be answered by those debtors who have been engaged in business. A debtor is considered to be "engaged in business" if the debtor has been a sole-proprietor or self-employed within the previous two years and thus will have to answer questions 16 through 21.

If the debtor has been an officer, director or managing executive of a corporation or a general partner of a business within the previous 2 years, the debtor must also answer questions 16 through 21. This book was not written for use by such a debtor.

This book will not address the problems faced by such a debtor. This type of debtor should consult with a bankruptcy attorney.

QUESTION 1

Question 1 asks how much the debtor has earned from work (either employed or self-employed) within the previous two years. If more space is needed, the debtor can attach additional pages.

QUESTION 2

Question 2 asks what other sources of income other than business income the debtor has received during the previous two years. The income may be interest, dividends, inheritances, devises, etc. The purpose of this question is to make sure the debtor is not concealing assets.

QUESTION 3

Question 3 requires the debtor to identify all payments made to creditors within 90 days of the filing. The purpose for identifying these payments: the trustee may have the right to recover payments from the creditors. These recovered payments can be distributed among the debtor's unsecured creditors. This probably will not result in any more property being kept by the debtor.

QUESTION 4

Question 4 requires the debtor to list all lawsuits,

executions and garnishments involving the debtor within the previous year. The reason: the trustee may be able to recover any property paid pursuant to a court order or judgment during the previous year. This recovery will benefit unsecured creditors and will not result in any more property being kept by the debtor.

QUESTION 5

Question 5 requires all foreclosures, repossessions or voluntary surrenders of property involving the debtor within the previous year be reported. The reason: the trustee may be able to recover the property as an improper preference to creditors. This recovery will benefit unsecured creditors and not result in any more property being kept by the debtor.

QUESTION 6

Question 6 necessitates listing all assignments made to creditors within 120 days preceding the filing and all property that has been held by a custodian, receiver or court appointed officer within one year preceding the filing be reported. The reason: the trustee may be able to recover property as an improper preference to creditors. This recovery will benefit unsecured creditors and not result in any more property being kept by the debtor.

QUESTION 7

Question 7 requires the debtor to list all gifts made prior to the year of filing the bankruptcy petition that had greater value than the \$200 per family member and \$100 per charitable organization. The purpose: to ensure that the debtor has not dissipated the estate by making gifts to individuals (usually family members) who may later give it back.

QUESTION 8

Question 8 necessitates the debtor list all losses from theft and casualty within one year from the commencement of the case and after the commencement of the case. This question helps determine if the debtor is squandering the estate's assets or otherwise them by claiming they were stolen.

QUESTION 9

Question 9 relates to payments made for debt counseling including payments made to attorneys within one year of the filing. It might be possible for the trustee to recover such payments as estate assets and to use them to benefit of the unsecured creditors (which these people will become).

QUESTION 10

Question 10 requires the debtor to list any other transfer of property not previously listed, other than transfers in the ordinary course of business or as security within one year of the

debtor's filing for bankruptcy relief. It might be possible for the trustee to recover such property to benefit unsecured creditors (which these people will become).

QUESTION 11

Question 11 obliges the debtor to disclose all bank accounts, brokerage accounts, credit union accounts, pension funds, and all other financial accounts. This simply ensures that no assets are hidden or omitted.

QUESTION 12

Question 12 requires listing safe deposit boxes and their contents held within 1 year of the bankruptcy. The purpose: ensure the debtor is not concealing assets.

QUESTION 13

Question 13 requires the debtor to list any setoffs that creditors have applied against debts owed to them. A setoff occurs when a creditor reduces a debt by applying property or money owed to the debt or against it. For example assume that George owes the bank \$500, and the bank takes it from his checking account this is what is meant by a setoff. Under the bankruptcy law, setoffs made within 90 days of the debtor filing for bankruptcy relief may be recovered by the trustee. The trustee applies recovered property to pay the debts owed unsecured creditors.

QUESTION 14

Question 14 requires listing property held by another that the debtor owns or controls. The purpose: to prevent a debtor from giving property to another to hold or manage as directed by the debtor (such as a revocable trust) to remove it from the bankruptcy estate.

Such property is recovered by the trustee and placed in the bankruptcy estate to the extent it is not exempt.

QUESTION 15

Question 15. The debtor must list his prior addresses for the last two years. The purpose: simply background information for the trustee should he need to investigate the debtor.

QUESTIONS 16 THROUGH 21

Questions 16 through 21 are answered by a self-employed or a sole-proprietor within the previous two years. These answers also must be answered by debtors who have been general partners of a business, officers, directors, managing executives or owners of more than 5% of the securities of a corporation. This book does not address the particulars faced by such sophisticated debtors.

The trustee will use the answers to acquire more information to determine assets of the business that belong in the debtor's estate.

QUESTION 16

Question 16 requires the debtor to state the name, address and description of any business of the debtor as sole-proprietor or self-employed within the two previous years of the bankruptcy filing.

QUESTION 17

Question 17 requires the debtor to list all the bookkeepers and accountants of the business for the six years prior to the filing of the petition. The debtor is required to list anyone who has audited the books of the business within the two years prior to the filing of the petition. The debtor is also required to list every person and entity to whom a financial statement was given within two years prior to filing for bankruptcy relief.

The debtor requests copies of the audits and financial statements from these named people and entities. The trustee compares the information in the financial statements and audits with the books and records of the business.

QUESTION 18

Question 18 deals with the inventories of the business. The debtor is required to list the dates and values of the last two inventories. The inventory of the business is an asset of the estate of the debtor who is self-employed or a sole-proprietor.

The inventory is converted to benefit creditors by the trustee to the extent it is not exempt.

QUESTION 19

Question 19. The debtor must list each partner, officer or director of the business (if it is a corporation). For persons using this book, the answer should be no because no one who is a partner or shareholder of a corporation engaged in business should use this book. As seen by the questions asked so far, it should be clear that such businesses will have far more complicated problems than those of a self-employed person.

QUESTION 20

Question 20 requires the debtor to list each person who withdrew as a partner, officer or director of the business (if it is a corporation) within the year previous to the filing of the petition. For persons using this book, the answer should be "no" because no one who is a partner or shareholder of a corporation engaged in business should use this book. As seen by the questions asked so far, it should be clear that such businesses will have far more complicated problems than those of a self-employed person.

QUESTION 21

Question 21 requires debtor to list every withdrawal or distribution to any partner, officer or director of the business

(if it is a corporation) within 1 year of the filing of the debtor's petition for relief. For persons using this book, the answer should be "no" because no one who is a partner or shareholder of a corporation engaged in business should use this book. As seen by the questions asked so far, it should be clear that such businesses will have far more complicated problems than those of a self-employed person.

A sample completed Statement of Financial Affairs is set forth for reference purposes.

FORM 7. STATEMENT OF FINANCIAL AFFAIRS

UNITED STATES BANKRUPTCY COURT

NORTHERN

DISTRICT OF

CALIFORNIA

In re JOHN LESTER SMITH

(Name)

Case No. _____

(If known)

Debtor

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under Chapter 12 or Chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1-18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19-25. **Each question must be answered. If the answer to any question is "None," or the question is not applicable, mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101(30).

1. Income from employment or operation of business

None



State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtor's filing under Chapter 12 or Chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE (If more than one)

\$6,000

JANE SMITH'S JOB AS MANAGEMENT ASSISTANT

\$12,000

JOHN SMITH'S JOB AS A PLUMBER

2. **Income other than from employment or operation of business**

None ☐ State the amount of income received by the debtor other than from employment, trade, profession, or operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under Chapter 12 or Chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT	SOURCE
\$160.00	LOTTERY WINNINGS

3. **Payments to creditors**

None ☐ a. List all payments on loans, installment purchases of goods or services, and other debts, aggregating more than \$600 to any creditor, made within **90 days** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include income by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
PETER HOLLINGS	DECEMBER 1, 1998	\$547.14	\$68,000
1879 HOPEWELL	JANUARY 1, 1999	\$547.14	
UKIAH, CA 95482			

None ☒ b. List all payments made within **one year** immediately preceding the commencement of this case, to or for the benefit of, creditors who are or were insiders. (Married debtors filing under Chapter 12 or Chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR; RELATIONSHIP TO DEBTOR	DATES OF PAYMENTS	AMOUNT PAID	AMOUNT STILL OWING
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4. **Suits, executions, garnishments and attachments**

None ☐ a. List all suits to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT AND CASE NUMBER	NATURE OF PROCEEDING	COURT AND LOCATION	STATUS OR DISPOSITION
N:5687	LAWSUIT FOR COLLECTION OF MEDICAL BILLS	SUPERIOR COURT 100 MAIN STREET UKIAH, CA 95482	ORDERED TO PAY \$39,000

- None
☒ b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON FOR WHOSE BENEFIT PROPERTY WAS SEIZED	DATE OF SEIZURE	DESCRIPTION AND VALUE OF PROPERTY
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5. **Repossessions, foreclosures and returns**

- None
☐ List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller within **one year** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR OR SELLER	DATE OF REPOSSESSION, FORECLOSURE SALE, TRANSFER OR RETURN	DESCRIPTION AND VALUE OF PROPERTY
JACOB APPLIANCE 1499 EDISON AVENUE UKIAH, CA 95482	JUNE 15, 1998	REFRIGERATOR AND STOVE \$1,300

6. **Assignments and receiverships**

- None
☒ a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF ASSIGNEE	DATE OF ASSIGNMENT	TERMS OF ASSIGNMENT OR SETTLEMENT
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- None ☒ b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT: CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE OF PROPERTY
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7. **Gifts**

- None ☒ List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and unusual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under Chapter 12 or Chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
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8. **Loses**

- None ☐ List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under Chapter 12 or Chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
1987 TOYOTA CELICA	TOTALED IN AUTO ACCIDENT INSURANCE ONLY COVERED COLLISION	MARCH 3, 1998

9. **Payments related to debt counseling or bankruptcy**

None



List all payments made or property transferred by or on behalf of the debtor to any person, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT; NAME OF PAYOR IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
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10. **Other transfers**

None



List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **one year** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
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11. **Closed financial accounts**

None



List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None ☒ List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAME AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
AMERICAN SAVINGS BANK 700 S.STATE STREET UKIAH, CA. 95482	JOHN LESTER SMITH JANE ALICE SMITH	WILLS, MARRIAGE CERTIFICATES, DEED	NONE

13. Setoffs

None ☒ List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under Chapter 12 or Chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None ☒ List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None ☒ If the debtor has moved within the **two years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
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16. Spouses and Former Spouses

- None ☒ If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington or Wisconsin) within the **six-year period** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information

For the purposes of this question, the following definitions apply:

“Environmental Law” means any federal, state or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or materials into the air, land, soil, surface water, groundwater or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes or material.

“Site” means any location, facility or property as defined under any Environmental law, whether or not presently or formerly owned by the debtor, including , but not limited to, disposal sites.

“Hazardous material” means anything defined as a hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental law.

- None ☒ a. List the name and address of every site for which the debtor has received notice in writing by a government unit that it may be liable under or in violation of an Environmental law. Indicate the government unit, the date of the notice, and , if known the Environmental law.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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- None ☒ c. List all judicial proceedings, including settlements or orders, under any Environmental Laws with respect to which the debtor is or was a party. Indicate the name and address of the government unit that is or was a party to the proceeding and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
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18. Nature, location and name of business

None

☐

- a. If the debtor is an individual, list the names, addresses taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partnership, sole proprietorship, or was a self-employed professional within the **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities with the **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of the case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within the **six years** immediately preceding the commencement of the case.

NAME	TAXPAYER I.D. NUMBER	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
JOHN LESTER SMITH	291-52-7868	504 C LOW GAP RD UKIAH, CA. 95482	PLUMBING	JAN 1970 TO PRESENT

- b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. Section 101.

None

☒

NAME	ADDRESS
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The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within the **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or otherwise self-employed.

(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within the six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)

19. Books, records and financial statements

None

☐

- a. List all bookkeepers and accountants who within the **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
GABRIEL BOOKKEEPING 643 B. SOUTH MAIN UKIAH, CA. 95482	JUNE 1, 1983 TO PRESENT

None

☒

- b. List all firms or individuals who within the **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME AND ADDRESS	DATES SERVICES RENDERED
------------------	-------------------------

- None ☒ c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

- None ☐ d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued within the **two years** immediately preceding the commencement of this case by the debtor.

NAME AND ADDRESS

DATE ISSUED

**SAN FRANCISCO BANK
542 GOBBI
UKIAH CA 95482**

JANUARY 5, 2001

20. Inventories

- None ☒ a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT OF INVENTORY
(Specify cost, market or other basis)

- None ☒ b. List the name and address of the person having possession of the records of each of the two inventories reported in a. above.

DATE OF INVENTORY

NAME AND ADDRESSES OF
CUSTODIAN OF INVENTORY RECORDS

21. Current partners, officers, directors and shareholders

- None ☒ a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

- None ☒ b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

22. **Former partners, officers, directors and shareholders**

- None ☒ a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME	ADDRESS	DATE OF WITHDRAWAL
------	---------	--------------------

- None ☒ b. If the debtor is a corporation, list all officers or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS	TITLE	DATE OF TERMINATION
------------------	-------	---------------------

23. **Withdrawals from a partnership or distributions by a corporation**

- None ☒ If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other prerequisite during **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF RECIPIENT; RELATIONSHIP TO DEBTOR	DATE AND PURPOSE OF WITHDRAWAL	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
---	-----------------------------------	--

24. **Tax Consolidation Group**

- None ☒ If the debtor is a corporation, list the name and federal tax payer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within the **six year** period immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION	TAXPAYER IDENTIFICATION NUMBER
----------------------------	--------------------------------

25. **Pension Funds**

- None ☒ If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time with the **six year period** immediately preceding the commencement of the case.

NAME OF PENSION FUND	TAXPAYER IDENTIFICATION NUMBER
----------------------	--------------------------------

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Signature of Joint Debtor (if any) JANE ALICE SMITH

Penalty for presenting fraudulent claim: Fine of up to \$500,000, or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

IV. SCHEDULE A: REAL PROPERTY

Schedule A is simply a list of the real property in which the debtor has an interest. Leasehold interests of the debtor are not to be listed on this form. Leasehold interests are listed on Schedule G, Schedule of Executory Contracts and Unexpired Leases. The trustee will request the debtor furnish him copies of the deeds and other instruments that are necessary for the administration of the estate.

A description of the debtor's interest in the property is included in this form. Life estates as well as easements and covenants concerning land owned by another are listed. Real property in which the debtor has an interest are to be listed, showing the percentage of ownership. Another column is for use when a married couple files jointly; it offers space to show the owner of the property. If the property is owned by the husband a H is placed in the column, if it is owned by the wife a W is placed, if it is owned jointly a J is placed, or if owned as community property a C is placed in the column.

The debtor is also required to list the current fair market value of the property in one column and to list the value of any secured claim (loan, judgment lien or statutory lien) on the property in the last column. As an example, a completed Schedule A is set forth. All bankruptcy courts will use this form, and it will be completed in the same general manner as the example herewith.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE A — REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor’s own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an “H,” “W,” “J,” or “C” in the column labeled “Husband, Wife, Joint or Community.” If the debtor holds no interest in real property, write “None” under “Description and Location of Property.”

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G — Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write “None” in the column labeled “Amount of Secured Claim.”

If the debtor is an individual or if a joint petition is filed, state the amount of any exception claimed in the property only in Schedule C--Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR’S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR’S INTEREST IN PROPERTY WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
504 LOW GAP ROAD UKIAH, CA 95482	OWNERSHIP	C	\$75,000	\$68,000
Total ➡			\$	

(Report also on Summary of Schedules.)

V. SCHEDULE B: PERSONAL PROPERTY

Schedule B is used to report all of the debtor's interest in personal property leases and executory contracts that are listed in Schedule G, Schedule of Executory Contracts and Unexpired Leases. The trustee will request the debtor furnish copies of the deeds and other instruments that are necessary for the administration of the estate.

This form requires a description and location in the first column of the debtor's interest in the personal property. Another column is for a married couple file jointly so that the owner of the property will be listed. If the property is owned by the husband an H is placed in the column across from the property, if it is owned by the wife a W is placed, if it is owned jointly a J is placed, or if owned as community property a C is placed in the column.

The debtor is also required to list the current fair market value of the property in the last column. The debtor is not permitted to reduce the fair market value of the property by any lien on it.

A completed Schedule B is set forth as an example. All bankruptcy courts will use this form, and it will be completed in the same general manner as the example.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE B — PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an “X” in the appropriate position in the column labeled “None.” If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an “H,” “W,” “J,” or “C” in the column labeled “Husband, Wife, Joint or Community.” If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C — Property Claimed as Exempt.

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person’s name and address under “Description and Location of Property.”

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR’S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$230.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, build-ing and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		AMERICA SAVINGS BANK 700 S. MAIN UKIAH, CA 95482	C	\$695.00
3. Security deposits with public utilities, telephone companies, landlords, and others.	X			
4. Household goods and furnish-ings, including audio, video, and computer equipment.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$1,200.00

SCHEDULE B — PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$250.00
6. Wearing apparel.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$500.00
7. Furs and jewelry.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$100.00
8. Firearms and sports, photographic, and other hobby equipment.		504 C LOW GAP ROAD UKIAH, CA 95482	C	\$175.00
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.		GLOBE INSURNACE (group life)	C	\$2,500.00
10. Annuities. Itemize and name each issuer.	XX			
11. Interests in IRA, ERISA, Keough, or other pension or profit sharing plans. Itemize.	XX	IRA - AMERICAN SAVINGS BANK 700 S. MAIN STREET UKIAH, CA 95482	C	\$16,000.00
12. Stock and interests in incorporated and unincorporated businesses. Itemize.		ERISA - CALLON PUBLISHING 1600 S. STATE, UKIAH, CA	C	\$14,000.00
13. Interests in partnerships or joint ventures. Itemize.	XX			

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE B — PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
14. Government and corporate bonds and other negotiable and non-negotiable instruments.	XX			
15. Accounts receivable.	XX			
16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	XX			
17. Other liquidated debts owing debtor including tax refunds. Give particulars.		TAX REFUNDS FEDERAL \$1,200 STATE \$400	C	\$1,600.00
18. Equitable or future interest, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	XX			
19. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	XX			
20. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.	XX			
21. Patents, copyrights, and other intellectual property. Give particulars.	XX			
22. Licenses, franchises, and other general intangibles. Give particulars.		PLUMBING CONTRACTOR'S LICENSE	C	0

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE B — PERSONAL PROPERTY
(Continuation Sheet)

TYPE OF PROPERTY	NONE	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT MARKET VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
23. Automobiles, trucks, trailers, and other vehicles and acces- sories.	XX	1980 TOYOTA PICKUP 1992 CHEVROLET GEO-PRIZM 504 C LOW GAP ROAD UKIAH, CA 95482	C	\$1,100.00
24. Boats, motors, and accessories.			C	\$16,000.00
25. Aircraft and accessories.	XX	1957 CESSNA 150	C	\$5,800.00
26. Office equipment, furnishings, and supplies.				
27. Machinery, fixtures, equip- ment, and supplies used in business.	XX	PLUMBING TOOLS AND SUPPLIES 504 C LOW GAP ROAD UKIAH, CA 95482	C	\$1,500.00
28. Inventory.				
29. Animals.	XX	ONE FRENCH POODLE - ONE CAT 504 C LOW GAP ROAD UKIAH, CA 95482	C	\$50.00
30. Crops--growing or harvested. Give particulars.				
31. Farming equipment and implements.	XX			
32. Farm supplies, chemicals, and feed.	XX			
33. Other personal property of any kind not already listed, such as season tickets. Itemize.	XX			
Total ➡				\$61,700.00

_____ continuation sheets attached

(Include amounts from any
continuance sheets attached.
Report total also on Summary of
Schedules.)

VI. SCHEDULE C: PROPERTY CLAIMED AS EXEMPT

The debtor is required to list that property the debtor claims as exempt under whatever set of exemptions the debtor uses. If the debtor uses the federal set, box 11, U.S.C. section 522(b)(1), should be checked. If state exemptions and federal nonbankruptcy exemptions are used, box 11, U.S.C. section 522 (b)(2), is checked.

The debtor should carefully read Chapter 7 before electing a set of exemptions. The debtor should calculate when an election is possible and which set is more beneficial and use that set. It might even be wise for a debtor to delay filing, move to another state, reside there three months, and use either that state's exemptions or the federal exemptions.

This form is easy to use. The debtor describes the property in the first column. In the second column is code section or case law justifying the exemption. In column 3 is placed the value of the exemption. In column 4 is placed the fair market value of the property. If the value in column 4 is higher than in column 3, the debtor may have to pay the difference to the trustee in order to keep the property. Otherwise, the trustee might sell the property. Proceeds equal to the value of the exemption will be given to the debtor and the remainder kept for payment to unsecured creditors.

A sample Schedule C is completed for reference.

In re JOHN LESTER SMITH Case No. _____
Debtor (If known)

SCHEDULE C — PROPERTY CLAIMED AS EXEMPT

Debtor elects the exemptions to which debtor is entitled under:

(Check one box)

- ☐ 11 U.S.C. § 522(b)(1): Exemptions provided in 11 U.S.C. § 522(d). **Note: These exemptions are available only in certain states.**
- ☒ 11 U.S.C. § 522(b)(2): Exemptions available under applicable nonbankruptcy federal laws, state or local law where the debtor's domicile has been located for the 180 days immediately preceding the filing of the petition, or for a longer portion of the 180-day period than in any other place, and the debtor's interest as a tenant by the entirety or joint tenant to the extent the interest is exempt from process under applicable nonbankruptcy law.

[illegible]

VII. SCHEDULE D: CREDITORS HOLDING SECURED CLAIMS

Since a debtor files for bankruptcy relief to have debts discharged, it is important that the creditors be listed along with the extent of their claims.

This form requires the debtor to list all creditors holding any type of secured claim against the debtor's property. A secured claim includes the following: consumer loans, credit loans, judgment liens, statutory liens, mortgages, deeds of trust and other security interests. If additional sheets are necessary, continuation sheets may be attached.

In the first column is placed the creditor's name and address along with the account number.

In the second column, if there is a co-debtor (such as a co-signer on a loan or a co-defendant on a court judgment), place an X across from the debt. If a spouse is also liable for the debt but is not filing jointly, place the X there as well. For all co-debtors (other than a spouse filing jointly), the debtor must also complete Schedule H Co-debtors.

The third column is for use by a married couple. The debtor is to place an H if the debt is the husband's, a W if the debt is the wife's, J if held jointly or C if the debt is community property.

Unless the debtor agrees with the amount of the debt, the debtor is required to mark the debt as contingent, unliquidated or

disputed as the case may be. A contingent debt is one that might occur if something happens. Example: Debtor had an auto accident, and the other party has filed a complaint. If Debtor loses the lawsuit, he could owe \$50,000. The \$50,000. is a contingent debt.

An unliquidated debt is one where the amount has not yet been calculated. The debtor knows that the creditor will be owed an amount of money but not how much. Example: Damages caused by an auto accident that have not yet been determined.

A disputed claim is one that either the liability or the amount is disputed. Example: In a lawsuit for an auto accident each party claims the other caused the accident. The amount of the debt and its validity are being disputed.

The amount of the debt is placed in the next to the last column. The value of the collateral does not affect the amount of the debt figure that is entered. In the last column place the amount of the claim that would be unsecured. If the value of the property is less than what is owed the balance is unsecured and placed in the last column.

A sample Schedule D is set forth for reference purposes.

SCHEDULE D — CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding claims secured by property of the debtor as of the date of filing of the petition. List creditors holding all types of secured interest such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests. List creditors in alphabetical order to the extent practicable. If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H--Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 465-895-01	X	C	HOME PURCHASE ON JAN 14, 1983 504 C LOW GAP ROAD UKIAH, CA 95482				\$68,000	
PETER HOLLINGS 1079 HOPEWELL UKIAH, CA 95482			VALUE \$ 75,000					
ACCOUNT NO. DW67903		C	COURT JUDGMENT FOR MEDICAL BILLS LIEN PLACED ON HOME				\$39,000	\$32,000
GREATER UKIAH MEDICAL CENTER 1256 PINE STREET UKIAH, CA 95482			VALUE \$ 75,000					
ACCOUNT NO. 25630-65-78		C	FEBRUARY 13, 1992 PURCHASE OF GEO-PRIZM				\$17,295	\$1,295
MACO CHEVROLET 3309 BLIGHT HOPELAND, CA 95481			VALUE \$ 16,000					
ACCOUNT NO. 324-789-56		C	MARCH 21, 1991 PURCHASE OF HOME FURNITURE				\$2,345	\$1,145
ACME FURNITURE 567 TOWER WAY UKIAH, CA 95482			VALUE \$ 1,200					
Subtotal ➡ (Total of this page)							\$126,640	
Total ➡ (Use only on last page)								

(Report total also on Summary of Schedules)

_____ continuation sheets attached

SCHEDULE D — CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND MARKET VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO. 2345-78-67			MARCH 14, 1990 PURCHASE OF 1958 CESSNA				\$5,800	
UKIAH CESSNA 1290 STATE UKIAH, CA 95482		C	VALUE \$ 7,500					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					

Subtotal ➡
(Total of this page)

\$5,800

Total ➡
(Use only on last page)

\$132,440

Sheet no. _____ of _____ continuation sheets attached to
Schedule of Creditors Holding Secured Claims

(Report total also on Summary of Schedules)

VIII. SCHEDULE E: CREDITOR HOLDING UNSECURED PRIORITY CLAIM

An unsecured creditor is a person who is owed money but has no interest in any collateral to secure payment.

There are a few types of unsecured claims that are entitled to be paid before the other nonpriority unsecured claims.

These types of claims having priority are:

1. Claims deriving from extension of credit to a business in an involuntary case under 11 U.S.C. section 507(a)(2). This priority would not normally be of interest to anyone using this book. This book is not intended for use by someone who has a business in involuntary bankruptcy, but any credit obtained prior to appointment of the trustee is entitled to priority.
2. Wages, salaries and commissions owed to employees are entitled to priority equal to \$2,000 per person earned within 90 days of the filing. Failure to pay wages may be a crime under state law that makes the debt nondischargeable.
3. Contributions owed to employee benefit plans are also entitled to priority.
4. Taxes and other debts owed to first the federal government and, second the state.
5. Debts owed to farmers for grain or for a grain storage operator are entitled to priority equal to \$2,000 under 11 U.S.C. Section 507(a)(5).
6. Debts owed to fishermen for their fish equal to \$2,000 are entitled to priority under 11 U.S.C. Section 507(a)(5)

7. Deposits up to \$900 for the purchase, rental or lease of property that was not delivered or for personal services that were not furnished prior to the debtor filing for bankruptcy relief under 11 U.S.C. Section 507(a)(6).

Listing these debts does not help the debtor; it merely helps the trustee disseminate estate assets to the correct recipients in the correct amounts.

The form is easy to understand and follow. In the first column is placed the creditor's name and mailing address.

In the second column, if there is a co-debtor such as a co-borrower on a loan or a co-defendant on a court judgment, place an X across from the debt. If a spouse is also liable for the debt but is not filing jointly place the X there as well. For all co-debtors (other than a spouse filing jointly), the debtor must also complete Schedule H-Co-debtors.

The third column is for use by a married couple. The debtor is to place an H if the debt is the husband's, a W if the debt is the wife's, J if held jointly or C if the debt is community property.

The debtor must file the date the claim was incurred in column 4 and what the consideration was.

Unless the debtor agrees with the amount of the debt, the debtor is required to mark the debt as contingent, unliquidated or disputed. A contingent debt is one that might occur if something happens. Example: Debtor is a defendant in a current lawsuit.

The damages figure is established or approximated, but no decision of liability has been rendered.

An unliquidated debt is one where the amount has not yet been calculated. The debtor knows that the creditor will be owed an amount of money but not how much at this time. Example: Damages caused by an auto accident that have not yet been calculated.

A disputed claim is one that either liability or amount is disputed. Example: In a lawsuit for an auto accident, each party may claim the other caused the accident. Both the amount of the debt and its validity are being disputed by the debtor.

The amount of the debt is placed in the next to the last column. No deduction is made against the amount of the debt for the value of the collateral.

In the last column is placed the amount of the claim entitled to priority. If not all of the claim is entitled for priority, only that portion permitted for priority is placed here. Example: A debtor owes a person \$3,000 in back wages. The total of the \$3,000 claim is placed in the next to the last column. Since only \$2,000 is entitled to priority, only that amount will be placed in the last column. The trustee will pay the \$2,000 first as a priority unsecured claim and treat the remaining \$1,000 as an unsecured claim without priority.

A sample Schedule E is set forth for reference purposes.

SCHEDULE E —CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name and mailing address, including zip code, and account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of this petition.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H -- Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled, "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Repeat this total also on the Summary of Schedules.

☒ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(2).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees, up to a maximum \$4000* per employee, earned within 90 days immediately preceding the filing of the original petition, or the cessation of the business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(3).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to a maximum \$4000* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(5).

☐ **Deposits by individuals**

Claims of individuals up to a maximum \$1800* for deposits for the purchase, lease or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(6).

☐ **Taxes and Other Certain Debts Owed to Governmental**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507(a)(9).

***Amounts are subject to adjustments on April 1, 1998, and every three years thereafter with respect to cases commenced on or after the date of adjustment.**

_____ continuation sheets attached

SCHEDULE E —CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	TOTAL AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
ACCOUNT NO.								
ACCOUNT NO.								
ACCOUNT NO.								
ACCOUNT NO.								
ACCOUNT NO.								
Subtotal → (Total of this page)							\$	
Total → (Use only on last page)							\$	

(Report total also on Summary of Schedules)

IX. SCHEDULE F: CREDITORS HOLDING UNSECURED

NONPRIORITY CLAIMS

An unsecured creditor is a person who owed money but has no interest in collateral to secure the payment.

On Schedule F are listed all unsecured creditors that have no portion of their claims entitled to priority.

As with Schedule E, listing these debts does not help the debtor. It assists the trustee in his dissemination of estate assets correctly in the proper amounts to the correct recipients.

The form is easy to understand and follow. In the first column place the creditor's name and mailing address.

In the second column, if there is a co-debtor (such as a co-borrower on a loan or a co-defendant on a court judgment), place an X across from the debt. If a spouse is also liable for the debt but is not filing jointly place the X there as well. For all co-debtors (other than a spouse filing jointly), the debtor must also complete Schedule H, Co-debtors.

The third column is for use by a married couple. The debtor is to place an H if the debt is the husband's, a W if the debt is the wife's, J if held jointly or C if the debt is community property.

The debtor must file when the claim was incurred in column 4 and what the consideration was for it.

Unless the debtor agrees with the amount of the debt, the debtor is required to mark the debt as contingent, unliquidated or disputed. A contingent debt is one that might occur if something happens. Example: Debtor is defendant in a current lawsuit. The damages figure is established or approximated, but no decision has been rendered on liability.

An unliquidated debt is one where the amount has not yet been calculated. The debtor knows that the creditor will be owed an amount of money but not how much at this time. Example: Damages caused by an auto accident that have not yet been calculated.

A disputed claim is one that either liability or amount is disputed. Example: In a lawsuit for an auto accident, each party may claim the other caused the accident. Both the amount of the debt and its validity are in dispute.

The amount of the debt is placed in the next to the last column. For example, assume that George lost Bill's outboard motor while fishing; George owes Bill \$500. Bill has no security for payment of the \$500; he is an unsecured creditor. Since the debt is not one entitled to priority, Bill's claim is placed in Schedule F.

A sample Schedule F is set forth for reference purposes.

SCHEDULE F —CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and account number, if any, of all entities holding unsecured claims without priority against the debtor or the property of the debtor as of the date of filing of the petition. Do not include claims listed in Scheduled D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse or in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured nonpriority claims to report on this Schedule F.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 131-009-5678 BANK OF ALABAMA 1230 TRUXTUN KEELING, AL 34567	C	CREDIT CARD FROM AUGUST 1987 TO PRESENT				\$4,700
ACCOUNT NO. 87-657-8979 CALIFORNIA SAVINGS AND LOAN 1256 PERKINS UKIAH, CA 95482	C	CREDIT CARD FROM OCTOBER 1987 TO PRESENT				\$8,870
ACCOUNT NO. 45-689-0 DR. PAUL RODDY 235 KEENE SAN FRANSISCO, CA 94102		MEDICAL BILLS FOR SURGERY JAN 1, 1992				\$13,000
ACCOUNT NO. JOHN KREBS 1345 DORA UKIAH, CA 95482						
Subtotal → (Total of this page)						\$28,070
Total → (Use only on last page)						
(Report total also on Summary of Schedules)						

_____ continuation sheets attached

SCHEDULE F —CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE	CODEBTOR HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO. 161-465-57 HOME LENDING BANK 1236 YOLLO FRESNO, CA 93102	W	JUNE 1982 STUDENT LOAN WHICH BECAME PAYABLE ON JULY 14, 1987				\$5,675
ACCOUNT NO. 456-347-88 METRO HOSPITAL 758 GEROGI SAN FRANCISCO, CA 94102	J	JAN 1 THROUGH FEB 13, 1992, HOSPITALIZATION FOR TRIPLE BY PASS SURGERY				\$23,000
ACCOUNT NO. 						
ACCOUNT NO. 						
ACCOUNT NO. 						
ACCOUNT NO. 						

Sheet no. _____ of _____ continuation sheets attached to
Schedule of Creditors Holding Unsecured Non-Priority Claims

Subtotal ➡
(Total of this page)

Total ➡
(Use only on last page)

(Report total also on Summary of Schedules)

\$28,675

\$56,745

X. SCHEDULE G: EXECUTORY CONTRACTS AND UNEXPIRED LEASES

On Schedule G is listed every executory contract still involving the debtor. An executory contract is a contract still in effect that has not been fully performed.

The most common executory contracts are:

1. Leases for real or personal property.
2. Service contracts.
3. Sale contracts for real or personal property.
4. Franchises or licensing agreements.
5. Business contracts.

This is an information return for use by the trustee. The important information concerning property or debts of the estate is detailed in the other schedules. The main purpose of the form: to apprise the trustee of what the debtor owes to others what each owes to him.

The form is easy to complete. A description of the contract, respective rights of the parties, debts owed and addresses of the parties are listed. The debtor is required to disclose specific information needed by the trustee in identifying leases that must be assumed within 60 days after the order of relief or be deemed rejected under Section 365(d) of the Bankruptcy Code.

A completed Schedule G is set forth for reference purposes.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE G —EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real personal property. Include any timeshare interests.

State nature of debtor’s interest in contract, i.e., “Purchaser,” “Agent,” etc. State whether debtor is the lessor or lessee of a lease.

Provide the names and complete mailing addresses of all other parties to each lease or contract described.

NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.

☒ Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT

XI. SCHEDULE H: CO-DEBTORS

This is the one of the simplest schedules in the petition. When a person is liable with the debtor for a debt, he is to be listed here. The creditor of the debt is also listed.

If the debtor is married filing separately and there are debts for which the spouse is also liable, the spouse must be listed across from every creditor who is jointly owed the debt.

The complete schedule provides information regarding nondebtor parties, such as guarantors and nondebtor spouses that have an interest as tenants by the entirety.

A completed Schedule H is set forth as a reference sample.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE H —CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint case should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six years immediately preceding the commencement of this case.

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR
<p>MARKAM SMITH 3467 FRONT UKIAH, CA 95482 (CO-SIGNER FOR HOME LOAN)</p> <p>AGNES TEMPLE MARTIN 1289 HOWARD UKIAH, CA 95482 (CO-SIGNER FOR CAR LOAN)</p>	<p>PETER HOLLINGS 1879 HOPEWELL UKIAH, CA 95482</p> <p>MACO CHEVROLET 3309 BLIGHT HOPELAND, CA 95481</p>

XII. SCHEDULE I: CURRENT INCOME FOR INDIVIDUAL DEBTORS

The debtor is required to provide information regarding the household's income on Schedule I. This information is used for two purposes:

1. To determine the amount the debtor needs for support. This is important because many exemptions (such as ERISA pensions) are exempt equal only to the amount needed for support.
2. To determine if assets have been concealed. The circumstances involving a debtor who makes \$1,000,000 per year and has no assets are suspicious.

This form is to be completed by the debtor. If a married couple is filing a joint petition, both spouses must complete the petition. The spouse first listed in the title of the action is the debtor, and the other debtor is the spouse.

The form has been greatly simplified. The introductory information is basic. An S for single or M for married is placed in the Marital Status box. The debtor's name, age, length of employment and employer's address are completed for each spouse.

If a married couple is filing jointly, both spouses complete the columns. If a married person is filing separately, the column for spouse does not need to be completed; it might be necessary to complete this column if the court makes exemption determinations

based on need for support. Most states have laws requiring spouses to support each other. The court may require the information to be provided before it rules on any exemptions that are limited to the debtor's need for support.

If current income is expected to increase or decrease by more than 10% within a year, the debtor is required to attached a written explanation. The court may need this information to determine the debtor's need for support. The calculations of debtor's requirements relative to expected changes are based on this information.

If the debtor receives income from sources not listed on this schedule, those sources are to be listed under the title "Other Monthly Income." If more space is needed to list the other monthly income, the debtor can attach a continuation sheet.

A sample completed Schedule I is set forth for reference.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE I —CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a Chapter 12 or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

DEBTOR'S MARITAL STATUS:	DEPENDENTS OF DEBTOR AND SPOUSE		
	NAMES	AGE	RELATIONSHIP
MARRIED	JASON ALLEN SMITH MARY LOUISE SMITH	8 6	son daughter
Employment:	DEBTOR	SPOUSE	
Occupation	plumber	management assistant	
Name of Employer	self-employed	CALLON PUBLISHING	
How long employed	25 years	2 years 5 months	
Address of Employer	504 C LOW GAP ROAD UKIAH, CA	1666 STATE STREET UKIAH, CA 95482	

INCOME (Estimate of average monthly income)

Current monthly gross wages, salary, and commissions
(pro rate if not paid monthly)

Estimated monthly overtime

DEBTOR	SPOUSE
\$ 0	\$ 1,500
\$	\$
\$ 0	\$ 1,500

SUBTOTAL

LESS PAYROLL DEDUCTIONS

a. Payroll taxes and Social Security

b. Insurance

c. Union Dues

d. Other (Specify: _____)

\$ 0	\$ 260
\$ 0	\$ 40
\$ 0	\$ 0
\$	\$

SUBTOTAL OF PAYROLL DEDUCTIONS

\$ 0	\$ 300
\$ 0	\$ 1,200

TOTAL NET MONTHLY TAKE HOME PAY

Regular income from operation of business or profession or farm
(attach detailed statement)

Income from real property

Interest and dividends

Alimony, maintenance or support payments payable to the debtor for the debtor's use or that of dependents listed above

Social Security or other government assistance

(Specify: _____)

Pension or retirement income

Other monthly income

(Specify: _____)

\$ 1,470	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$ 0	\$ 0
\$	\$

TOTAL MONTHLY INCOME

\$ 1,470	\$ 1,200
----------	----------

TOTAL COMBINED MONTHLY INCOME \$ 2,670

(Report also on Summary of Schedules)

Describe any increase or decrease of more than 10% in any of the above categories anticipated to occur within the year following the filing of this document.

SCHEDULE I

REGULAR EARNINGS FROM OPERATION OF SOLE-PROPRIETORSHIP PLUMBING BUSINESS

1.	AVERAGE EARNINGS AS A PLUMBER	\$2,400
2.	DEDUCTIONS FOR WITHHOLDING FOR SOCIAL SECURITY, SELF-EMPLOYMENT TAX, FEDERAL AND STATE INCOME TAXES	\$630
3.	UNION DUES FOR PLUMBERS' UNION #654	\$100
4.	HEALTH AND DISABILITY INSURANCE	\$200
	AVERAGE TAKE HOME PAY	\$1,470

XIII. SCHEDULE J: CURRENT EXPENDITURES FOR INDIVIDUAL DEBTORS

The debtor is required to provide information regarding the household's expenses on Schedule J. This schedule contains information regarding the average monthly expenses of the debtor and the debtor's family. If a married couple is filing jointly but maintain separate households, each spouse must prepare a separate Schedule J.

The list of expenditures includes everything from alimony payments to tax payments. If there are some expenses not specifically listed, the debtor can list those expenses under the title "Other." If more space is needed, the debtor can attach a continuation sheet.

This form provides information the court needs to determine the level of support needed by the debtor. This determination is very important. Some exemptions are limited to the value needed for support. If the debtor does not need the property covered by such an exemption for support, the debtor will not get the property. The only way a court can determine if an exemption is needed for support is for the debtor to complete this form. All expenses should be listed by the debtor.

A sample Schedule J is completed for reference.

In re JOHN LESTER SMITH
Debtor

Case No. _____
(If known)

SCHEDULE J —CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

Rent or home mortgage payment (include lot rented for mobile home)	\$	<u>547.14</u>
Are real estate taxes included? Yes _____ No <u>XX</u>		
Is property insurance included? Yes _____ No <u>XX</u>		
Utilities: Electricity and heating fuel	\$	<u>40.</u>
Water and sewer	\$	<u>12.</u>
Telephone	\$	<u>40.</u>
Other _____	\$	<u> </u>
Home maintenance (repairs and upkeep)	\$	<u>25.</u>
Food	\$	<u>200.</u>
Clothing	\$	<u> </u>
Laundry and dry cleaning	\$	<u>25.</u>
Medical and dental expenses	\$	<u>200.</u>
Transportation (not including car payments)	\$	<u>50.</u>
Recreation, clubs and entertainment, newspapers, magazines, etc.	\$	<u>50.</u>
Charitable contributions	\$	<u> </u>
Insurance (not deducted from wages or included in home mortgage payments)		
Homeowner's or renter's	\$	<u>50.</u>
Life	\$	<u> </u>
Health	\$	<u>100.</u>
Auto	\$	<u>112.</u>
Other _____	\$	<u> </u>
Taxes (not deducted from wages or included in home mortgage payments)		
(Specify: _____)	\$	<u> </u>
Installment payments: (In Chapter 12 and 13 cases, do not list payments to be included in the plan)		
Auto	\$	<u>309.</u>
Other <u>furniture</u>	\$	<u>95.94</u>
Other <u>aircraft</u>	\$	<u>163.14</u>
Alimony, maintenance, and support paid to others	\$	<u> </u>
Payments for support of additional dependents not living at your home	\$	<u> </u>
Regular expenses from operation of business, profession, or farm (attach detailed statement)	\$	<u> </u>
Other _____	\$	<u> </u>

TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)

\$ 2,019.22

(FOR CHAPTER 12 AND CHAPTER 13 DEBTORS ONLY)

Provide the information requested below, including whether plan payments are to be made bi-weekly, monthly, annually, or at some other regular interval.

A. Total projected monthly income	\$	<u> </u>
B. Total projected monthly expenses	\$	<u> </u>
C. Excess income (A minus B)	\$	<u> </u>
D. Total amount to be paid into plan each _____	\$	<u> </u>
(Interval)		

XIV. SUMMARY OF SCHEDULES

There is a column of schedules entitled "Name of Schedule." Each schedule is listed in the column. The attorney next column is entitled "Attached." The attorney debtor is required to state whether the schedule is attached or not. The third column requires the debtor to list the number of sheets in the schedule. Usually, there is only one sheet per schedule, but if continuation sheets are attached, the number will change. The next 3 columns are entitled as follows: "Assets," "Liabilities" and "Other" respectively. The totals from each column are placed in the appropriate boxes. To make it less confusing, where no information is to be entered, the box is blackened.

This schedule will be the one most used in the bankruptcy. Most amendments to the petition will result in this schedule also being amended.

A sample schedule is completed for reference.

United States Bankruptcy Court

NORTHERN

District of

CALIFORNIA

In re JOHN LESTER SMITH

Debtor

Case No. _____

(If known)

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtors assets. Add the amounts from Schedules D, E and F to determine the total amount of the debtor's liabilities.

				AMOUNTS SCHEDULED		
NAME OF SCHEDULE		ATTACHED (YES/NO)	NUMBER OF SHEETS	ASSETS	LIABILITIES	OTHER
A	Real Property	YES	1	\$ 75,000		
B	Personal Property	YES	4	\$ 61,700		
C	Property Claimed as Exempt	YES	1			
D	Creditors Holding Secured Claims	YES	2		\$132,440	
E	Creditors Holding Unsecured Priority Claims	YES	1		\$ 0	
F	Creditors Holding Unsecured Nonpriority Claims	YES	2		\$ 56,745	
G	Executory Contracts and Unexpired Leases	YES	1			
H	Codebtors	YES	1			
I	Current Income of Individual Debtor(s)	YES	2			\$2,670
J	Current Expenditures of Individual Debtor(s)	YES	1			\$2,019.22
Total Number of Sheets of All Schedules ➡			16			
Total Assets ➡				\$136,700		
Total Liabilities ➡					\$189,185	

In re JOH LESTER SMITH
Debtor

Case No. _____
(If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules consisting of 16 sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1)

Date MARCH 1, 1999

Signature JOHN LESTER SMITH
Debtor

Date MARCH 1, 1999

Signature JANE ALICE SMITH
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____

Address _____

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document.

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X

Signature of Bankruptcy Petition Preparer _____

Date _____

A bankruptcy petition preparer's failure to comply with the provisions of Title 11 and the Federal Rules of Bankruptcy Procedure may result in fine or imprisonment or both. 11 U.S.C. § 110, 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [Corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ Sheets, and that they are true and correct to the best of my knowledge, information, and belief (Total shown on summary page, plus 1)

Date _____

Signature _____

[Print or type name of individual signing on behalf of debtor]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

Penalty for making a false statement or concealing property: Fine of up to \$500,000, imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

XVI. CREDITOR'S MATRIX

Many bankruptcy courts requires that the debtor list the creditors through the use of a mailing matrix. This matrix is a page that is divided into 30 blocks. The debtor is required to type the name and address of one creditor in each box. If there are more than 30 creditors, additional pages can be attached.

Some courts will have their own forms for listing creditors and for other special requirements. The debtor can determine through the clerk of the court or through the local rules of court if the enclosed mailing matrix will be accepted or if a special local form must be used. If a local form is required the debtor must get it from the clerk.

If the mailing matrix can be used, the debtor types the debtor's name, address and phone number in the top left hand corner. The debtor will list the creditors in alphabetical order, unless local rules require another method.

Particular care must be taken to assure that all creditors are listed. The debt of any creditor not listed will not be discharged. To get such a debt discharged later is a great deal of work that would require either filing an amendment and holding a new creditors' meeting or reopening the estate.

Following below, for reference only, are the local rules of the Bankruptcy Court for the Northern District of California that

relate to the Creditor's Matrix. Each Bankruptcy Court promulgates its own local rules so it is necessary to get from the court or from a law library the local rules for that Court. Examples of the two types of matrixes follow. In case of an emergency filing, a debtor might fill out both types of matrix and leave it to the clerk to select the appropriate one for filing with the court.

Acme Furniture 567 Tower Way Ukiah, CA 95482	Ukiah Cessna 1290 State Ukiah, CA 95482	
Bank of Alabama 1239 Truxtun Keeling, AL 34567		
California Savings and Loan 1256 Perkins Ukiah, CA 95482		
Dr. Paul Roddy 239 Keene San Francisco, CA 94102		
Greater Ukiah Medical Center 1256 Pine Street Ukiah, CA 95482		
Home Lending Bank 1235 Yollo Fresno, CA 93102		
John Krebs 1345 Forte Ukiah, CA 95482		
Peter Hollings 1759 Hopewell Ukiah, CA 95482		
Maco Chevrolet 3309 Blight Hopland, CA 95481		

REVIEW INSTRUCTIONS ON
NEXT PAGE

MASTER MAILING LIST

CASE NO: _____
_____ LABELS
SHEET _____ OF _____

INSTRUCTIONS FOR COMPLETION OF MASTER MAILING LIST

1. The Master Mailing List must be completed pursuant to Local Bankruptcy Rule 105(6). **PLEASE REVIEW THIS RULE.**
2. If the schedules for the husband and wife list the same creditors, only one Mailing list is needed.
3. This form is to be completed in **BLACK** ink only.
4. The first three boxes in the upper left hand column are to be completed as follows:
 1. Debtor's names(s)
Mailing address
including zip code
 2. Spouse's name
(If different)
Address and zip code
 3. Attorney's name (if applicable)
Mailing address
include zip code
5. All remaining boxes are to be completed with creditors names, complete mailing addresses and zip codes as shown on the debtor's schedule of debts.
6. The Declaration (below) must be signed by the debtor(s) and the attorney of record, if any, before being submitted.

Declaration

I, JOHN LESTER SMITH and JANE ALICE SMITH, do hereby certify, under penalty of perjury, that the Master Mailing List, consisting of ONE Sheets, is complete, correct and consistent with the debtor's schedules pursuant to Local Bankruptcy Rule 105(6).

JOHN LESTER SMITH
Debtor

JANE ALICE SMITH
Spouse

Attorney if applicable

Name JOHN LESTER SMITH and JANE ALICE SMITHAddress 504 C LOW GAP ROADUKIAH, CA 95482Telephone (707) 468-0268

ATTORNEY PRO PER

(THIS CREDITOR'S FORM USED IN THE NORTHERN DISTRICT OF CALIFORNIA.
MANY BANKRUPTCY COURTS STILL USE THE OLDER BLOCK FORMAT.)

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

List all names including trade names, used	)	CASE NO.
Debtor(s) within last six (6) years:)	
)	
JOHN LESTER SMITH and JANE ALICE SMITH)	
(JANE ALICE SMITH))	
)	
Social Security No: 291-52-7868 , Debtor)	
Social Security No: 524-36-7898 , Joint Debtor)	

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s) do hereby certify under penalty of perjury that the attached Creditor Mailing List consisting of

_____ sheets is complete, correct and current names and addresses of all priority, secured and unsecured creditors listed in the debtor's schedules and that this matrix conforms with the Clerk's promulgated requirements.

Date: _____

Debtor_____
Joint Debtor

SAMPLE CREDITOR MATRIX FOR THIS VERSION

Acme Furniture
567 Tower Way
Ukiah, CA. 95482

Bank of Alabama
1239 Truxtun
Keeling, Alabama 34567

California Savings and Loan
1256 Perkins
Ukiah, CA. 95482

Dr. Paul Roddy
235 Keene
San Francisco, CA. 94102

Greater Ukiah Medical Center
1256 Pine Street
Ukiah, CA. 95482

Home Lending Bank
1235 Yollo
Fresno, CA. 93102

John Krebs
1345 Forta
Ukiah, CA. 95482

Peter Hollings
1759 Hopewell
Ukiah, CA. 95482

Macto Motors
3308 Blight
San Francisco, CA. 94102

255

Name _____

Address _____

Telephone _____

ATTORNEY PRO PER

UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

List all names including trade names, used	)	CASE NO.
Debtor(s) within last six (6) years:)	
)	
)	
)	
)	
Social Security No:	, Debtor)
Social Security No:	, Joint Debtor)

VERIFICATION OF CREDITOR MATRIX

The above named debtor(s) do hereby certify under penalty of perjury that the attached Creditor Mailing List consisting of _____ sheets is complete, correct and current names and addresses of all priority, secured and unsecured creditors listed in the debtor's schedules and that this matrix conforms with the Clerk's promulgated requirements.

Date: _____

Debtor

Joint Debtor

UNITED STATES BANKRUPTCY COURT
Northern District of California
99 South "E" Street
Santa Rosa, California 95404

PAUL C. CAIRN, JR.

Clerk, U. S. Bankruptcy Court

Telephone (707) 525-8539

PETITION REQUIREMENTS:

- Original + 4 copies required for Chapter 7 & 13 (includes copy for you)
- Original + 6 copies required for Chapter 11 (includes copy for you)
- Original + 5 copies required for Chapter 12 (includes copy for you)
- Arrange in order from top to bottom:
Petition; Chapter 11--Exhibit A & List of 20 largest unsecured
creditors; Summary of Schedules; Schedules A-J; Declaration
concerning Schedules; Statement of Financial Affairs; Chapter 7
Statement of Intention; Declaration on behalf of corporation
or partnership; Application to pay fees in installments; Statement of
Attorney; Chapter 12/13 Plan; Creditor matrix & cover sheet.
- Requirements for filing a skeleton petition:
Petition; Chapter 11 List of 20 largest unsecured creditors; Creditor
matrix & creditor matrix cover sheet; filing fee
- State Bar ID required on all pleadings
- Chapter 11 requires list of 20 largest unsecured creditors with
creditors' name, address, telephone number and dollar amounts
- Computer generated forms require additional first page of petition
- Requires Notice of Available Chapters.
- Requires Attorney Disclosure Statement
- Requires Creditor Matrix and Creditor Matrix Cover Sheet
- Requires Chapter 12/13 Plan
- Requires magnetic tape if 10 or more creditors
- Amendment to Schedule D, E, F or H requires a \$20.00 filing fee. List
only added or deleted creditors. Include Proof of Service and
Amended Creditor Matrix and Creditor Matrix Cover Sheet
- Amendment to Schedule A, B, or C requires Proof of Service
- This falls under our 15-day rule [Rule 1007(c)]--which means if the
above are not submitted by _____, this petition **could**
possibly be dismissed
- Other: _____

FILING FEE SCHEDULE:

- \$155.00 for Chapter 7 & 13
- \$200.00 for Chapter 12
- \$800.00 for Chapter 11

..... \$120.00 for Adversary Proceedings & removals
 \$105.00 for Notice of Appeal
 \$60.00 for Motion to Vacate or Modify the Automatic Stay
 \$60.00 for Motion to Compel Abandonment of Property
 \$60.00 for Motion to Withdraw the Reference of a Case
 Additional fee of \$_____ required for deconsolidation of a joint petition
 Other: _____

OTHER FEES:

..... \$5.00 for certification per document/Abstract of Judgment
 \$15.00 for reproduction of magnetic tapes
 \$15.00 for search of record (per name or item searched)
 \$.50 photocopy charge per page. \$_____ total copy costs.
 \$25.00 for retrieval of record from Federal Records Center
 All fees must be submitted with your request. When requesting copies, it is suggested that you make your check in an amount "Not to exceed \$_____." Your receipt will show the total cost entered on your check.
 Other: _____

CHECK ACCEPTANCE:

..... Payee does not indicate: U. S. Bankruptcy Court; United States Bankruptcy Court
 Checks must be pre-printed by bank
 Check is not signed
 Personal/Debtor's checks are not accepted
 Checks is over 30 days old
 Incorrect amount
 Other: _____

SUBSEQUENT PLEADINGS:

..... Requires captioned title page; see Local Rule 200-2
 Requires proper form; papers; see Local Rule 120-1
 State Bar ID required
 Other _____

ADDITIONAL REQUIREMENTS:

..... Requires signature of Attorney/Debtor/Creditor on _____
 Requires documents assembled in sets
 No extra copy submitted for conforming and/or no postage-paid envelope submitted
 Copies required: Original + one(1); two(2); three(3) copies
 Order returned, submit at/after hearing; see notice re: proposed orders dated February 1, 1989

..... Requires: Summons; Cover Sheet; Self-addressed, stamped envelope
..... Other: _____

OTHER:

..... We are unable to respond to this general type of inquiry. Please advise specifically what information you are seeking.

..... The information you requested would require the rendering of legal advice, something the Court, by law, cannot do. In order to obtain answers to your questions, it is suggested that you seek the advice of competent legal counsel.

..... We can find no record of this person having filed in this court. If you can provide us with further information, we will be happy to check our records again.

..... We have a 50-page limit on the amount of copywork we can perform. You will need to make the copies yourself or use a copy service to complete your request. Such service may be obtained from your Yellow Pages under Attorneys' Support Services.

..... Proof of Claim requires original plus one copy - Chapter 7/11 (one to be returned to you) original plus two copies - Chapter 13 (one to be returned to you) Please furnish a self-addressed envelope. There is no filing fee.

..... Matrix does not conform to electronic scanner requirements.

..... The information you have requested is in a closed file. The file has been sent to the Federal Records Center (FRC). See attached information sheet for the FRC. They will make copies for you even if you require less than the entire file copied. If you want us to retrieve the file for you, there is a \$25 fee and it usually takes a week to ten days for the file to arrive here. Please include a telephone number where we can call you COLLECT to tell you when the file arrives.

..... Other: _____

Date: _____

Deputy Clerk

In re)	Case no:
)	
)	
)	
Debtor(s))	
)	

I declare that the attached Creditor Mailing Matrix, consisting of _____ sheets, contains the correct, complete and current names and addresses of all priority, secured and unsecured creditors listed in debtor's filing and that this matrix conforms with the Clerk's promulgated requirements.

Signature of Debtor's Attorney or Pro per Debtor

FORMAT FOR PREPARING BANS CREDITOR MATRIX

In order to ensure that creditor names and addresses are properly read by the Optical Character Reader (OCR), please observe the following guideline. Your cooperation is if the Clerk's Office is to make improvements in the existing system.

1. Creditor names and addresses must be typed in one of the standard typefaces or print styles:

- * Courier 10 pitch
- * Prestige Elite
- * Letter Gothic

2. Creditor names and address should be typed in a single column rather than in three columns (see example attached).

Creditor names and addresses must be typed in a single column because the Optical Character Reader scans the material automatically from left to right, line by line. If the current matrix is used and the first column has an address with three lines, the second column has an address of four lines and the third column has an address with five lines, the optical character reader will see the blank line after the first address and not read any further. Therefore, only single column names and addresses will be read automatically and completely.

3. Creditor names and addresses must be typed so that no letters are closer than 1 ½ inches from the edge of the paper.

4. Each creditor's names and address must consist of no more than 4 (four) total lines, with at least three blank lines between each of the name/address blocks. Zip Codes located on the same line as the city and state.

5. Each line must be 30 characters or less in length.

6. DO NOT include the following parties on the BANS creditor matrix.

- * Debtor
- * Joint Debtor
- * Attorney for Debtor (s)

7. Never use the following symbols in names and/or addresses on the BANS creditor matrix:

- * Ampersand (&) Type the word "and" instead
- * Percent (%) If used to signify "care of" in a creditor's address, type c/o instead. If used for any other purpose type o/o instead.

8. Do not type a lower case "L" to signify the numeral one (1).

THINGS TO AVOID

Although the court is using sophisticated equipment and software to ensure accuracy to creditor matrix reading, certain problems can still occur. By following the instructions below the court will avoid delays or additional effort in mailing notices.

Deviation from the following instructions will prevent matrices from being read by the Optical Character reader thus requiring you to resubmit your creditor matrix in an acceptable form.

1. The matrix should not contain any extra marks such as letterhead, dates, debtor name, coffee stains, or handwritten marks.
2. Do not type lines, page numbers, or anything else on the front of a creditor matrix. Any identifying marks you choose to add can be added on the back of the matrix.
3. Do not type the matrix on non-standard paper such as onion-skin, half-sized or colored (such as yellow) paper.
4. Avoid poor quality type caused by photocopying, using carbon paper, or a poor quality typewriter.
5. Fabric typewriter ribbons should be avoided. They produce letters which are too fuzzy to be properly scanned.
6. Do not use unreadable type faces or print styles such as proportionally spaced fonts or exotic fonts (such as Olde English or Script) Use only Courier 10 pitch, Prestige Elite or Letter Gothic.
7. The ability of the OCR to read creditor matrices prepared using dot matrix printers varies with the quality of the dot matrix printer used. Depending on the number of pins, the OCR may read matrices prepared using "letter quality" dot matrix printers. There is no hard and fast rule concerning the minimum number of pins required. The greater the number of pins, however, the greater the chance that the OCR will read the matrix. If you have questions concerning the ability of the OCR to read matrices prepared by your dot matrix printer, please contact the data entry section supervisor or lead operator in the division of the Clerk's Office where you wish to file the matrix.
8. Avoid misaligned lists caused by removing the paper from the typewriter before completing the list, or inserting the paper in the typewriter crooked.
9. Incorrect typewriter settings will cause unreadable matrices. Make certain that your typewriter is set for 10 pitch if you are using a 10 pitch type style.
10. Upper case only (all capital letters) should be avoided. Type in upper and lower case as you would on a letter.
11. The Zip Code must be typed on the last line for each address. Nine digit ZIP code should be typed with a hyphen separating the two groups of digits. The last line of each address should consist of the city, state and zip code only. DO NOT type attention lines or account numbers on the last line. Type these lines on the second line of the name/address block if needed. The ZIP Code must be typed on the last line of the address for the ZIP code sorting equipment to find it.

EXAMPLE CREDITOR MATRIX COURIER 10 PITCH

Metromedia Video Productions
1224 Murray Avenue
San Luis Obispo, CA. 93401

MultiTronics Animations
3837 Stone Way North
Studio 7
Baltimore, MD 20459

Eastman Kodak
Special Films Division
8742 Kodak Avenue
Rochester, NY 20948

N.W. Marine Retirement Trust
P.O. Box C-34203
Seattle, WA 98124

Nabisco
6518 Ravenna Avenue, NE.
Seattle, WA 98126

Northwest Instrument
2825 Westin Building
2001 6th Avenue
Seattle, WA 98274

A.M.Test Inc.
Suite 6
4900 9th Avenue, NW
Daly City, CA. 95015

Arctic Expeditions, Inc.
536 East 48th Avenue
Anchorage, AK 99505

AT and T Consumer Sales
P.O. Box 6729
Portland, OR 97228

ERRORS TO AVOID IN PREPARING CREDITOR LISTS

Debtor: Allnet Svcs.

PAGE TITLES

If you want to type this or other identification on list type it on the back, never on the front

ALL UPPER CASE

Use upper and lower case (capitals and small letters) as if you were typing a letter.

BOLD TYPE

Do not use boldface setting on your typewriter or word processor

WRONG FONT

You may use Courier 10 Prestige Elite or

WRONG PITCH

If you use a 10-pitch font, make sure typewriter is set to

HANDWRITING

Handwriting is not acceptable and will interfere with the reading of the rest of the list
10 pitch

PAGE NUMBER

Do not number pages or type anything but creditors on list.

Stephen R. Miller III
Coal Building
1092 17TH Street, NW.
Carlsbad, CA. 92001

MULTI-TRONICS ANIMATIONS
3837 STRONG WAY NORTH
SUITE 10
BALTIMORE, MD. 20938
OR
107-D CASTLE BUILDING
NORTH PARKWAY BLVD.
HOUSTON, TX 10938

ARCTIC EXPEDITIONS, INC.
836 East 48th Avenue
Anchorage, AK 99505

Gow Fire Protection, Inc.
459 North 87th Street
Hoquiam, WA 98550
Attn: Steve Jamison

Larry Miller, Jr.
Landover Food & Bev.
Suite 12B
Burg, MD 24309 5182

TOO CLOSE TO EDGE

You must keep all typing at least 1.5" from any edge, bottom or side.

TOO LONG

A name/address block must be 4 lines of 30 characters each or less

FABRIC RIBBON

Use Office quality ribbon to insure proper scanning

ATTENTION LINE

If you must type an

DIGIT ZIP CODE

Separate the two groups of digits with a dash, not a space

STRAY MARKS

No lines, symbols, Letterhead, or other No address data should appear on the creditor list.

XVII. APPLICATION TO PAY THE FILING FEE IN INSTALLMENTS

A sample form is completed for the payment of the fee in installments. The application is filed along with the petition. The Official Form 3 is also included with the blank forms in the back of the book and in the form directories if the petitioner wishes to use it.

In order to have the installment schedule granted, the debtor must certify no payments have been made to any attorney or other person for services (including typing) relating to this bankruptcy.

The court wants to get its share first so it also requires that the debtor certify that no such payments will be made prior to paying the filing fee.

The fee must be paid within 120 days and can be paid in installments. Failure to make the scheduled payment will obviously result in the petition being dismissed.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIAIN RE: JOHN LESTER SMITH, CASE NUMBER: _____CHAPTER 7APPLICATION TO PAY FILING FEES IN INSTALLMENTS

In accordance with Federal Bankruptcy Rule of Procedure 1006,
application is made to pay the filing fee on the following terms:

\$ 50.00 with the filing of the petition, and the balance of\$ 100.00 in 4 installments, as follows:\$ 50.00 on or before August 1, 1992\$ \$50.00 on or before September 1, 1992

\$ _____ on or before _____

\$ _____ on or before _____

I certify that I am unable to pay the filing fee except in installments. I
further certify that I have not paid any money or transferred any property to an
attorney or any other person for services in connection with this case or in connection
with any
other pending bankruptcy case and that I will not make any payment or transfer any
property for services in connection with the case until the filing fee is paid.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE: _____, CASE NUMBER: _____

CHAPTER _____

APPLICATION TO PAY FILING FEES IN INSTALLMENTS

In accordance with Federal Bankruptcy Rule of Procedure 1006,
application is made to pay the filing fee on the following terms:

\$ _____ with the filing of the petition, and the balance of

\$ _____ in _____ installments, as follows:

\$ _____ on or before _____

\$ _____ on or before _____

\$ _____ on or before _____

\$ _____ on or before _____

I certify that I am unable to pay the filing fee except in installments. I
further certify that I have not paid any money or transferred any property to an
attorney or any other person for services in connection with this case or in connection
with any other pending bankruptcy case and that I will not make any payment or transfer
any property for services in connection with the case until the filing fee is paid.

1
2 Date: _____
3 Applicant

4 _____
5 _____
6 address

7 ORDER

8
9
10 IT IS ORDERED that the debtor pay the filing fee in installments on the terms set
11 forth in the foregoing application.

12
13
14 IT IS ORDERED that until the filing fee is paid in full the debtor shall not pay,
15 and no person shall accept, any money for the services in connection with this case,
16 and the debtor shall not relinquish, and no person shall accept, any property as
17 payment for services in connection with this case.

18
19 Date: _____ BY THE COURT

20
21
22 _____
23 United States Bankruptcy Court
24
25
26
27
28

XVIII. ATTORNEY FEES

Under Bankruptcy Rule 2016, every attorney who provides services for a fee to a debtor in bankruptcy must file a disclosure of the compensation paid or to be paid for the attorney services. The bankruptcy court may on its own motion or the motion of any interested party reduce the compensation sought by the attorney if it finds the amount to be excessive. A copy of the disclosure must also be filed with any trustee appointed by the court.

Bankruptcy Rule 2016(b) reads as follows:

"Every attorney, whether or not the attorney applies for compensation, shall file and transmit to the United States Trustee within 15 days after the order of relief, or at some other time as the court may direct, the statement required under Section 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity. The statement shall include the particulars of any such sharing or agreement to share by the attorney, compensation with a member or regular associate of the attorney's law firm shall not be required. A supplemental statement shall be filed and transmitted to the United States Trustee within 15 days after any payment or agreement not previously disclosed."

Some bankruptcy courts require, under their local rules, that their own forms be used for the mandatory disclosure of attorney fees. The attorney should check the local rules to determine the case.

Also, some bankruptcy courts require, pursuant to local rules, that the attorney prepare and file an Application For Allowance of Compensation with a copy served on the Trustee. If such a court does not have its own form for the application, the attorney must create his own. The following is a suggested form covering both the disclosure requirement under Bankruptcy Rule 2016 (b) and the Allowance of Compensation.

UNITED STATES BANKRUPTCY COURT

(NORTHERN DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE: JOHN LESTER SMITH) CASE NUMBER:
(type in debtor's name for) (insert filing number
example JOHN Q. DOE)) from the petition)
) CHAPTER (7) (13)
) APPLICATION FOR ALLOWANCE OF
) COMPENSATION, STATEMENT OF
) ATTORNEY PURSUANT TO BANKRUPTCY
) RULE 2016(b) and ORDER THEREON

1. The total fee to be charged by the attorney for the legal services rendered or to be rendered in the above-entitled bankruptcy action are \$200. This fee is exclusive of costs. To date ONE HUNDRED DOLLARS \$100 has been paid leaving an unpaid balance of \$100.

2. By agreement with the debtors, the attorney shall be paid by the trustee, if any, as a priority administrative claim upon approval by the Bankruptcy Court.

3. A Statement of Disclosure, pursuant to Bankruptcy Rule 2016(b) has been filed with this Court and its provisions are incorporated herein by reference.

4. The legal services rendered or to be rendered by the attorney in this action are as follows: ADVICE OF THE STATE EXEMPTIONS
REGARDING BANKRUPTCY AND ADVICE OF COMPLETING THE FORMS

1
2
3
4
5
6 5. The attorney is licensed to practice before this Court and
7 Courts of this State and is competent to handle a bankruptcy action like
8 this case. The attorney 's office address is that stated below.

9 6. The attorney does not have an interest in the action except as
10 the attorney in the action.

11 7. That in addition to the foregoing, Applicant makes the following
12 statements pursuant to Bankruptcy Rule 2016(b):
13

14 (a) The details set forth by the debtor herein concerning
15 compensation paid and to be paid to the attorney is a true, complete and
16 accurate statement of the agreement between the debtor and the attorney
17 for legal services rendered and to be rendered herein.

18 (b) The source of monies paid by the debtor to the attorney to the
19 best of the knowledge and belief of said attorney was:

20 from savings earned from the debtor's work
21
22
23

24 © The attorney has not shared or agreed to share, other than with
25 members of the law firm or corporation, any of the said compensation
26 with any other person except: _____

27 none
28

is requested that any unpaid balance of compensation be given the status as a priority administrative claim and paid by the trustee from the funds deposited with the trustee by the debtors.

DATED: _____

Attorney for Debtors

(Address and phone number)

CERTIFICATE OF MAILING

The undersigned certifies under penalty of perjury that on _____ a true copy of this Application for Allowance of Compensation was sent by first class mail to the United States trustee and trustee of this case.

DATE: _____

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER
)
) CHAPTER
)
) APPLICATION FOR ALLOWANCE OF
) COMPENSATION, STATEMENT OF
) ATTORNEY PURSUANT TO BANKRUPTCY
) RULE 2016(b) and ORDER THEREON

1. The total fee to be charged by the attorney for the legal services rendered or to be rendered in the above-entitled bankruptcy action are _____. This fee is exclusive of costs. To date _____ has been paid leaving an unpaid balance of _____.

2. By agreement with the debtors, the attorney shall be paid by the trustee, if any, as a priority administrative claim upon approval by the Bankruptcy Court.

3. A Statement of Disclosure, pursuant to Bankruptcy Rule 2016(b) has been filed with this Court and its provisions are incorporated herein by reference.

4. The legal services rendered or to be rendered by the attorney in this action are as follows: _____

1
2
3
4
5
6
7 5. The attorney is licensed to practice before this Court and
8 Courts of this State and is competent to handle a bankruptcy action like
9 this case. The attorney 's office address is that stated below.

10 6. The attorney does not have an interest in the action except as
11 the attorney in the action.

12 7. That in addition to the foregoing, Applicant makes the following
13 statements pursuant to Bankruptcy Rule 2016(b):
14

15 (a) The details set forth by the debtor herein concerning
16 compensation paid and to be paid to the attorney is a true, complete and
17 accurate statement of the agreement between the debtor and the attorney
18 for legal services rendered and to be rendered herein.

19 (b) The source of monies paid by the debtor to the attorney to the
20 best of the knowledge and belief of said attorney was:
21
22
23
24

25 © The attorney has not shared or agreed to share, other than with
26 members of the law firm or corporation, any of the said compensation
27 with any other person except: _____
28

1 _____
2 WHEREFORE the undersigned respectfully requests that this
3 Application for Allowance of Compensation be allowed. Furthermore, it
4 is requested that any unpaid balance of compensation be given the status
5 as a priority administrative claim and paid by the trustee from the
6 funds deposited with the trustee by the debtors.
7

8 DATED: _____

9 Attorney for Debtors
10

11 _____
12 _____
13 (Address and phone number)
14

15 CERTIFICATE OF MAILING
16

17 The undersigned certifies under penalty of perjury that on
18 _____ a true copy of this
19 Application for Allowance of Compensation was sent by first class mail
20 to the United States trustee and trustee of this case.
21

22 DATE: _____
23
24
25
26
27
28

XIX. NOTICE TO INDIVIDUAL CONSUMER DEBTOR

Under Section 342 of the Bankruptcy Code, the clerk is required to give notice to the debtor prior to the filing of any bankruptcy petition, if the debts to be discharged are primarily consumer debts. This notice explains the various types of bankruptcy proceedings that are available.

Section 342 reads as follows:

"(a) There shall be given such notice as is appropriate, including notice to any holder of a community claim, of an order for relief in a case under this title.

(b) Prior to the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give written notice to such individual that indicates each chapter of this title under which such individual may proceed."

As a practical matter, the courts require that the debtors file with their petition a form stating that they are aware of this knowledge. The following form has been created to comply with section 342, it is identical with the Official Form B 201 except that it has a case caption for easy identification. Local rules should be reviewed to determine if a local form is required to be used instead.

NORTHERN DISTRICT OF CALIFORNIA

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income (\$155 filing fee plus \$30 administrative fee)

CHAPTER FIVE

THE CHAPTER 13 PLAN

Once the debtor has completed the petition, the next matter to attend to is the creation of the Chapter 13 Plan. Under the Bankruptcy Code, the debtor in a Chapter 13 proceeding is required to submit, for court approval, a written plan for the payment of creditors over a period of years. The plan must last for three years and with court approval may be extended to five years.

The procedure for obtaining court approval is very straightforward. After the debtor files the chapter 13 petition, notice of the petition is given, by the Clerk, to the debtor's creditors which places an automatic stay on any collection actions by the creditors. The debtor then prepares the proposed plan which is filed with the court and served upon the Trustee and all of the creditors. The proposed Plan can be filed at the same time as the Petition or afterwards by a date set by the Court.

A hearing date is then set for the confirmation of the plan. The Official Form 9 is a combination form for giving notice of the due date for the filing of all creditors claims on Form 10, the date of the Meeting of Creditors and notice for when the Plan has been filed and date of the hearing on the Confirmation of the Plan. Following this Chapter are the Official Forms 9 and 10. When the proposed Plan is filed with the Petition, the hearing date is

usually on the same day as the Meeting of Creditors. Any creditor having objections to the plan may file objections which will be heard at the hearing. At such a hearing, the objecting Creditor is given an opportunity to come forward explain why the creditor feels the Plan should not be approved. As a practical matter, the objections of unsecured creditors will not prevent a plan from being approved if:

- (a) the unsecured creditors receive under the Plan at least as much as they would have received had the debtor filed a Chapter 7 petition instead; and
- (b) the debts seeking to be discharged are not of the type which under the Bankruptcy Code are non-dischargeable.

As long as the unsecured creditors are paid the minimum amount that would have received had a chapter 7 petition been filed and the debt is properly dischargeable then the objections will be overruled and the plan approved.

The plan must provide payments to the unsecured creditors that will, at a minimum, equal the amount that they would have received had the debtor filed a chapter 7 liquidation instead of a chapter 13 petition. The debtor is not required to pay all of the unsecured debts. Under the bankruptcy law, the debtor is only required to pay that percentage of debts that would have been paid had a Chapter 7 petition been filed. The Bankruptcy Code requires that all unsecured creditors be dealt with in the Plan. Unlike secured creditors, a debtor can not make an agreement with the unsecured creditors to pay them outside of the Plan or in accordance with the

terms of their original agreement.

Even if a debt is non-dischargeable, the Plan can nonetheless structure payments for that debt to be made during the Plan's term. If the debt is not fully paid in the bankruptcy proceeding, the debtor remains liable for payment of the balance after the plan has been completed.

In the same vein as nondischargeable debts are debts with priority claims. Section 1322(a) requires that a Chapter 13 Plan provide for full payment, in deferred cash, of all priority claims unless the holder of the claim agrees otherwise (i.e, agrees to take less than the holder owed or agrees to take payments outside the Plan or after the Plan has been completed). Priority claims are defined under section 507(a) as being:

- (a) Administrative expenses such as the Trustee's fee and the debtor's attorney fee;
- (b) unpaid taxes;
- (c) unpaid wages, salaries, commissions earned by the creditor with 90 days of filing the petition or date of the cessation of the debtor's business which occurred earlier but only to the extent of \$2,000 per person;
- (d) unsecured claims for contributions to employee benefit plans within stated limits;
- (e) unsecured claims up to \$2,000 per person for fishermen and persons engaged in raising grain.
- (f) unsecured claims up to \$900 each for deposits for purchases, rentals or services which were not delivered.

Priority Claims are listed on Schedule E.

The plan may also provide for the payment of secured debts as well as unsecured debts. Under the Bankruptcy Code, fully secured debts must be paid in full if they are included in the plan. If a fully secured creditor is not fully paid off under the proposed Plan, the secured creditor can object to the Plan and therefore not have the secured debt discharged. However, even if the secured debt is not discharged, the payments to be made on that debt can be set by the Bankruptcy Court during the term of the Plan. This is normally what happens to a secured creditor in order for the debtor to avoid a foreclosure. In such an instance, the Plan can be drafted so that the defaults on the debt are gradually make up and the debtor then resumes normal payments. In such an instance, the secured creditor is unable to foreclose of the property. As long as the debtor makes the payments to the secured creditor in accordance with the provisions of the Plan, the secured creditor will not be granted relief from an automatic stay even though are in arrears and it will take a great deal of time to catch up.

In a chapter 13 proceeding, the debtor must make all of the payments ordered under the plan to the Trustee. Upon receipt of the debtor's payments, the Trustee then turns around and pays the creditors the amounts designated un the plan. Generally, the Trustee receives as his or her payment 10% of all payments received as the Trustee's fee.

Payments under the Plan must begin within 30 days after the

filing of the plan with the court. The payments must be regularly made, usually on a monthly basis. Some bankruptcy courts will order an attachment of the debtor's wages to assure payments are made under the plan. Most Bankruptcy Courts have local rules regarding the payments that are to be made under the Plan.

Once the plan has been approved, all that remains is for the debtor to make the payments ordered under the Plan to the Trustee along with costs of the Plan. The major cost of the Plan is the Trustee's fee which is equal to 10% of all the money paid to the Trustee. Because the Trustee is based upon the amount of the money paid to the Trustee, secured debts which are not in default are usually not included in the Plan. In such a situation, the debtor makes the payments outside the Plan and therefore does not have to pay a 10% Trustee Fee for having the payments transmitted to the secured creditor. Where the debtor is in default of a debt with a secured creditor, the debt is handled in the Plan so that the secured creditor can not foreclose on the property securing the debt. In that instance, the debtor must pay the Trustee fee on the payments made to the secured creditor pursuant to the Plan's terms.

The actual drafting of a Plan is relatively simple. All unsecured creditors have to be paid at least what they would have received had the debtor filed a Chapter 7 Petition. Section 1322(a) states that a Plan must:

- (a) provide for the submission of all or such portion of the future earnings or income of the debtor to the supervision

and control of the Chapter 13 Trustee as is necessary for the execution of the Plan'

- (b) provide for the full payment, in deferred cash, of all priority claims, unless the holder of the claim agree otherwise;
- (c) if the Plan classifies claims, provide for the same treatment for each claim within the particular class.

What this means is that all priority claim holders must be paid under the Plan. The identity and amount of each priority claim holder has already been identified on Schedule J so the Plan will simply set up a payment schedule for those creditors. The minimum amounts which each unsecured creditor should receive under the Plan should have been calculated by use of the worksheet. The amount each unsecured creditor will receive is simply the product of the number of months for which payments will be made times the monthly payment to be made to the creditor. For example if a unsecured creditor is entitled to \$3600. The minimum payment the creditor is to receive, in a three year (36 month) Plan, is \$100 per month.

The next matter for which the debtor has to decide is whether special classes should be set wherein the unsecured creditors will receive more than their minimum amounts. If so, the creditor must explain what the classes are how the determination is made for placing a creditor in the class. In other words, the debtor may, have special reasons, for wishing to pay some unsecured creditors more than minimum share. For example, the debtor may wish to pay some business creditors 90% and personal creditors 100%.

Secured creditors are treated differently from unsecured creditors in a chapter 13 proceeding. Secured creditors may be treated in one of four ways. In the first instance, each secured creditor is given the option of accepting a proposed payment plan. This usually means that an agreeing secured creditor will be paid less than the creditor is actually owed under the security agreement. Secondly, each secured creditor may reject the proposed payment plan and stand on their security instrument. In this instance, the creditor must be completely paid off within the term of the plan. The court will not approve any plan which will not pay off an objecting secured creditor within the term of the plan. Interest must be paid on all secured claims handled in the plan. In the third case, the debtor may surrender the collateral to the secured creditor holding a security interest on it. In such a situation, the secured creditor would become an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property. The last way for a debtor in a chapter 13 proceeding to deal with a secured creditor is to omit the creditor from the plan and continue to make the payments as before the filing.

When dealing with secured creditors it is important to remember that a secured creditors lien only extends to the fair market value of the security. As such, if a secured claim is handled in the plan, once the creditor receives the fair market value of the collateral, the lien is discharged and the secured

creditor thereafter becomes an unsecured creditor as to any remaining unpaid balance.

A sample Chapter 13 Plan follows below. The Plan even covers a lien avoidance of a judgment lien placed up the debtors residence. A lien avoidance requires the filing of a motion to avoid the lien (see the CHAPTER LIEN AVOIDANCE for the form of the motion). That motion should be filed concurrently with the proposed Plan so that it can be heard at the Confirmation hearing. The Trustee is calculated as follows: the monthly house payment for 36 months is \$19,697.76. To that is added the arrearage payments of \$3,285 and interest on it for \$295. The total is \$23,277.76. Since these are the only payments handled by the Trustee, the fee will be 10% of this amount which is \$2,378 plus another \$300 to reflect 10% of the \$3,000 being paid to the unsecured creditors. If more space is needed to list everything, additional pages can be added as long as the items are properly identified as to the sections they apply.

NAME _____

ADDRESS _____

PHONE _____

DEBTOR PRO PER

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:

) CASE NUMBER:

)

) CHAPTER 13

CHAPTER 13 PLAN

THE DEBTOR PROPOSES THE FOLLOWING CHAPTER 13 PLAN. CREDITORS DO NOT VOTE ON THIS PLAN BUT THEY MAY MAKE OBJECT TO ITS CONFIRMATION PURSUANT TO BANKRUPTCY CODE SECTION 1324. ANY OBJECTION MUST BE IN WRITING AND MUST BE FILED WITH THE COURT AND SERVED ON THE DEBTOR, DEBTOR'S ATTORNEY (IF ANY) AND THE CHAPTER 13 TRUSTEE NOT LESS THAN FOUR (4) DAYS PRIOR TO THE DATE FIXED FOR THE CONFIRMATION HEARING. ABSENT SUCH OBJECTION, THE COURT MAY CONFIRM THIS CHAPTER 13 PLAN AND ACCEPT THE STATEMENTS AND ALLEGATION MADE THEREIN AS TRUE.

HOLDERS OF SECURED CLAIMS IN REAL PROPERTY WILL BE PAID ACCORDING TO THE PROVISIONS OF THE PLAN UNLESS AND UNTIL A CLAIM IS TIMELY FILED BY THE SECURED CLAIM HOLDER AND THAT CLAIM IS ALLOWED. HOLDERS OF ALL OTHER CLAIMS MUST TIMELY FILE PROOFS OF CLAIM IN ORDER TO BE PAID.

I. PROPERTY AND FUTURE EARNINGS

1. The debtors hereby propose to payover, deliver and transfer to the supervision, control, management and administration of the Trustee the following property:

a. FUTURE EARNINGS: _____ per month beginning within 30 days of the date of filing the Petition.

b. OTHER PROPERTY: _____

c. Amounts necessary to pay any post-petition claims that were allowed under Bankruptcy Code Section 1305.

II. TERM OF THE PLAN

The term of the Plan shall be _____ months commencing from the date of the confirmation of the Plan.

If the Plan is for a period over 36 months, good cause exists for the extended period in that:

a. ____ The Plan intends to pay at least 70% of the unsecured claims

b. ____ Other _____

III. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN

1. PRIORITY CLAIMS. The following claims are entitled to priority treatment under section 507 of the Bankruptcy Code and will be paid in full under this Plan in deferred payments, provided a proof of claim form has been properly filed:

	PRIORITY CLAIM	MONTHLY PAYMENT	NUMBER OF PAYMENTS	TOTAL PAYMENTS
a. Trustee's Compensation	10% OF TOTAL DISBURSEMENTS	_____	_____	_____
b. Attorney Fees	_____	_____	_____	_____
c. Tax Claims	_____	_____	_____	_____
d. Other _____	_____	_____	_____	_____

2. SECURED CLAIMS ON THE DEBTOR'S PRINCIPAL RESIDENCE. The value is set as of the Plan's effective date and is equal to the allowed total amount of the claim payable in monthly installments. Defaults will be cured using a discount rate of _____ % per year. Any secured obligation on the Principal's Residence, maturing prior to the Plan's termination date, will be paid in full by that date. The secured creditors retain their liens.

CREDITOR	DEFAULT AMOUNT	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL PAYMENT
_____	_____	_____	_____	_____
CURE DEFAULT	_____	_____	_____	_____
_____	_____	_____	_____	_____

CURE DEFAULT

3. SECURED AND PARTIALLY SECURED CLAIMS WHICH WILL BE FULLY PAID UNDER THE PLAN. Creditor will retain their liens until completion of the Plan. The value of the secured claim is the allowed amount of the claim, based upon its present value computation, on the Plan's effective date, using a discount rate of _____% per annum. Payments shall be made monthly.

TOTAL PAYMENT	CREDITOR OF	TOTAL DEBT SECURED PAYMENT	UNSECURED MONTHLY CLAIM	NUMBER CLAIM
MONTHS				
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

4. SECURED OR UNSECURED CLAIMS DEALT WITH UNDER THE PLAN FOR WHICH THE LAST PAYMENT IS DUE AFTER THE FINAL PAYMENT OF THE PLAN IS DUE. The value is set as of the Plan's effective date and is equal to the allowed total amount of the claim payable in monthly installments. Defaults will be cured using a discount rate of _____ % per year.

CREDITOR	DEFAULT AMOUNT	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL PAYMENT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

5. ALLOWED UNSECURED CLAIMS. THE SECURED CLAIMS WILL BE DIVIDED INTO CLASSES. The Plan provides for equal treatment subclass and no unfair discrimination exists in the division into subclasses. Unless the Plan calls for 100% to the unsecured creditors, the debtor shall pay all disposable income to the Trustee for the first 36 months and submit statements of income to the Trustee on a semi-annual basis. The Trustee may petition the Court to increase the payments if higher payments can be made.

Class A claims consist of the following unsecured creditors who will be paid _____% of their claims as follows.

CREDITOR	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL
----------	-----------------	------------------	-------

Class B claims consist of the following unsecured creditors who will be paid _____% of their claims as follows.

CREDITOR	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL

6. POST-PETITION CLAIMS. Post Petition claims allowed under Bankruptcy Code Section 1305 shall be paid in full. Payments shall be in equal monthly installments commencing within 30 days of the their allowance and concluding on the last day of the Plan, provided sufficient funds are available.

IV. CLAIMS PAID OUTSIDE OF THE PLAN.

A. SECURED CLAIMS

B. NONDISCHARGEABLE DEBTS

V. PLAN ANALYSIS. Total Payment to be made under the Plan

CLASS ONE TOTAL	
CLASS TWO TOTAL	
CLASS THREE TOTAL	
CLASS FOUR TOTAL	
CLASS FIVE TOTAL	
CLASS SIX TOTAL	

TRUSTEE FEES (ESTIMATE 10%) _____

TOTAL _____

VI. COMPARISON WITH CHAPTER 7 As of the effective date of the Plan, the distribution to each unsecured creditor is not less than the amount that the creditor would have received had the Debtor filed for a liquidation under Chapter 7 of the Bankruptcy Code on that date. The estimate of the distribution to the general unsecured creditors is _____ %.

VII. MISCELLANEOUS PROVISIONS

1. Insurance to protect the liens of secured creditors will () will not () be provided under the Plan as follows: _____

2. Property of the estate vests in the debtor upon confirmation of the Plan unless otherwise stated in the order confirming the Plan.

3. The debtor's federal income tax refund will be deposited with the Trustee upon receipt by the debtor.

4. The debtor rejects the following executory contracts and unexpired leases: _____

5. The debtor ratifies and assumes the following executory contracts and unexpired leases: _____

6. The priority claims shall be paid as soon as funds are received by the Trustee.

7. The Trustee is authorized to disburse funds after the confirmation of the plan in open court.

8. The Debtor abandons the following real and/or personal property: _____

9. Miscellaneous Provisions: _____

DATED: _____

DEBTOR

NAME _____

ADDRESS _____

PHONE _____

DEBTOR PRO PER

UNITED STATES BANKRUPTCY COURT

_____ DISTRICT OF _____

IN RE:	) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH	) CHAPTER 13
)

CHAPTER 13 PLAN

THE DEBTOR PROPOSES THE FOLLOWING CHAPTER 13 PLAN. CREDITORS DO NOT VOTE ON THIS PLAN BUT THEY MAY MAKE OBJECT TO ITS CONFIRMATION PURSUANT TO BANKRUPTCY CODE SECTION 1324. ANY OBJECTION MUST BE IN WRITING AND MUST BE FILED WITH THE COURT AND SERVED ON THE DEBTOR, DEBTOR'S ATTORNEY (IF ANY) AND THE CHAPTER 13 TRUSTEE NOT LESS THAN FOUR (4) DAYS PRIOR TO THE DATE FIXED FOR THE CONFIRMATION HEARING. ABSENT SUCH OBJECTION, THE COURT MAY CONFIRM THIS CHAPTER 13 PLAN AND ACCEPT THE STATEMENTS AND ALLEGATION MADE THEREIN AS TRUE.

HOLDERS OF SECURED CLAIMS IN REAL PROPERTY WILL BE PAID ACCORDING TO THE PROVISIONS OF THE PLAN UNLESS AND UNTIL A CLAIM IS TIMELY FILED BY THE SECURED CLAIM HOLDER AND THAT CLAIM IS ALLOWED. HOLDERS OF ALL OTHER CLAIMS MUST TIMELY FILE PROOFS OF CLAIM IN ORDER TO BE PAID.

I. PROPERTY AND FUTURE EARNINGS

1. The debtors hereby propose to payover, deliver and transfer to the supervision, control, management and administration of the Trustee the following property:

a. FUTURE EARNINGS: \$1,008 per month beginning within 30 days of the date of filing the Petition.

b. OTHER PROPERTY: none

c. Amounts necessary to pay any post-petition claims that were allowed under Bankruptcy Code Section 1305.

II. TERM OF THE PLAN

The term of the Plan shall be 36 months commencing from the date of the confirmation of the Plan.

If the Plan is for a period over 36 months, good cause exists for the extended period in that:

a. x The Plan intends to pay at least 70% of the unsecured claims

b. Other _____

III. CLASSIFICATION AND TREATMENT OF CLAIMS UNDER THE PLAN

1. PRIORITY CLAIMS. The following claims are entitled to priority treatment under section 507 of the Bankruptcy Code and will be paid in full under this Plan in deferred payments, provided a proof of claim form has been properly filed:

	PRIORITY CLAIM	MONTHLY PAYMENT	NUMBER OF PAYMENTS	TOTAL PAYMENTS
a. Trustee's Compensation	10% OF TOTAL DISBURSEMENTS			
b. Attorney Fees	_____	_____	_____	<u>0</u>
c. Tax Claims	_____	_____	_____	<u>0</u>
d. Other _____	_____	_____	_____	<u>0</u>

2. SECURED CLAIMS ON THE DEBTOR'S PRINCIPAL RESIDENCE. The value is set as of the Plan's effective date and is equal to the allowed total amount of the claim payable in monthly installments. Defaults will be cured using a discount rate of _____ % per year. Any secured obligation on the Principal's Residence, maturing prior to the Plan's termination date, will be paid in full by that date. The secured creditors retain their liens.

CREDITOR	DEFAULT AMOUNT	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL PAYMENT
<u>PETER HOLLINGS</u>	<u>\$3,285</u>	<u>\$547.14</u>	<u>36</u>	
CURE DEFAULT		<u>\$219</u>	<u>15</u>	<u>\$22,982.04</u>
<u>GREATER UKIAH MEDICAL (LIEN AVOIDANCE SOUGHT)</u>				
CURE DEFAULT		_____	_____	_____

3. SECURED AND PARTIALLY SECURED CLAIMS WHICH WILL BE FULLY PAID UNDER THE PLAN. Creditor will retain their liens until

completion of the Plan. The value of the secured claim is the allowed amount of the claim, based upon its present value computation, on the Plan's effective date, using a discount rate of _____% per annum. Payments shall be made monthly.

NUMBER CREDITOR PAYMENT	TOTAL CLAIM	TOTAL DEBT SECURED CLAIM	UNSECURED CLAIM	MONTHLY PAYMENT	OF MONTHS
none					

4. SECURED OR UNSECURED CLAIMS DEALT WITH UNDER THE PLAN FOR WHICH THE LAST PAYMENT IS DUE AFTER THE FINAL PAYMENT OF THE PLAN IS DUE. The value is set as of the Plan's effective date and is equal to the allowed total amount of the claim payable in monthly installments. Defaults will be cured using a discount rate of _____ % per year.

CREDITOR	DEFAULT AMOUNT	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL PAYMENT
none				

5. ALLOWED UNSECURED CLAIMS. THE SECURED CLAIMS WILL BE DIVIDED INTO CLASSES. The Plan provides for equal treatment subclass and no unfair discrimination exists in the division into subclasses. Unless the Plan calls for 100% to the unsecured creditors, the debtor shall pay all disposable income to the Trustee for the first 36 months and submit statements of income to the Trustee on a semi-annual basis. The Trustee may petition the Court to increase the payments if higher payments can be made.

Class A claims consist of the following unsecured creditors who will be paid 9.249 % of their claims as follows.

CREDITOR	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL
(SEE ATTACHMENT)			

Class B claims consist of the following unsecured creditors who will be paid _____% of their claims as follows.

CREDITOR	MONTHLY PAYMENT	NUMBER OF MONTHS	TOTAL
<u>none</u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>
<u></u>	<u></u>	<u></u>	<u></u>

6. POST-PETITION CLAIMS. Post Petition claims allowed under Bankruptcy Code Section 1305 shall be paid in full. Payments shall be in equal monthly installments commencing within 30 days of the their allowance and concluding on the last day of the Plan, provided sufficient funds are available.

IV. CLAIMS PAID OUTSIDE THE PLAN

A. SECURED CLAIMS

1. MACO CHEVROLET will be paid outside the plan under the terms of the original purchase agreement
2. ACME FURNITURE will be paid outside the plan in accordance with the original purchase agreement.
3. UKIAH CESSNA will be paid outside the plan in accordance with the terms of the original agreement.

B. NONDISCHARGEABLE DEBTS none

V. PLAN ANALYSIS. Total Payment to be made under the Plan

CLASS ONE TOTAL	<u>0</u>
CLASS TWO TOTAL	<u>766.14</u>
CLASS THREE TOTAL	<u>0</u>
CLASS FOUR TOTAL	<u>0</u>
CLASS FIVE TOTAL	<u>150</u>
CLASS SIX TOTAL	<u>0</u>
TRUSTEE FEES (ESTIMATE 10%)	<u>91.61</u>
TOTAL	<u>1,007.75</u>

VI. COMPARISON WITH CHAPTER 7 As of the effective date of the Plan, the distribution to each unsecured creditor is not less than the amount that the creditor would have received had the Debtor filed for a liquidation under Chapter 7 of the Bankruptcy Code on that

date. The estimate of the distribution to the general unsecured creditors is _____ %.

VII. MISCELLANEOUS PROVISIONS

1. Insurance to protect the liens of secured creditors will
() will not (X) be provided under the Plan as follows: _____
HOME INSURANCE WILL BE CARRIED

2. Property of the estate vests in the debtor upon confirmation of the Plan unless otherwise stated in the order confirming the Plan.

3. The debtor's federal income tax refund will be deposited with the Trustee upon receipt by the debtor.

4. The debtor rejects the following executory contracts and unexpired leases: _____ NONE

5. The debtor ratifies and assumes the following executory contracts and unexpired leases: _____

_____ NONE

6. The priority claims shall be paid as soon as funds are received by the Trustee.

7. The Trustee is authorized to disburse funds after the confirmation of the plan in open court.

8. The Debtor abandons the following real and/or personal property: _____ NONE

9. Miscellaneous Provisions: _____

DATED: _____

JOHN LESTER SMITH

DATED: _____

JANE ALICE SMITH

TOTAL PAYMENT AVAILABLE FOR UNSECURED CREDITORS
\$150 PER MONTH

CREDITOR	AMOUNT	PERCENTAGE OF TOTAL UNSECURED CLAIMS	MONTHLY PAYMENT	TOTAL
GREATER				
<u>UKIAH MEDICAL</u>	<u>\$39,000</u>	<u>41</u>	<u>\$61.50</u>	<u>\$2,214</u>
BANK OF				
<u>ALABAMA</u>	<u>\$4,700</u>	<u>5</u>	<u>\$7.50</u>	<u>\$270</u>
CALIFORNIA				
<u>SAVINGS</u>	<u>\$8,870</u>	<u>9</u>	<u>\$13.50</u>	<u>\$486</u>
<u>PAUL RODDY</u>	<u>\$13,000</u>	<u>13</u>	<u>\$19.50</u>	<u>\$702</u>
<u>JOHN KREBS</u>	<u>\$1,500</u>	<u>2</u>	<u>\$3.00</u>	<u>\$108</u>
HOME LENDING				
<u>BANK</u>	<u>\$5,675</u>	<u>6</u>	<u>\$105</u>	<u>\$3,780</u>
METRO				
<u>HOSPITAL</u>	<u>\$23,000</u>	<u>24</u>	<u>\$36.00</u>	<u>\$1,296</u>
TOTAL	\$95,745	100%		\$8,856

CHAPTER 6

THE EFFECTS OF BANKRUPTCY ON THE DEBTOR'S HOME

I. INTRODUCTION

There are several questions that any debtor will have regarding the effect of a Chapter 13 petition on the debtor's home.

Will the home be lost?

Will the debtor lose all of the equity in the home?

Is the debt on the home loan dischargeable?

What happens to judgment liens from lawsuits on the property?

All of the above are questions that immediately leap into the mind of anyone considering bankruptcy.

If a debtor owns a home, it is important for the debtor to understand the effects of filing a Chapter 13 petition on that home. As stated throughout the book, in a Chapter 13 Plan the unsecured creditors must receive at least as much in payments under the Plan as they would have received had the debtor filed a Chapter 7 petition. Consequently, it is necessary for a debtor to know how much, of the debtor's equity in the home will be considered in determining the extent of assets available for payment to the unsecured creditors.

Under the federal exemptions and most state exemptions, debtors are permitted to exempt a certain amount of equity in their home from creditors (the homestead exemption). Every debtor must

determine the equity in the home that must be paid to the unsecured creditors and factor it into the payment calculations for the unsecured creditors.

There are additional considerations that are also present. The first is that a bankruptcy will not stop a foreclosure from occurring if the payments are not made. While a bankruptcy filing will delay the foreclosure for a few months, it will not bar it completely. To do so would result in simply giving the property debt-free to the debtor. Such is just not done for secured real property.

In place of simply giving the home to the debtor through the federal and state laws, there are exemptions for the debtor's equity in a home to a limited amount. This exempted amount of the debtor's equity in the home is called the "homestead exemption." In most bankruptcies, the homestead exemption is the most important exemption in the entire estate. A few states do not permit a homestead exemption but most do.

Many persons filing for bankruptcy relief are also married. Some states have special laws that exempt property that is held in joint tenancy or tenants by the entirety with a spouse under certain circumstances. In these states, the debtor's interest in the home, if held in joint tenancy or tenancy by the entirety with a spouse, may be exempted regardless of whether or not the state has a homestead exemption when only one spouse files for bankruptcy

protection. This chapter covers the laws of those states that permit such exemptions to the extent that is possible in a book of this format.

This chapter informs and instructs concerning what to expect in the event of a foreclosure. This chapter also will cover possible alternatives to maximize the debtor's recovery from any foreclosure.

Because of the importance of both the homestead exemption and possible exclusion of tenancy by the entirety property from the debtor's bankruptcy, the reader, should review the state law and consult an attorney skilled in bankruptcy for possible changes before filing the petition. The bankruptcy law is constantly amended. New exemptions are added every few years and existing exemption amounts are sometimes increased. A careful reader will review state law to ensure the exemption amounts have not been raised. Example: South Carolina raises its homestead exemption from \$5,000 to \$50,000 in the future. The debtor does not know it. The debtor may lose the \$45,000. The trustee will not inform the debtor of the exemptions that are available because the trustee wants as much money in the estate as possible to pay creditors.

Fortunately, it is cheap to check on the state exemptions. Chapter 8 lists state exemptions with their appropriate code section numbers. The debtor can simply go to a set of the state codes, present in all law libraries and many public libraries, and

find the particular code section for the exemption in question to see if the exemption has been changed. It is unlikely that an exemption will be revoked or reduced in amount. Usually the exemption will be increased for the debtor's benefit, and new ones might be added. All law libraries have books on bankruptcy such as Cowans Bankruptcy Law and Practice and Collier on Bankruptcy. Law libraries are in law schools, every state capitol, and most county seats and large cities, all open to the public. The debtor should also consider consulting a bankruptcy attorney. If a foreclosure is being undertaken by a creditor, the debtor must consult an attorney because of the complexity of the law in that area and the procedures that must be followed.

II. HOMESTEAD EXEMPTION ON THE DEBTOR'S HOME

Under both federal and most states' laws, a debtor is permitted to claim an exemption for his equity in real or personal property that he uses as a residence of a limited fixed value. Some states also permit each spouse who is filing bankruptcy, either separately or individually, to claim the full amount of the homestead. Most states, however, do not permit this "doubling" of the homestead exemption. The states that are known to permit or deny doubling are listed in the Chapter 8. It is up to the debtor to determine if doubling is permitted in other states. The simplest thing might be to double when in doubt, and see if the court or trustee object. If so, the doubling will simply be disallowed.

The debtor is the one who must prove that the property on which a homestead exemption is claimed is the debtor's residence. This can be accomplished quite easily by the recordation of a homestead declaration. In fact, some states actually require the filing a homestead declaration prior to filing the bankruptcy petition in order to be able to claim the petition. As a practical matter, a debtor should record a homestead declaration prior to filing the bankruptcy petition whether or not it is required if a homestead exemption is sought. Filing the homestead declaration strengthens the homestead exemption and is proof that the property was the debtor's residence. This will be important evidence if a creditor contests the appropriateness of the homestead exemption. A homestead declaration can be purchased at most stationary stores, notarized and recorded for a total cost of around \$20. Given the fact that the declaration may save thousands in exemption, it is a cheap insurance policy.

The amount of the debtor's homestead exemption is calculated by taking the fair market value of the property, subtracting the liens on the property, then subtracting the amount of the debtor's equity up to the amount of the homestead exemption. Any remaining equity in the home is considered available for payment to the unsecured creditors. For example assume that the debtor's home is worth \$40,000 and that there is a loan on the property of \$19,000. The cost of the Trustee's sale is \$2,000, and the state's homestead

exemption is \$7,500. The results would be as follows:

Sale price	\$40,000
minus debts on home	- \$19,000
minus costs of sale	- \$ 2,000
minus homestead exemption	<u>- \$ 7,500</u>
remainder that must be	\$11,500
factored into the Plan for	
payment to the unsecured creditors.	

The above example shows the worst case scenario. The debtor has equity that will be paid to unsecured creditors in the Chapter 13 Plan. There are two alternatives. The first is to sell the house before the bankruptcy and invest the proceeds in new exempt property. The second is to borrow against the equity and invest the borrowed money in exempt property. Caution should be exercised in doing either of the above. Some bankruptcy courts consider such actions an abuse of the bankruptcy law. In this situation, the reader can see the wisdom in consulting a bankruptcy attorney.

A second example more common and beneficial to the debtor exists where the debtor does not have enough equity to cover the homestead exemption. Prior to filing, the debtor should, sell nonexempt assets to apply to the loan on the home. This will increase the debtor's assets after bankruptcy. Example: The debtor's home is worth \$40,000, with loans of \$30,000 on it, costs of sale of \$2,000, and a maximum homestead exemption of \$7,500. In addition, the debtor has a nonexempt bank account of \$2,000. The debtor will have a homestead exemption of only \$500. If the debtor uses the \$2,000 bank account (that will otherwise be lost to pay debts) the debtor's equity and

homestead exemption will increase to \$2,500. Most states, like Maine (14 MRSA section 4422), do not forbid increases to exempt property made within 90 days of the filing of the petition.

NEW RULES ON HOMESTEAD EXEMPTION.

Next to the means test, the most important changes in the Reform Act are the changes to the homestead exemption. Since a home is the largest asset in most debtors' estates, the issue of changing the homestead exemption was a major sticking point in the amendment of the Bankruptcy Act for decades. Even now the changes, while significant were still not the wide sweeping changes originally foreseen: There are three major changes in how the homestead exception works:

- 1 There is a limitation on the increase of value in a debtor's homestead prior to filing bankruptcy. Under the old law, there was no prohibition to selling nonexempt assets and adding the proceeds toward improvements or paying off the debts on the homestead to the extent of the exempt homestead amount under state law.

Now under the Reform Act, any addition to the value of a homestead made during the 10-year period before filing by the Debtor, funded by nonexempt property, and made with the intent to hinder, delay, or defraud creditors, is NOT protected by the state homestead exemption. § 522(o). There is still significant wiggle room under this section because any improvement in the 10-year period not made with the intent to defraud or delay creditors will still be counted toward the homestead amount. Ten years seems entirely too long a period to be workable. It seems very unlikely that creditors could succeed in claiming that

improvements made more than three years before filing a petition were part of a plan to defraud creditors. Improvements made closer to the filing period will start to carry such a presumption under the Act

2. The second change to the homestead act prevents adding additional value to a homestead exemption which would raise it more than \$125,000 within 1215 days (three years and four months) prior to the filing. For example, if a debtor's state exemption is \$250,000 but the debtor only has \$50,000 equity in the homestead, the debtor can only add an additional \$75,000 in value to raise the exemption amount within 1215 days of filing anything more than that will not count. However if the debtor waits more than 1215 after last adding value to the homestead, he can increase it by \$200,000

Not included in the addition to value is an interest transferred from a debtor's previous principal residence acquired prior to the beginning of the 1215-day period into the debtor's current principal residence in the same state, or the homestead is the principal residence of a family farmer. § 522(p)

3. Under the third change, there is a \$125,000 cap on the homestead exemption for debtor's found to have engaged in certain prohibited conduct. A debtor's homestead exemption is limited to \$125,000 if a Bankruptcy Court finds that the debtor
 - (a) had been convicted of a felony which demonstrates bankruptcy abuse,
 - (b) owes a debt arising from violation of Federal or State securities laws; or any RICO civil remedy;

- (c) committed any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual during the last five years. An exception to this \$125,000 limitation is allowed to the extent reasonably necessary for the support of the debtor and any dependent. § 522(q)

III. SETTING ASIDE A JUDICIAL LIEN ON A HOME

A judicial lien is a court judgment requiring the debtor to pay a certain amount of money to a designated person. A judicial lien derives from a lawsuit that results in a monetary judgment against the debtor. When the judgment is recorded, it creates by operation of law an automatic lien against all the real property of the debtor in the county where the judgment was recorded. The recordation of any judgment automatically places a judicial lien on the home of the debtor.

Unless the judicial lien is removed, it will impair the homestead exemption. Example: A debtor is entitled to a homestead exemption of \$7,500. He has a home valued at \$40,000, a mortgage of \$19,000 and a judicial lien of \$14,000 (arising from a judgment for an automobile accident). Assuming the cost of sale is \$2,000, upon the sale the debtor would receive only \$5,000 as a homestead exemption.

The bankruptcy code, however, allows all judicial liens on exempt property (such as homesteads,) to be automatically set aside to the extent that they impair the exemption if the debtor requests it. Setting aside a judicial lien is covered in great detail in Chapter 9. All that a debtor is required to do to remove a judicial lien is file the motion as detailed in that chapter and attend the court hearing. It is a simple procedure and could save thousands of dollars of exempt property. No one should ever be afraid of going

into bankruptcy court. Remember the purpose of the bankruptcy court is to help the debtor start over again. The judge will be knowledgeable and sympathetic to what the debtor is attempting to accomplish. Avoidance of a judicial lien is automatic. The judge does not have authority to refuse to set aside a judicial lien that impairs a valid exemption. So ask. It will be done.

IV. EFFECT OF BANKRUPTCY ON TENANCY BY THE ENTIRETY PROPERTY

Only about 20 states recognize tenancy by the entirety. It is a special joint tenancy estate between a husband and wife. Neither spouse can obtain a partition of the estate or defeat the right of survivorship of the other spouse. It cannot be terminated by the unilateral act of one spouse.

A tenancy by the entirety is terminated only by:

1. Divorce (which changes the tenancy into that of tenants in common).
2. Mutual agreement whereby they agree to terminate the tenancy.
3. Execution against the property by a joint creditor of both spouses. A creditor of just one spouse cannot execute against property held in a tenancy by the entirety.

A tenancy by the entirety is usually not a good method of estate planning, in community property states, because it does not provide a surviving spouse with a stepped-up basis of both halves of the property upon death of a spouse. This could result in a substantial tax liability if the property is later sold.

Under section 522(b)(2)(B) of the Bankruptcy Code, a debtor is permitted to exempt the debtor's interest in property held as tenant

by the entirety or joint tenancy to the extent that such interest would have been exempt from process under nonbankruptcy law.

Section 522(b)(2)(B) reads as follows:

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest, as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable non-bankruptcy law.

In practice the only joint tenancy property of a debtor that has ever been held exempt is that of tenancy by the entirety. The following states permit a debtor to exempt tenancy by the entirety property when the debts of both spouses are not being discharged. In essence that usually means that both spouses are not filing bankruptcy either separately or jointly or that both spouses had not incurred the debt on the property. Only one spouse put the debt on the property, or the debt was not for necessities for the couple:

DELAWARE	DISTRICT OF COLUMBIA	FLORIDA
HAWAII	MARYLAND	MASSACHUSETTS
MICHIGAN	MISSOURI	NORTH CAROLINA
OHIO	PENNSYLVANIA	TENNESSEE
VERMONT	VIRGINIA	WYOMING

The U.S. Fourth Circuit Court of Appeal which includes Maryland, North Carolina, South Carolina, Virginia, and West Virginia held in *Ragsdale vs. Genesco* 674 F.2d 277 (1982) that a creditor can reach property held as tenancy by the entirety in a bankruptcy where both of the spouses are liable on the creditor's claim. A similar result occurred in the Sixth Circuit Court of Appeals (*In the Matter of*

Grosslight 757 F.2d. 773) and the Third Circuit Court of Appeals (In re Thicket 5 C.B.C. 2d 85).

It is important for a debtor to know not only if his state permits property to be held as tenancy by the entirety between spouses but if the property will be exempt in a bankruptcy. For example: In re Ford 1 C.B.C. 2d 840 held that under Maryland law tenancy by the entirety property was exempt under bankruptcy law.

In re Weiss 2 C.B.C. 2d 426 held that since New York law allowed tenancy by the entirety property to be sold under execution, it was not exempt.

In re Gibbons 13 C.B.C. 759 1985, held that tenancy by the entirety property held by a debtor in Rhode Island was not exempt.

If a married person is filing bankruptcy separately and owns property jointly with the spouse, he should consult an attorney to determine if the joint property can be exempted under state law. Generally, if a debtor lives in one of the states and the nonfiling spouse is not obligated to pay the debt on the property, the debtor's interest is exempt. Consulting a bankruptcy attorney to determine if such property is exempt can only save a great deal of money because the value of the property can be protected from unsecured creditors.

V. FORECLOSURE ON DEBTOR'S HOME

A. INTRODUCTION

Usually, the straw that breaks the camel's back, the act that finally results in the debtor filing for bankruptcy relief, is the foreclosure on the debtor's home. Foreclosure happens in accordance with state law based upon the security agreement the lender has on the property. There are two general types of security agreements that a lender may employ and the remedies that the lender has resulting from a borrowers breach depends on the type of security agreement employed. The two types of security agreements are a deed of trust and a mortgage.

A deed of trust has become the preferred means of security liens on real property and is employed in most states. Under a deed of trust, the borrower (called the trustor) signs a promissory note for the loan on the property. The promissory note is then secured by a deed of trust given by the borrower (trustor) to a third party (trustee). Under the deed of the trust the trustee is given the authority to seize the property without going for permission if the borrower fails to makes the payments. Under the law of most states, if the borrower fails to make the payments on the loan, the trustee will give a 20 day notice to pay. If the back payments are not made, then the trustee sets the property for sale in another 90 days. At this point the loan has to be paid in full. If the loan is paid off, the property is sold at a public sale and the debtor loses all interest in the property. Any proceeds left after the loan and costs of the sale are paid are returned to the buyer. In most states, if

there is a balance left owing, a deficiency judgment can be obtained against the borrower. Some states, such as California, have enacted antideficiency legislation holding that there cannot be deficiency judgments for purchase money loans on residential property. In addition, some states like California, hold that there cannot be deficiency judgments for property sold under the power of sale of a deed of trust. The debtor does not have any right to redeem any property sold by a trustee under a power of sale.

A mortgage is a straight security agreement on the property. When the borrower fails to make the payments, the lender must go to court and sue for the court to grant a judgment against the borrower. The lender then has the sheriff sell the home at an execution sale. The proceeds are used to pay the loan and the costs of sale. Any remaining proceeds are returned to the borrower. Most states permit deficiency judgments on judicial sales under a mortgage foreclosure. Some states, like California, have antideficiency legislation on purchase money residential property. Most states give the borrower one year to redeem the property. The borrower redeems the property by paying the buyer the price paid for the property at the judicial sale. Because a borrower might redeem the property, many potential buyers are not interested in bidding on the property. That plus the fact that judicial foreclosure on a mortgage can take a year explains why lenders prefer deeds of trust.

Regardless of which method of foreclosure is used, both security

agreements give the lender the right to accelerate the loan on default (that is declare the outstanding balance entirely due and payable). It is this acceleration that usually results in the filing of bankruptcy.

B. AUTOMATIC STAY

Once the bankruptcy is filed any attempt by the debtor to foreclose on the debtor's home or any other property is stopped in its tracks under the automatic stay of the bankruptcy law. Until the automatic stay is lifted, no creditor can repossess or sell any property of the debtor.

At first blush, it seems that filing a bankruptcy petition would protect the home. Such protection is only fleeting. The lender on the property can and will, unless the back payments are forthcoming, make a motion with the court to lift the automatic stay as it relates to the debtor's home. If the debtor cannot reinstate the back payments and make the future payments, the court will usually lift the stay and permit the foreclosure to continue.

Any proceeds left after the sale are used to pay first the lender and then the costs of sale. The remaining proceeds are split as follows: the debtor is given the amount of the homestead exemption and the rest is given to the trustee for payment to the debtor's creditors.

In any sale during a bankruptcy either by a creditor or a

trustee, the debtor should make sure that there is enough to assure payment of the homestead exemption. This can be accomplished by selling nonexempt property prior to the bankruptcy using the proceeds to increase the debtor's equity in the home.

In the same vein, the debtor should ensure that unused equity in the home will not be lost before filing a bankruptcy petition. This can be accomplished by taking a loan for the equity over the homestead amount and using it to purchase exempt property. Where a home is involved, a debtor should consult a bankruptcy attorney for advice as to the state's homestead exemption and planning.

C. THE CHAPTER 13 PLAN

Under a Chapter 13 Plan, the debtor pays his debts from income, not from the sale of debtor's property. The debtor does not have to sell the debtor's home even though it may contain equity that would not be exempt under a Chapter 7 petition. A Chapter 13 petition automatically cancels the acceleration of the loan. The debtor will present a plan to be approved by the court that will spread out the repayments of the missed payments, late charges and interest over a span of time of five years or less.

The plan may also provide for the payment of secured debts as well as unsecured debts. Under the bankruptcy code, fully secured debts must be paid in full if they are included in the plan. If secured creditors are not fully paid in the plan, they can object and

no discharge of their debts will be granted.

A debtor is not required to deal with a secured creditor in the plan and may continue to deal with them outside the plan. The main reason for listing a secured creditor is to deter a foreclosure. As long as the plan provides for the curing of a default and the resumption of normal payments in a responsible time, the court would prevent the secured creditor from proceeding with a foreclosure action. If the debtor cannot cure the default and resume payments within the plan, the court will release the debt from the automatic stay and permit the creditor to foreclose on the property. The debtor is required to pay interest on the debt of any creditor covered under the plan.

Secured creditors are treated in one of four ways. First, each secured creditor is given the option of accepting a proposed payment plan. This usually means that an agreeing secured creditor will be paid less than the creditor is actually owed under the security agreement.

Second, each secured creditor may reject the proposed payment plan and stand on his security instrument. The creditor must be completely paid within the term of the plan. The court will not approve any plan which will not pay an objecting secured creditor within the term of the plan. Interest must be paid on all secured claims handled in the plan. Third, the debtor may surrender the

collateral to the creditor holding a security interest on it. The secured creditor becomes an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property.

Fourth, the debtor may omit the creditor from the plan and continue to make payments as before the filing.

When dealing with secured creditors it is important to remember that a secured creditor's lien extends only to the fair market value of the security. If a secured claim is in the plan, the lien is discharged once the creditor receives the fair market value of the collateral, and the secured creditor becomes an unsecured creditor for any remaining unpaid balance. Interest must be paid on any payments to secured creditors under the plan. Interest is only to be paid on principal. The debtor does not pay interest on the interest portion of any delinquent payment.

A Chapter 13 Payment Plan must be approved by the bankruptcy court to discharge the debtor from unpaid portions of the debts. The procedure for obtaining court approval is straight forward and has been discussed in Chapter 5.

CHAPTER 7

THE EFFECT OF BANKRUPTCY ON THE DEBTOR'S PENSION

INTRODUCTION

Under the bankruptcy law, a debtor's pension and retirement benefits and any other property are assets of the debtor's estate. A debtor must pay the unsecured creditors the minimum to which they would have been entitled had the debtor filed a Chapter 7 petition: The value of any portion of a pension or retirement plan of a debtor that is not exempt must be paid to the unsecured creditors.

To be able to keep some or all of the pension, the debtor's pension must be exempt in whole or in part under whichever schedule of exemptions (state or federal) the debtor employs. Many pensions are not exempt under state or federal law. These pensions will be lost in a bankruptcy filing.

If a debtor is retired and receiving benefits prior to the filing of the bankruptcy petition, many states will exempt the pension benefits received (usually up to 75%) if needed for support.

Whether or not a pension is deductible depends first on whether the debtor is using the state or federal exemptions. Pensions that are exempt under state exemptions are not always exemptible under the federal exemptions and vice versa.

Another horrendous effect on a pension that can occur as a result of the bankruptcy is a huge tax bill that is not

dischargeable. In the situation where either the debtor or debtor's employer has been making tax deferred contributions to the plan (contributions that are taxable once the debtor starts drawing from the plan), when the trustee takes the assets in the pension plan it is treated as a distribution to the debtor and placed with the trustee. Even though the debtor does not get the pensions, the debtor must pay income tax on the tax deferred contributions. A debtor having a pension plan should consult with a bankruptcy attorney prior to filing the bankruptcy and review current bankruptcy law. If the reader does not wish to consult with an attorney specializing in bankruptcy, he should at least review the state exemptions, starting with those listed in this chapter, to see if the pension exemption has been changed. It is quite possible, given the frequency of the changes to the bankruptcy code, that pensions that are not now exemptible will be so when the reader becomes involved in a bankruptcy.

Still there are a few things that can be done to minimize or prevent a partial or total loss of pension benefits.

II. EXEMPTING A PENSION UNDER FEDERAL LAW

Bankruptcy Code Section 522(d) created a list of exemptions. The federal exemptions can be used in place of the debtor's state exemptions provided the law of the debtor's home state permits the debtor to use them. Only the following 13 states and the District of Columbia permit a debtor an option to use the federal exemptions instead of the state exemptions:

CONNECTICUT	HAWAII	MASSACHUSETTS	MICHIGAN
MINNESOTA	NEW JERSEY	NEW MEXICO	PENNSYLVANIA
RHODE ISLAND	TEXAS	WASHINGTON	WISCONSIN
VERMONT			

Under Bankruptcy Code Section 522(d) only those pensions that covered under the Employee Retirement Income Security Act (ERISA) are exempt to the extent needed for support. Almost all private retirement plans are covered by ERISA while most state and local government pension plans are not covered by ERISA. Before a person residing in one of the above states or the District of Columbia elects to use the federal exemption, he must know if his pension is covered by ERISA.

It is easy to find if a plan is covered by ERISA. In order to determine if a pension plan is ERISA qualified, the employee merely calls the pension plan administrator and asks if the plan is covered. The employer and the union should have the name and phone number of the plan administrator readily available. If the pension plan is not governed by ERISA, the federal pension exemption cannot be used, and the person might consider using the state exemptions instead.

Section 522(d)(10)(E) reads as follows regarding the determination of which pension benefits are exemptible under the federal exemptions:

"(E) a payment under a stock bonus, pension, profit sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless;

- (i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan arose;
- (ii) such payment is on account of age or length of service; and
- (iii) such plan or contract does not qualify under section 401(a), 403(a) 403(b), 408 or 409 of the Internal Revenue Code of 1954 (26 U.S.C. section 401(a), 403(b), 408 or 409).

Under this federal exemption, only that part of the pension that is "reasonably necessary for the support of the debtor and any dependent of the debtor" is exempt. To determine the amount of the benefits from a ERISA pension that are exempt, the court will look at the following:

1. The debtor's age and health,
2. Whether the debtor is employed and the amount of take home pay,
3. The debtor's monthly expenses after dischargeable debts have been canceled,
4. The number of dependents in the debtor's home, and
5. The amount of assets that the debtor owns along with income from other sources (such as family trusts) that are not part of the debtor's estate.

From all of these factors, the bankruptcy court will determine how much of the debtor's pension payments are needed for the debtor's support. It is possible that even though the pension may be governed by ERISA, it may not be needed for the debtor's support and thus it will entirely lost in the bankruptcy.

A recent Supreme Court case (Patterson vs. Shumate 1191 L.Ed2d 519 1992) held that, regardless of whether federal or state

exemptions are used an ERISA pension plan having a transfer restriction (which means it could be transferred or assigned) is not part of the bankruptcy estate. Under this decision an ERISA pension with a transfer restriction is totally excluded from the bankruptcy estate and not just for the benefits needed for support. Under this case the participant in an ERISA plan would probably exempt the entire pension plan rather than just the portion needed for support as permitted under the limited federal exemption. Congress may change the effect of this case. Had Congress originally intended to exempt ERISA plans, it would have done so outright rather than by implication. Likewise, Congress would not have created a limited federal exemption for pension plans. Still, until Congress passes legislation to change the Supreme Court's interpretation, ERISA plans will remain totally exemptible.

If a pension is to be lost because it is not an ERISA plan or the debtor does not need it for support, the reader should consult an attorney specializing in bankruptcy for alternatives that will save some of the pension.

Pension and Profit Sharing Plans - 401K Loans

Retirement funds are subject to special attention under 2005 Act. There is a codification and extension of the Patterson vs. Shumate decision of the Supreme Court to the effect that tax exempt retirement funds, are not property of the estate subject to payment of debts. Likewise,

1. transfers and roll-overs, are not part of the estate up to \$1,000,000 per individual. §522(b)(4)
2. loans from these plans are specifically exempted from discharge §523(a)(18)
3. wage deductions for funding tax-deferred plans and repayment of such loans are not subject to the Automatic Stay which means the deductions can continue §362(b)(19)
4. payments are not included in "disposable income" in a Ch 13 case, and the terms of the loan cannot be materially altered by a Ch 13 plan. § 1322(f)
5. even though it is exempt property it may still be liable for a domestic support obligation. § 522(c)(1)

The effect of this favored treatment of these types of retirement loans may be that to some extent debtors may borrow money from their own account prior to the bankruptcy and then repay it to their retirement accounts during the Ch 13 case thus reducing the amounts available for repayment of creditors.

III. EXEMPTING A PENSION UNDER STATE LAW

A. NON-ERISA PENSIONS

Most governmental state pensions are not covered under the ERISA. Therefore, unless there is a specific exemption under state law for a state pension plan, a state or local pension will be lost when the person covered by the state or local government files for bankruptcy. Some states have specifically enacted laws to exempt all plans for state or local public employees, but most states have enacted only limited exemptions for certain public employees. Only those non-ERISA plans that have been exempted, under state law, are exempt in bankruptcy. A public employee should check to determine

if his pension plan is exempt before filing a bankruptcy petition.

As with non-ERISA state pensions, non-ERISA private pensions will not be exempt unless there is a specific state law making them exempt. A few states will exempt private pension plans if the benefits are needed for support. Most states do not exempt private plans whatsoever. This is where the problem lies: Many state pensions of public workers are exempt while those pensions of the average citizen are not exempt. This is a case of government employees looking out only for themselves. It is unfair for a state to exempt only government pensions and not those pensions of the average citizen. Yet, such is usually the case. If a debtor has a private pension that is not listed in Chapter 8, the debtor must consult a bankruptcy attorney before filing.

In the Chapter 8 the state exemptions regarding pensions are listed. Pension exemptions, however, may change. Usually more exemptions will be added or the amounts of the existing exemptions will be increased. It is unlikely that an existing exemption will be deleted. If a person having a pension is filing for bankruptcy relief, he should confirm the information in chapter 8 by either reading the state code or consulting a bankruptcy attorney.

B. EXEMPTIONS OF ERISA PLANS UNDER STATE LAW

Many states, but not all states, have specific exemptions for ERISA pensions. These states are listed in Chapter 8. Some of these states exempt the entire plan while others exempt only those payments needed for support. Unfortunately, the United States

Supreme Court (Mackey vs. Lanier Collections Agency & Service, Inc. 486 U.S. 825, 100 L.Ed 2d. 836) ruled in a collection case that a state could not grant an exemption for ERISA plans. Georgia had a law, as many states do, that prevented a creditor from attaching a debtor's ERISA plan. The Supreme Court held that the ERISA act superseded state law when it stated:

"We hold that ERISA does not forbid garnishment of an ERISA welfare benefit plan even where the purpose is to collect judgments against plan participants. Moreover, we agree with the Georgia Supreme Court that the anti-garnishment provisions found in Section 18-4-22.1 is pre-empted by ERISA, the judgment is affirmed."

Since ERISA does not forbid creditors in a nonbankruptcy case from attaching the plan, state law cannot prevent the attachment. The question that remained open for several years was whether or not a debtor who was using the state exemptions could exempt an ERISA pension and, how much of the pension could be exempted.

In contrast, the Circuit Court of Appeals for the Tenth Circuit (Gladwell vs. Harline 950 F2d 669; 1991) permitted a debtor to exempt his ERISA pension under the federal nonbankruptcy exemption. In addition, both the Fourth Circuit Court of Appeals (Anderson vs. Raines 907 F2d. 1476) and the Sixth Circuit (Forbes vs. Lucas 924 F2d. 597) held that ERISA pensions are not to be considered part of the debtor's estate. These courts reason that it is irrelevant whether or not the pensions are exempt since a trustee cannot take them under any circumstance. These Courts of Appeals cover the following states: Fourth Circuit (Illinois, Indiana and Wisconsin); Seventh Circuit (Maryland, North Carolina, South Carolina, Virginia and West Virginia).

The Supreme Court in its decision, Patterson vs. Shumate 119 L.Ed2d 519 1992 has settled the matter. The case dealt with the excludability from a bankruptcy estate of an ERISA plan in

Virginia, a state that does not permit the use of federal exemptions. The Supreme Court ruled that an ERISA pension plan having a transfer restriction (which means it could be transferred or assigned) is not part of the bankruptcy estate regardless of whether federal or state exemptions are used. Thus, under this decision an ERISA pension plan with a transfer restriction is totally excluded from the bankruptcy estate and not just for the benefits needed for support.

The United States Supreme Court held as follows:

"Having concluded that 'applicable bankruptcy law' is not limited to state law, we next determine whether the antialienation provision contained in the ERISA qualified plan at issue here satisfies the literal terms of Section 541(c)(2).

The anti-alienation provision required for ERISA qualification and contained in the Plan at issue thus constitutes an enforceable transfer restriction for purposes of Section 541(c)(2)'s exclusion of property from the bankruptcy estate."

Taken together, the U.S. Supreme Court's Mackey and Patterson decisions mean that an ERISA pension can be taken by creditors prior to a bankruptcy but are exempt from any attachment for the benefit of the debtor's creditors after a bankruptcy petition is filed. If a large pension is involved, the debtor should consult a bankruptcy attorney for the most current statement of the debtor's state law regarding pension exemptions.

IV. WHAT CAN BE DONE IF THE PENSION IS NOT EXEMPT

If the pension is not exempt under either state or federal law, and is not an ERISA pension, the debtor has a couple of options available although somewhat extreme. The debtor could:

1. Move to a state that permits the exemption prior to filing. If before filing the debtor finds that the pension would be lost, the debtor could move to another

state that will exempt the pension, establish residency and then file for bankruptcy relief. The drawback is that the debtor might lose the homestead in the first state and also the time involved to establish new residence. To establish residency for bankruptcy purposes, the debtor must live in the new state more than 90 days before filing the petition. Moreover, an employed person may not be able to just quit and move to another state. These are the practical problems in such a case.

2. Cash in the pension and purchase exempt property . The other possible alternative is to cash in the pension plan, pay the taxes as required and buy exempt property that will be kept under bankruptcy. **IF DONE, HOWEVER, BE AWARE OF POSSIBLY OWING INCOME TAXES.** Another possibility might be rolling the nonexempt pension into an exempt pension.

Because a pension is an important part of a person's future, any reader who determines that his pension is not or may not be exempt must consult an attorney specializing in bankruptcy.

V. EFFECT ON IRA'S AND SEP'S

Two of the most common type of retirement plans for individuals are the Individual Retirement Accounts (IRA's) and Simplified Employee Plans (SEP's). A debtor who has a large amount invested in such plans should consult a bankruptcy attorney before filing for bankruptcy relief.

IRA's and SEP's are considered part of a bankrupt's estate and thus could be lost in a bankruptcy. There is no federal exemption for IRA's and SEP's under 11 USC 522(d)(10)(E) whereas there are for other ERISA plans. The bankruptcy courts have denied an

exemption for IRA's and SEP's because plans are under the substantial control of the debtor and there is no assurance that they will be used for the debtor's support (In re Pauquette, 1984, 38 BR 170, In re Hersey, 1988, 88 BR 47, In re Velis, 109 BR. 64). The bankruptcy court (In re Shackleford, 1983, 27 BR. 372) rejected the argument that IRA's and SEP's were not part of the estate under the non-bankruptcy law exemptions.

The best chance a debtor has to keep IRA's, SEP's and Keogh plans are under the state exemptions. Many states specifically exempt such plans to the extent they are necessary for support. For example, New York does (In re Fill, 1988, 84 BR 332) and California does as well (In re Dalaimo, 1988, 88 BR 268). Still, as with federal exemptions, there are some states which do not exempt IRA's, SEP's or Keogh Plans because of the substantial control the debtor has over the plan (See Louisiana In re Talbot 15 BR 536, Oregon In re Mace, 1978, 16 CBC 254, Nebraska Education Asst. Corp. vs. Zellner 827 F2d 1222).

To the best extent possible, the Chapter 8 lists those states that permit IRA's, SEP's and Keoghs plans to be exempted. The laws for these states frequently change. Therefore, before filing a petition for bankruptcy relief when such a plan exists, the reader should review the current status of the law either by reading the indicated statutes with any amendments and, better still, consulting a bankruptcy attorney.

CHAPTER 8
EXEMPTIONS AVAILABLE TO A DEBTOR
I. INTRODUCTION

The most important concept in a Chapter 13 proceeding is that the debtor must pay to the unsecured creditors at least as much as they would have received had the debtor filed a Chapter 7 petition. Therefore, to determine the minimum amount that the unsecured creditors must receive under the Chapter 13 Plan, the debtor must know what property in his estate is exempt and thus not payable to the unsecured creditors.

A bankruptcy starts with the premise that all of the property belongs in the estate and under the management of the trustee. Then that property that the debtor claims is exempt is removed from the bankruptcy estate. The debtor keeps the exempt property regardless of what happens to the rest of the estate.

The Bankruptcy Code provides the means for a person to get from under bone-crushing debts and start over. It provides a fresh start for the debtor. Since it would be difficult to start over if totally broke, a debtor is given the opportunity to keep some of the property in the estate to begin a new life.

Property is not counted in determining the amount of money to be paid the unsecured creditors under the Chapter 13 Plan to the extent that it is classified as exempt. There are two sets of exemption

There is a set of federal exemptions and there is a set of state exemptions that for each state has for its citizens. Each set of state exemptions is different from the federal and the other states.

II. FEDERAL EXEMPTIONS

A. WHEN ELECTION TO USE FEDERAL EXEMPTIONS IS MADE

The Bankruptcy Code provides a set of exemptions. These exemptions are listed in a schedule following this chapter. When Congress passed the Bankruptcy Code, it did not intend to overrule or preempt any state law regarding exemptions. To avoid that happening, Congress has given each state the right to decide if its residents can use the federal exemptions.

Only 15 states and the District of Columbia have permitted their citizens to using the federal exemptions instead of the state exemptions. These 15 states are:

ARKANSAS	CONNECTICUT	DISTRICT OF COLUMBIA	HAWAII
MASSACHUSETTS	MICHIGAN	MINNESOTA	NEW HAMPSHIRE
NEW JERSEY	NEW MEXICO	PENNSYLVANIA	RHODE ISLAND
TEXAS	VERMONT	WASHINGTON	WISCONSIN

A citizen of any of the above jurisdictions has the option of using the applicable state exemptions or the federal exemptions. The exemption election is total. A person must elect to use either all of one set or the other. A person cannot use some of the federal and some of the state exemptions.

In electing which set of exemptions to use, the debtor should compare the sets and use the one that is most beneficial. Example: The federal homestead exemption is \$17,425; the Wisconsin exemption is \$40,000. The Wisconsin state exemption is better. On the other hand, the Virginia homestead exemption is only \$5,000.

The exemptions are placed in groups for ease of comparison. A person should compare both state and federal exemptions and perhaps those of selected other states. It might be beneficial for a person to move to another state and live there for three or more months before filing for bankruptcy. By choosing, the person can have that state's exemptions or perhaps the federal exemptions, depending on which state the person chooses.

B. WHEN ELECTION TO USE FEDERAL EXEMPTION IS NOT MADE

If a person is not permitted to use the federal exemptions or does not wish to do so, there are several exemptions available under the general federal law for use with the state exemptions. These particular non-bankruptcy exemptions cannot be taken if the debtor elects to use the federal set of bankruptcy exemptions. No state can prevent its citizens from taking these nonbankruptcy exemptions along with the state exemptions.

These special exemptions do not derive from the bankruptcy code, they derive from statutes throughout the United States Code. These special nonbankruptcy exemptions follow the end of this chapter. When making an election between federal and state exemptions (in those states permitting it), a person should not forget to compare federal bankruptcy and nonbankruptcy exemptions. It might prove to be more advantageous to use the state exemptions with the federal nonbankruptcy exemptions than the federal exemptions alone.

III. STATE EXEMPTIONS

Every state has its own list of property that a citizen may claim as exempt from attachment. In a bankruptcy this list of

exemptions determines what property a debtor is allowed to claim as exempt if federal exemptions are not used.

Following this chapter are the exemptions of the 50 states and the District of Columbia. A person contemplating a bankruptcy filing should review the exemption schedule of his state of residence (or the District of Columbia if that is where the person resides) and the nonbankruptcy exemptions schedule. If the person lives in a state that permits its citizens to use the federal exemptions, he should compare the two schedules.

The only way to compare schedules is to enter in the values of the property that will be claimed as exempt. Example: having a \$7,500 homestead exemption does not do much good if the person does not have a homestead. Knowing that an exemption is available gives a person the incentive to sell nonexempt property and invest the proceeds in exempt property prior to filing bankruptcy.

A debtor should select and maximize those exemptions that will permit the most money or property to be kept after the bankruptcy. In order to maximize the property to be kept, the debtor should elect the most favorable set of exemptions (federal or state plus the nonbankruptcy set) and attempt to maximize the exemption by increasing the debtor's equity in the property.

If a person's equity in exempt property exceeds the amount of the exemption, the person should consider selling the property prior to the bankruptcy and reinvesting the proceeds in exempt property. Then again, the debtor may more quickly borrow against the property to reduce the equity and invest the borrowed funds in exempt

property. Any equity in exempt property may be lost in a bankruptcy. Example: A person has a home with an equity of \$10,000. The homestead exemption is \$7,500. In a bankruptcy the overage will be lost. If the person borrows \$2,500 the house as collateral, the equity is reduced to the homestead limit. The money may then be used to buy a car, may also be exempt. While such planning is possible the debtor should consult with a bankruptcy attorney first to determine how such actions are viewed in the bankruptcy court where the petition will be filed.

SUMMARY OF STATE EXEMPTIONS

ALABAMA

(ALL STATUTES REFER TO THE ALABAMA CODE)

GENERAL EXEMPTION

There is a \$3,000 general exemption on any personal property by Statute 6-10-6. In 1983, the Bankruptcy Court for Alabama in the case IN RE MORRIS 30 B.R. 392 denied the application of this exemption to insurance proceeds. A married couple may double this exemption amount.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to AFDC, aged, blind and disabled by statute 38-4-8.
2. Black lung benefits (pneumoconiosis) by statute 25-5-179.
3. Compensation to victims of crimes by statute 15-23-15.
4. Prisoner of war benefits by statute 31-7-2.
5. Unemployment compensation by Statute 25-4-140.
6. Worker's Compensation benefits by Statute 25-5-86.

HOMESTEAD EXEMPTION

In Alabama Code statute 6-10-2, there is a \$5,000 homestead exemption on real property or a mobile home. The property cannot exceed 160 acres. A homestead declaration must be recorded before any sale of the property. A husband and wife filing for bankruptcy relief may double this exemption (each can take the full amount).

INSURANCE

There are several exemptions for different types of insurance proceeds in Alabama law:

1. Annuity proceeds of \$250.00 per month are exempt by Statute 27-14-32.
2. Benefits from fraternal societies are exempt by Statute 27-24-27.
3. Benefits from mutual aid associations are exempt by Statute 27-30-25.
4. Disability benefits of \$250 per month are exempt by Statute 27-14-31.
5. Life insurance proceeds when the debtor-beneficiary is the insured's spouse are exempt by Statutes 6-10-8 and 27-14-29.
6. Life insurance proceeds when the debtor-beneficiary is the insured's exempt child by Statute 6-10-8.
7. Life insurance proceeds when the insurance policy prohibits payment of the proceeds being made to the debtor-beneficiary's creditors are exempt by Statute 27-15-26.

PERSONAL PROPERTY

Alabama has exemptions for the following personal property:

1. Books by Statute 6-10-6.
2. Church pew by Statute 6-10-5.
3. Family pictures and portraits by Statute 6-10-6.
4. Funeral plot by Statute 6-10-5.
5. Needed clothing by Statute 6-10-6;
6. Property of a business partnership by Statute 10-8-72.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability under Section 541(2) of the Bankruptcy Code the pension from the bankruptcy estate of whether federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Judges are exempt only to the extent of payments being received by Statute 12-18-10.
3. Law Enforcement Officers by Statute 36-21-77.
4. State Employees by Statute 36-27-28.
5. Teachers by Statute 16-25-23.
6. IRA's and other retirement accounts by Statute 19-3-1.

TOOLS OF THE DEBTOR'S TRADE

By Alabama law, arms, uniforms, equipment which the debtor is required to keep as a member of the National Guard by statute 31-2-78.

WAGES

There is an exemption of 75% of earned but unpaid wages under 6-

ALASKA

(ALL STATUTE REFERENCES ARE TO THE ALASKA STATUTES)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 9.38.015:
 - (a) Compensation to victims of crimes.
 - (b) Alaska longevity bonus.
 - (c) Federally exempt public benefits.
2. Unemployment compensation by Statute 23
3. Worker's Compensation benefits by Statute 9.38.015.
4. One-half of permanent fund benefits by Statute 43.23.065.
5. General Relief by Statute 47.25.395.
6. Aid to AFDC by Statute 47.35.395.
7. Aid to the aged, blind and disabled by Statute 47.25.550.

HOMESTEAD EXEMPTION

By Alaska Code Statute 9.38.010, there is a \$64,800 homestead exemption. If joint owners file for bankruptcy, the maximum total exemption is \$64,800.

INSURANCE

There are several exemptions for different types of insurance proceeds by Alaska law:

1. Benefits from fraternal societies are exempt by Statute 21.84.240.
2. Disability benefits by Statutes 9.38.015 and 9.38.020.
3. Insurance proceeds for wrongful death or personal injury to the extent of exempt wages by Statute 9.38.030.
4. Life insurance proceeds when the debtor-beneficiary is the insured's spouse or dependent are exempt, to the extent of exempt wages by Statute 9.38.030.
5. Life insurance or annuity contract with a value of \$10,000 by Statute 9.38.025.
6. Medical and hospital benefits by Statute 9.38.015.

PERSONAL PROPERTY

Alaska has exemptions for the following personal property:

1. By Statute 9.39.015:
 - (a) Funeral plot and medical aids
 - (b) Alaska fisheries permits for limited entry.
 - (c) Child support payments and Liquor licenses
2. By Statute 9.38.020:

- (a) Books, family pictures, portraits and heirlooms of \$3,450.
- (b) Jewelry of \$1,500.
- (c) Motor vehicles with equity of \$3,600
- (d) Pets worth of \$1,200.
- 3. Recoveries for personal injuries and wrongful death to the extent of exempt wages by Statute 9.38.030.
- 4. Alimony to the extent of exempt wages by Statute 9.38.030.
- 5. Recoveries for damaged property by Statute 9.38.015.
- 6. Business partnership property by Statute 9.38.100.
- 7. Building Materials by Statute 34.35.105.
- 8. Cash and liquid assets to \$1,680 by Statute 9.38.030.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

- 1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability under Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate of whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442.)
- 2. ERISA, IRA and Keogh benefits deposited more than 120 days before filing the bankruptcy relief by Statute 9.38.017.
- 3. Public employees by Statute 9.38.015.
- 4. Teachers but only for benefits increasing by Statute 9.38.015.
- 5. Other pension plans but only for payments being received to the extent of exempt wages by Statute 9.38.030.

TOOLS OF THE DEBTOR'S TRADE

By Alaska law there is an exemption for books, tools and implements used in the debtor's trade to \$3,360 by Statute 9.38.020.

WAGES

Weekly earnings of \$420 are exempt. If the debtor is the sole wage earner for the household it is \$632.50 by Statutes 9.38.030 and 9.38.050.

ARIZONA

(ALL STATUTES REFER TO THE ARIZONA REVISED STATUTES)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

- 1. Unemployment compensation by Statute 23-783;

2. Welfare benefits by Statute 46-208;
3. Worker's compensation benefits by Statute 23-1068.

HOMESTEAD EXEMPTION

By Arizona Code Statute 33-1101, there is a \$100,000 homestead exemption. A married couple may not double this exemption. Homestead declaration must be recorded Statute 33-1102.

INSURANCE

There are several exemptions for different types of insurance proceeds By Arizona law:

1. Benefits from fraternal societies are exempt by Statute 20-881.
2. Life Insurance with a cash value of \$2,000 per dependent of a total of \$25,000 by Statute 20.1131.
3. Benefits from group life insurance by Statute 20-1132.
4. Health, accident or disability benefits by Statute 33-1126.
5. Life insurance proceeds when the beneficiary is the insured's spouse or child are exempt by Statute 33-1126.
6. Life insurance with a cash value to \$1,000 per dependent to a total value of \$25,000 by Statute 33.1126(A)(6). A married couple may double this amount.

PERSONAL PROPERTY

Arizona has exemptions for the following personal property:

1. Household goods, appliances, family pictures, portraits and heirlooms to \$4,000 by Statute 33-1123. A married couple may double this exemption.
2. Enough food and fuel to last 6 months by Statute 33 1124. A married couple may double this exemption.
3. Bible, bicycle, sewing machine, typewriter, funeral plot, firearm to a total of \$500 by Statute 33-1125. A married couple may double this exemption.
4. Books to \$250. Animals to \$500. Musical instruments to \$250. Medical aids. Clothing to \$500. Books to \$250. All are exempt by Statute 33-1125. These exemptions may be doubled by a married couple.
5. Motor vehicles with equity to \$1,500 (or \$4,000, if disabled) by Statute 33-1125. A married couple may double this exemption.
6. In lieu of a homestead exemption (renters) there is an exemption for a rent or security deposit to \$1,000 or one and a half times the rent, whichever is less. Also a bank deposit account with \$150 is exempt by Statute 33-1126. A married couple may double the exemptions.
7. Recoveries for sold and damaged property by Statute 33-1126. A married couple may double this exemption.
8. Minor's child earnings are exempt by Statute 33-1126.
9. Business partnership property by Statute 29-225.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability By Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA for qualified deposits made more than 120 days prior to filing for bankruptcy relief by Statute 33-1126.
3. Firefighters by Statute 9-968.
4. Board of Regents by Statute 15-1628.
5. Elected officials by Statute 38-811.
6. Police by Statute 9-931.
7. Public Safety personnel by Statute 38-850.
8. Rangers by Statute 41-955.
9. State employees by Statute 38-26.2.
10. IRA's by In Re Herrscher 121 BR 29 (D.Ariz.1990)

TOOLS OF THE DEBTOR'S TRADE

By Arizona law the following property used in the debtor's trade or business is exempt:

1. By Statute 33-1130;
 - (a) Books, tools and implements (not including vehicle) in the debtor's trade to \$2,500.
 - (b) Farm equipment and animals to \$2,500. A married couple may double this exemption.
2. Arms, uniforms and equipment that a debtor is required to keep by Statute 33-1130.
3. Teaching aids for a teacher in Statute 33-1127.

WAGES

There is an exemption of 75% of earned but unpaid wages or pension benefits by Statute 33-1131.

ARKANSAS

(ALL STATUTES REFER TO THE ARKANSAS CODE ANNOTATED)

GENERAL EXEMPTIONS

By the Arkansas Constitution, Sections 9-1 and 9-2, there is a general exemption equal to \$200 for a single person and of \$500 for a married person or head-of-household.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Unemployment compensation by Statute 11-10-109.
2. Worker's compensation by Statute 11-9-110.

3. Victim's compensation by Statute 16-90-716.
4. Assistance By AFDC or to the aged, blind, disabled by Statute 2076-430.

HOMESTEAD

By the Arkansas Constitution, Sections 9-3, 9-4 and 9-5, and Statute 16-66-210 there is a homestead exemption for a head-of-household. The amount of the exemption depends on the size of the homestead. For a homestead no greater than $\frac{1}{4}$ acre in a city, town or village or 80 acres elsewhere the entire homestead is exempt. If the homestead is more than $\frac{1}{4}$ acre but less than 1 acre in a city, town or village, or between 80 to 160 acres elsewhere the exemption is \$2,500. Above 1 acre in a city, town or village or more than 160 acres elsewhere there is no exemption. A married couple may not double a homestead exemption.

For a single person the homestead exemption is \$800 and for a married person, not a head-of-household, the exemption is \$1,250 by Statute 16-66-218.

INSURANCE

There are exemptions for the following insurance benefits by Arkansas law:

1. Cash value of life, health, accident or disability is exempt by Statute 16-66-209. Limited to \$500 under In Re Holt 97 BR 997 (W.D.ARK 1998)
2. An annuity contract and benefits are exempt by Statute 23-79-134.
3. Disability benefits by Statute 23-79-133.
4. Group life insurance by Statute 23-79-132.
5. Life insurance benefits if the policy prohibits payment to the beneficiary's creditors by Statute 23-79-131.
6. Life insurance benefits when the beneficiary is not the insured by Statute 23-72-114.
7. Benefits from fraternal societies are exempt by Statute 23-74-119.
8. Stipulated insurance premiums are exempt by Statute 23-71-112.
9. Benefits from mutual assessment policies are exempt by Statute 23-72-114.

PERSONAL PROPERTY

The following personal property is exempt by Arkansas law:

1. Clothing is exempt by the Arkansas Constitution, Sections 9-1 and 9-2.
2. Funeral plot of 5 acres in place of a single or married person's homestead exemption is exempt by Statutes 16-66-207 and 6-66-218.
3. A motor vehicle is exempt to \$1,200 by Statute 16-66-218.
4. Wedding bands and any diamond that does not exceed $\frac{1}{2}$ carat

are exempt by Statute 16-66-218.

5. Business property of a partnership by Statute 4-42-502.

RETIREMENT BENEFITS

The following retirement plans are exempt by Arkansas law:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability By Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA qualified benefits by Statute 16-66-220
3. IRA of \$20,000 provided the deposits were made over 1 year prior to the bankruptcy filing by Statute 16-66-218
4. Firefighters are exempt by Statute 24-10-616.
5. Police are exempt by Statute 24-10-616.
6. School employees are exempt by Statute 24-7-715.
7. State police are exempt by Statute 24-6-223.
8. Disabled police are exempt by Statute 24-11-417.
9. Disabled firefighters are exempt by Statute 24 11-814.

TOOLS OF TRADE

By Statute 16-66-218, Arkansas grants an exemption for implements, books and tools of trade of a debtor to \$750.

WAGES

By Statute 16-66-208, there is an exemption for the debtor's earned but unpaid wages due for 60 days or more.

CALIFORNIA

SCHEDULE ONE

California has two separate schedules of exemptions. The debtor must elect to use just one. There is no mix and match. All reference is to the California Code of Civil Procedure (C.C.P.)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to blind, aged, disabled and AFDC is exempt by C.C.P. Section 704.170.
2. Student aid is exempt by C.C.P. Section 704.190.
3. Relocation benefits are exempt by C.C.P. Section 704.180.
4. Unemployment benefits are exempt by C.C.P./ Section 704.120.
5. Union benefits from labor dispute by C.C.P. Section 704.120.

6. Worker's compensation by C.C.P. Section 704.160.

HOMESTEAD EXEMPTION

By C.C.P. Sections 704.710 and 704.730, there is a homestead exemption of:

1. \$50,000 if single and not disabled.
2. \$75,000 if married couple filing jointly (\$37,500 each).
3. \$150,000 if the debtor is 65 or older or mentally or physically disabled.
4. \$150,000 if 55 or older, single and earning less than \$15,000 or married and earning less than \$20,000 and creditors wish to take the debtor's home.

The debtor must live on the property when the bankruptcy petition is filed. The proceeds from a sale are exempt for six months after received by C.C.P. 704.720. A homestead exemption may be filed in C.C.P. 704.920.

INSURANCE

There are several exemptions for different types of insurance proceeds by California law:

1. By Statute C.C.P. 704.100:
 - a. Unmatured life insurance policies but not their loan value
 - b. Life insurance benefits needed for support.
 - c. Unmatured life insurance policy to \$8,000 cash value.
A married couple may double this exemption.
2. Fraternal unemployment benefits by C.C.P. 701.170.
3. Disability or health benefits by C.C.P. 704.130.
4. Homeowner's insurance proceeds for six months after receipt by C.C.P. 704.720.
5. Life insurance proceeds if the policy precludes payment to creditors by Insurance Code Sections 10170 and 10171.
6. Fidelity bonds are exempt by Labor Code Section 404.

PERSONAL PROPERTY

California has exemptions for the following personal property:

1. Business and professional licenses are exempt by C.C.P. 695.060 except liquor licenses by C.C.P. 704.920.
2. Motor vehicles are exempt to \$2,300 by C.C.P. 704.010.
3. Appliances, household goods, clothing and food as needed are exempt by C.C.P. 704.020.
4. Building materials to repair debtor's home are exempt to \$2,425 by C.C.P. 704.030.
5. Jewelry and heirlooms and art are exempt to \$5,000 by C.C.P. 704.040.
6. Medical aids are exempt by C.C.P. 704.050.
7. Social Security bank deposits to \$2,000 are exempt by

- C.C.P. 704.080. \$3,650 for husband and wife.
8. Proceeds from exempt property are exempt by C.C.P. 704.080.
 9. Trust funds for inmates to \$1,000 by C.C.P. 704.080.
 10. Personal injury causes of action and personal injury recoveries needed for support are exempt by C.C.P. 704.140.
 11. Funeral Plots are exempt by C.C.P. 704.200.
 12. Wrongful death causes of action and wrongful death recoveries needed for support are exempt by C.C.P. 705.150.
 13. Business partnership property by Corporation Code 15025.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Private pension plans including IRA's and Keogh are exempt to the extent tax-deferred by C.C.P. 704.115.
3. Public employees pensions by Government Code 21201.
4. Public retirement benefits by C.C.P. 704.110.

TOOLS OF THE DEBTOR'S TRADE

Under California law, tools, implements, materials, etc. except a motor vehicle) are exempt to \$6,075. If spouse in the same business, the exemption is \$12,150 in C.C.P. 704.060.

WAGES

The following wages are exempt by California law:

1. Public employees vacation benefits by C.C.P. 704.113.
2. 75% of the wages paid within 30 days of the bankruptcy filing by C.C.P. 704.070.

CALIFORNIA

SCHEDULE TWO

California has two separate schedules of exemptions. The debtor must elect to use just one. There is no mix and match. There is no doubling for married couples under this schedule.

GENERAL EXEMPTION

\$800 and the unused portion of the \$17,425 homestead exemption by C.C.P. 703.140(b)(5).

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Public assistance by C.C.P. 703.140(b)(11)(A).

2. Social Security benefits by C.C.P. 703.140(b)(10)(A).
3. Unemployment compensation by C.C.P. 703.140(b)(10)(A).
4. Veteran's benefits by C.C.P. 703.140(b)(10)(B).
5. Victim's crime compensation by C.C.P. 703.140(b)(11)(A).

HOMESTEAD EXEMPTION

By this schedule, the homestead exemption is \$17,425 and any unused portion can be applied to any other property by C.C.P. 703.140(b)(1).

INSURANCE

There are several exemptions for different types of insurance proceeds under California law:

1. Disability or health benefits by C.C.P. 703.140(b)(10)(C).
2. Life insurance benefits needed for family support by C.C.P. 703.140(b)(11)(C).
3. Unmatured life insurance policy to \$8,000 cash value by C.C.P. 703.140(b)(8).
4. Unmatured life insurance policy other than credit by C.C.P. 703.140(b)(7).

PERSONAL PROPERTY

California has exemptions for the following personal property:

1. \$450 is exempted for each of the following: animals, crops, appliances, furnishings, household goods, books, musical instruments and clothing by C.C.P. 703.140(B)(3).
2. Funeral plots are exempt of \$15,000 in lieu of a homestead by C.C.P. 703.140(b)(1).
3. Medical aids are exempt by C.C.P. 703.140(b)(9).
4. Jewelry is exempt to \$1,150 by C.C.P. 703.140(b)(4).
5. Motor vehicle is exempt to \$2,725 by C.C.P. 703.140(b)(2).
6. Personal injury recoveries, not including pain and suffering or pecuniary loss, are exempt to \$15,000 by C.C.P. 703.140(b)(11)(D,E).
7. Wrongful death recoveries needed for support are exempt by C.C.P. 703.140(b)(11)(B).
8. Child and spousal support needed for support by C.C.P. 703.140(b)(10)(D).

RETIREMENT BENEFITS

ERISA benefits needed for support are exempt by C.C.P. 703.140(b)(10)(E). An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate regardless of whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).

TOOLS OF THE DEBTOR'S TRADE

Under California law, tools, instruments, books of trade are

exempt by \$1,750 by C.C.P. 703.140(b)(6).

WAGES

None.

COLORADO

(ALL STATUTES REFER TO THE COLORADO REVISED STATUTES)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to blind, aged, disabled, AFDC by Statute 26-2-131.
2. Unemployment compensation by Statute 8-80-103.
3. Veteran's benefits by Statute 13-54-102.
4. Victim's crime compensation by Statutes 13-54-102 and 24-4.1-114.
5. Worker's compensation by Statute 8-52-107.

HOMESTEAD EXEMPTION

There is a homestead exemption for real property occupied by the debtor of \$45,000 by Statute 38-41-201. If a house trailer or coach is used as a residence it is exempt to \$3,000, if a mobile home to \$6,000 by Statute 13-54-102. Sale proceeds are exempt for one year by Statute 38-41-207. Husband and Wife may double the exemption In Re Pastrana 216 BR 948.

INSURANCE

There are several exemptions for different types of insurance proceeds by Colorado law:

1. Disability benefits to \$200 per month by Statute 10-8-114. If received in a lump sum, the entire amount is exempt.
2. Fraternal society benefits are exempt by Statute 10-14-122.
3. Proceeds from group insurance by Statute 10-7-205.
4. Homeowner's insurance proceeds to homestead exemption amount are exempt for one year after receipt by Statute 38-41-209.
5. Life insurance worth to \$25,000 by Statute 13-54-102.
6. Life insurance proceeds if the policy prohibits payment to creditors by Statute 10-7-106.

PERSONAL PROPERTY

Colorado has exemptions for the following personal property:"

1. By Statute 13-54-102:
 - a. Burial plot and medical aids
 - b. Clothing to \$1,500.
 - c. Food and fuel to \$600.

- d. Household Goods to \$3,000
 - e. Jewelry to \$1,000.
 - f. Motor vehicle needed for work to \$3,000 increasing to \$6,000 if debtor disabled, over 65 or if used by a dependent.
 - g. Personal injury recoveries.
 - h. Books and pictures to \$1,500.
 - i. Recoveries for damage to exempt property.
 - j. Security deposits.
2. Property of a business partnership by Statute 7-60-125.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

- 1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
- 2. ERISA-qualified benefits and IRA's by 13-54-104.
- 3. Firefighters by Statutes 31-30-412 and 31-30-518.
- 4. Police officers by Statutes 31-30-313 and 31-30-616.
- 5. Public employees by Statute 24-51-212.
- 6. Teachers by Statute 24-65-120.

TOOLS OF THE DEBTOR'S TRADE

By Colorado law the following property used in the debtor's trade and business is exempt:

- 1. Horses and mules and equipment to \$2,000 by Statute 13-54-102.
- 2. The library of a business professional to \$1,500 by Statute 13-54-102.
- 3. Livestock and poultry to a farmer to \$3,000 by Statute 13-54-102.
- 4. Tools and instruments to \$1,500 by Statute 13-54-102.

WAGES

By Statute 13-54-104, 75% of the earned but unpaid wages and pension benefits are exempt.

CONNECTICUT

(ALL STATUTES REFER TO THE CONNECTICUT GENERAL STATUTES)

GENERAL EXEMPTION

\$1,000 of any property by Statute 52-352(b)(r).

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to aged, blind and disabled by Statute 52-352b.
2. Aid to AFDC by Statute 52-352b.
3. Compensation to victims of crimes by Statute 52-352b and 54-213.
4. Social Security by Statute 52-352b.
5. Unemployment compensation by Statutes 31-272 and 52-352b.
6. Worker's compensation benefits by Statute 52-352b.
7. Veteran's benefits by Statute 52-352b.
8. Wages from earnings incentive programs by Statute 52-352b.

HOMESTEAD EXEMPTION

Real Property including mobile home or manufactured home to \$75,000 by Statute 52-352(b)(t). Husband and Wife may double.

INSURANCE

There are several exemptions for different types of insurance proceeds by Connecticut law:

1. Benefits from fraternal societies are exempt by Statute 38-229.
2. Health and disability benefits by Statute 52-352b.
3. Insurance proceeds when the policy forbids payment to creditors by Statute 38-162.
4. Life insurance proceeds and cash value by Statute 38-161.
5. No-fault insurance benefits by Statute 38-336.
6. Unmatured life insurance loan value up to \$4,000 by Statute 52-352(b)(s).

PERSONAL PROPERTY

Connecticut has exemptions for the following personal property by Statute 52-352b:

1. Appliances and household goods as needed.
2. Residential security deposits.
3. Funeral plot.
4. Food and medical aids as needed.
5. Motor vehicle to \$1,500.
6. Recoveries for damaged exempt property.
7. Wedding and engagement rings.
8. Alimony to the extent of exempt wages.
9. Child support payments.
10. Business partnership property.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension

from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).

2. ERISA benefits and IRA's only to payments being received and to the extent wages are exempt by Statute 52-352b.
3. State employees by Statutes 5-171 and 5-192W.
4. Teachers by Statute 10-183q.

TOOLS OF THE DEBTOR'S TRADE

By Connecticut law the following property used in the debtor's trade and business are exempt by Statute 52-352b:

1. Books, tools and implements used in the debtor's trade as needed.
2. Arms, military equipment, uniforms of military personnel.

WAGES

By Statute 52-361a, 75% of the earned but unpaid wages and pension benefits are exempt.

DELAWARE

(ALL REFERENCES ARE TO THE DELAWARE CODE)

GENERAL EXEMPTION

There is a \$500 exemption for use by a head of a household on any personal property except tools of trade by Statute 10-4903.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to blind by Statute 31-2309.
2. Aid to AFDC, aged and disabled by Statute 31-513.
3. General assistance benefits are exempt by Statute 31-513.
4. Unemployment compensation by Statute 19-3374.
5. Worker's compensation benefits by Statute 19-2355.

HOMESTEAD EXEMPTION

By Delaware law, there is no homestead exemption. Yet the bankruptcy court (In re Hovatter 25 B.R.123, and Citizen's Bank Inc. vs. Astrin 44 Del 451) permits a married debtor to exempt his half interest in tenancy-by-the-entireties property (joint tenancy property with the debtor's spouse) unless the debts of both spouses are sought to be discharged.

INSURANCE

There are several exemptions for different types of insurance proceeds by Delaware law:

1. Benefits from fraternal societies are exempt by Statute 18-6118.

2. Health and disability benefits by Statute 18-2726.
3. Life insurance proceeds and cash value by Statute 18-2725.
4. Group life insurance proceeds and policy are exempt by Statute 18-2728.
5. Annuity proceeds to \$350 per month are exempt by Statute 18-2728.
6. Insurance proceeds when the policy forbids payment to creditors by Statute 18-2729.

PERSONAL PROPERTY

Delaware has exemptions for the following personal property:

1. By Statute 10-4902:
 - a. Bible, books, family pictures and portraits.
 - b. Clothing and jewelry as needed.
 - c. Funeral plot.
 - d. Church pew or other seat in place of worship.
 - e. Piano or organ and sewing machine.
2. \$5,000 in personal property for single person \$10,000 for a married couple by Statute 10-4914.
3. Business partnership property by Statute 6-1525.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Kent County employees by Statute 9-4316.
3. State employees by Statute 29-5503.
4. Volunteer firefighters by Statute 16-6653.
5. Police officers by Statute 11-8803.
6. IRA's by In re Yuhas 104 F.3d.612

TOOLS OF THE DEBTOR'S TRADE

By Statute 10-4902, books, tools and implements used in the debtor's trade are exempt to \$75 in New Castle and Sussex Counties and \$50 in Kent County.

WAGES

By Statute 10-4913, 85% of earned but unpaid wages are exempt.

DISTRICT OF COLUMBIA

(ALL STATUTES REFER TO THE DISTRICT OF COLUMBIA CODE)

GENERAL EXEMPTION

\$850 of any property and up to \$8,075 of unused homestead

exemption under Statute 15-501(a)(3).

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Aid to blind, AFDC, aged and disabled by Statute 3-215.1.
2. General assistance benefits are exempt by Statute 3-215.1.
3. Crime victim's compensation by Statute 3-215.1.
4. Unemployment compensation by Statute 46-119.
5. Worker's compensation benefits by Statute 36-317.

HOMESTEAD EXEMPTION

Under Statute 15-5-1(a)(14) any property used as a residence or coop that the debtor or dependent uses as a residence is exempt. In *Warman vs. Strawberry* 587 F.Supp. 109 1983, *Travis vs. Benson* 1976, 400 A.2d 506 and *Estate of Wall* 440 F.2d.215 the court ruled that a debtor's half-interest in a tenancy-by-the-entireties (joint tenancy with a spouse) is exempt unless both spouses are seeking to discharge their debts.

INSURANCE

There are several exemptions for different types of insurance proceeds by District of Columbia law:

1. Benefits from fraternal societies are exempt by Statute 35-1211.
2. Disability benefits by Statutes 35-552.
3. Life insurance proceeds and cash value by Statute 35-521.4. Insurance proceeds to \$200 per month are exempt for a maximum of two months for head of household, \$60 for everyone else by Statute 15-503.
4. Group life insurance proceeds and policy are exempt by Statute 35-523.
5. Insurance proceeds when the policy forbids payment to creditors by Statute 35-525.
6. Uninsured motorist benefits under statute 31-2408-01.

PERSONAL PROPERTY

District of Columbia has exemptions for the following personal property:

1. By Statute 15-501:
 - a. Household furniture and appliances to \$425 for each item up to a total of \$8,625.
 - b. Clothing to \$300.
 - c. Books to \$400.
 - d. Family pictures and portraits.
 - e. Food and fuel for three months.
 - f. Motor vehicle to \$2,575
2. Holdings in cooperative associations to \$50 by Statute 29-1128.

3. Business partnership property by Statute 41-124.
4. Funeral plot by Statute 27-111.
5. Payment for loss of debtor or person on whom the debtor depended.
6. Higher education or tuition savings account by Stat 47-4510

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. Judges by Statute 11-1570.
2. Public school teachers by Statutes 31-1217 and 31-1238.
3. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
4. IRA's, Keoghs and ERISA plans under statute 15-501(a)(9)

TOOLS OF THE DEBTOR'S TRADE

By District of Columbia law the following property used in the debtor's trade or business is exempt:

1. By Statute 15-501:
 - a. Furniture, library and tools of professional person and artist to \$300 are exempt.
 - b. Tools of trade or business to \$1,625.
 - c. Mechanic's tools to \$200.
2. Seals and documents of public notary by Statute 1-806.

WAGES

By Statute 16-572, 75% of the earned but unpaid wages or pension benefits are exempt. By Statute 15-502, non-wage earnings to \$200 per month are exempt for head-of-household and \$60 per month for non-head-of-household.

FLORIDA

(ALL STATUTES REFER TO THE FLORIDA STATUTES)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. General assistance by Statute 222.201.
2. Compensation to victims of crimes by Statute 960.14.
3. Social Security by Statute 222.201.
4. Unemployment compensation by Statutes 222.201 and 443.051.
5. Worker's compensation benefits by Statute 440.22.
6. Veteran's benefits by Statutes 222.201 and 744.626.

HOMESTEAD EXEMPTION

Under Statute 222.-05 and the Florida Constitution Article X Section 4, there is an unlimited homestead exemption for ½ acre in a municipality of 160 acres elsewhere, includes mobile or modular home. The Bankruptcy Court in the cases In Re Blum 39 B.R. 897 and In Re Hohler 19 B.\$ 308 1987 have ruled that a debtor's half-interest in a tenancy-by-the-entireties (joint tenancy with a spouse) is exempt unless both spouses are seeking to discharge their debts or the debt is a joint obligation. Homestead Declaration may be filed by Statute 222.01. Husband and Wife may double the exemption amount.

INSURANCE

There are several exemptions for different types of insurance proceeds by Florida law:

1. Benefits from fraternal societies are exempt if received before October 1, 1996 by Statute 632.619.
2. Disability or illness benefits by Statutes 222.18.
3. Proceeds from annuity contracts by Statute 222.14.
4. Death benefits if paid to a specific beneficiary not an estate by Statute 222.13.
5. Life insurance proceeds cash value by Statute 222.14.

PERSONAL PROPERTY

Florida has a \$1,000 exemption for personal property. A married couple may double this exemption by the Florida Constitution Section 10-4. In addition, Florida has exemptions for the following property:

1. Alimony needed for support by Statute 222.201.
2. Child support payments by Statute 222.201.
3. Business partnership property by Statute 620.68.
4. Motor vehicle to \$1,000 by Statute 222.5.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. IRA's, Keoghs, SEP's and private pensions needed for support by Statute 222.11.
3. ERISA benefits are exempt by Statute 222.21.
4. State employees by Statute 121.131.
5. Teachers by Statute 238.15.
6. Police officers by Statute 185.25.
7. Highway patrol officers by Statute 321.22.
8. Firefighters by Statute 175.241.

9. County officers and employees by Statute 122.15.

TOOLS OF THE DEBTOR'S TRADE

By Florida law there is no exemption for property used in the debtor's trade or business.

WAGES

By Statute 222.11, the earned but unpaid wages and paid wages in bank account for head-of-household are exempt up to \$500 per week.

GEORGIA

(ALL STATUTORY REFERENCES ARE TO THE GEORGIA CODE)

GENERAL EXEMPTION

By Statute 4-13-100, there is a general exemption of \$600 plus the unused homestead exemption up to \$5,000.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 44-13-100:
 - a. Public assistance.
 - b. Social Security benefits.
 - c. Unemployment compensation.
 - d. Veteran's benefits.
 - e. Victim's crime compensation.
2. Old age assistance by Statute 49-4-35.
3. Assistance to the blind by Statute 49-4-58.
4. Assistance to the disabled by Statute 49-4-84.
5. Worker's compensation by Statute 34-9-84.

HOMESTEAD EXEMPTION

The homestead exemption is \$10,000, and any unused portion can be applied to any other property by Statute 44-13-100. Husband and wife may double the exemption amount.

INSURANCE

There are several exemptions for different types of insurance proceeds by Georgia law:

1. Disability or health benefits to \$250 per month by Statute 33-29-15.
2. Benefits from annuity by Statute 33-28-7.
3. Group insurance benefits by Statute 33-30-10.
4. Fidelity bonds are exempt by Statute 33-15-20.
5. Industrial life insurance policy owned by someone on whom the debtor relied for support by Statute 33-26-5.
6. Life insurance benefits if beneficiary is not the insured by Statute 33-25-11.
7. Life insurance benefits if policy owned by someone who

relied on the debtor or on whom the debtor relied for support by Statute 33-26-5.

8. Unmatured life insurance dividends, interest or cash value to \$2,000 by Statute 44-13-100.
9. Unmatured life insurance policy by Statute 44-13-100.

PERSONAL PROPERTY

Georgia has exemptions for the following personal property that can be claimed by a debtor by Statute 44-13-100:

1. \$300 is exempted for each of the following: animals, crops, appliances, furnishings, household goods, books, musical instruments and clothing for a total of \$5,000.
2. Funeral plots in lieu of a homestead.
3. Medical aids are exempt by Statute.
4. Jewelry is exempt to \$500.
5. Motor vehicle is exempt to \$3,500. Husband and wife may double the exemption amount.
6. Personal injury recoveries are exempt to \$10,000.
7. Wrongful death recoveries needed for support are exempt.
8. Lost future earnings needed for support are exempt.
9. Child and spousal support needed for support.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits by Statute 18-4-22.1.
3. Other pension benefits needed for support by Statute 18-4-22.
4. IRA's by Statute 18-4-22.
5. Public employees by Statute 47-2-332.

TOOLS OF THE DEBTOR'S TRADE

By Georgia law, tools, instruments, books of trade are exempt to \$500 by Statute 44-13-100.

WAGES

By Statutes 18-4-20 and 18-4-21, 75% of earned but unpaid wages are exempt.

HAWAII

(ALL STATUTES REFER TO THE HAWAII REVISED STATUTES)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Public assistance for work done in home or workshop by Statute 20-346-33.
2. Unemployment work relief funds of \$60 per month are exempt by Statute 36-653-4.
3. Unemployment compensation by Statute 21-383-163.
4. Worker's compensation benefits by Statute 21-386-57.

HOMESTEAD EXEMPTION

By Statutes 36-651-91 and 36-651-92, there is a homestead exemption of \$30,000 to head-of-household or debtor over 65 years of age. For all debtors, the exemption is \$20,000. The proceeds from a sale are exempt for six months. In the cases of *In Hinchee vs. Security Bank* 624 P.2d 821 and *Sewada vs. Endo* 1977, P.2d 1291, the courts have ruled that a debtor's half-interest in a tenancy-by-the-entireties (joint tenancy with a spouse) is exempt unless both spouses are seeking to discharge their debts.

INSURANCE

There are several exemptions for different types of insurance proceeds by Hawaii law:

1. Benefits of fraternal societies are exempt by Statute 24-431:10-232.
2. Health and disability benefits by Statute 24-431:10-231.
3. Insurance proceeds when the policy forbids payment to creditors by Statute 24-431:10-D-112.
4. Life insurance policy on spouse or child by Statute 24-431:10-234.
5. Group life insurance proceeds by Statute 24-431:10-233.
6. Benefits from annuity contract if debtor is the insured's spouse, parent or child by Statute 24-431:10-232.

PERSONAL PROPERTY

Hawaii has exemptions for the following personal property:

1. By Statute 36-651-121:
 - a. Appliances and household goods as needed.
 - b. Books.
 - c. Funeral plot.
 - d. Clothing.
 - e. Motor vehicle to \$2,575.
 - f. Recoveries for damaged exempt property for six months.
 - g. Jewelry up to \$1,000.
2. Down payment for home in a state project by Statute 20-359-104.

3. Business partnership property by Statute 23-425-125.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits deposited over three years before the bankruptcy filing are exempt by Statute 36-651-124.
3. Firefighters' plans by Statute 7-88-169.
4. Police officers' plans by Statute 7-88-169.
5. Public employee plans by Statutes 7-88-91 and 36-653-3.

TOOLS OF THE DEBTOR'S TRADE

By Hawaiian law, books, tools and implements used in the debtor's trade are exempt as needed by Statute 36-651-121.

WAGES

By Statutes 36-651-121 and 36-652-1, earned but unpaid wages within 31 days of the bankruptcy filing are exempt. Unpaid wages older than 31 days are exempt as follows: 95% of the first \$100, 90% of the second \$100 and 80% thereafter. Also prisoners' wages are exempt by Statute 20-353-22.

IDAHO

(ALL REFERENCES ARE TO THE IDAHO CODE)

GENERAL EXEMPTION

\$800 in any tangible personal property by Statute 11-605(10)

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 11-603:
 - a. Social Security benefits.
 - b. Unemployment benefits.
 - c. Veteran's benefits.
2. By Statute 56-223:
 - a. Old age assistance.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Assistance under AFDC.
3. Worker's compensation by Statute 72-802.
4. Victim's crime compensation by Statute 72-1020.

HOMESTEAD EXEMPTION

By Statute 55-1003, the homestead exemption is \$50,000. Sale proceeds are exempt for six months. Homestead Declaration must be recorded for property not occupied by Statute 55-1004.

INSURANCE

There are several exemptions for different types of insurance proceeds by Idaho law:

1. Medical or hospital benefits by Statute 11-603.
2. Disability or death benefits are exempt by Statute 11-6-04.
3. Benefits from annuity up to \$350 per month by Statute 41-1836.
4. Group insurance benefits by Statute 41-1834.
5. Industrial life insurance policy if the beneficiary is a married woman is exempt by Statute 41-1830.
6. Life insurance benefits if beneficiary isn't the insured by Statute 41-1833.
7. Life insurance benefits if policy prohibits payment to creditors by Statute 41-1833.
8. Benefits from fraternal societies by Statute 41-3218.
9. Insurance proceeds to \$25,000 to homeowners by Statute 55-1201.
10. Annuity contracts up to \$350 per month by Statute 41-1836

PERSONAL PROPERTY

Idaho has exemptions for the following personal property:

1. \$500 is exempted for each of the following: appliances, furnishings, one firearm, heirlooms, household goods, books, musical instruments and clothing for a total of \$5,000 by Statute 11-605.
2. Funeral plot by Statute 11-603.
3. Medical Aids are exempt by Statute 11-603.
4. Jewelry is exempt to \$250 by Statute 11-650.
5. Motor vehicle is exempt to \$1,500 by Statute 11-605.
6. Personal injury recoveries needed for support are exempt by Statute 11-604.
7. Wrongful death recoveries needed for support are exempt by Statute 11-604.
8. Proceeds for damages exempt property are exempt for 3 months by Statute 11-606.
9. Building materials by Statute 45-514.
10. Crops grown by debtor on 50 acres to \$1,000 by Statute 11-605.
11. Child and spousal support needed for debtor's support by Statute 11-604.
12. Liquor licenses are exempt by Statute 23-514.
13. Business property of partnership is exempt by Statute 53-325.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits to the extent they are tax deferred by Statute 55-1611.
3. Public employees by Statute 59-1317.
4. Other pension benefits, including IRAs and Keoghs, needed for support by Statute 11-604.
5. Firefighters by Statute 72-1417.
6. Police officer by Statute 50-1517.

TOOLS OF THE DEBTOR'S TRADE

Under Idaho law, tools, instruments, books of trade to \$1,000 along with arms and uniforms that peace officer or member of military are required to keep are exempt by Statute 11-605.

WAGES

By Statute 11-207, 75% of earned but unpaid wages and pensions are exempt.

ILLINOIS

(ALL STATUTES REFER TO ILLINOIS ANNOTATED STATUTES)

GENERAL EXEMPTION

By Statute 110-12-1001, the general exemption is \$2,000 that can be applied to any personal property including wages.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 23-11-03:
 - a. Old age assistance.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Assistance under AFDC.
2. Worker's compensation by Statute 48-138.21.
3. Occupational disease compensation by Statute 48-172.56.
4. Unemployment compensation by Statute 48-540.
5. By Statute 110-12-1001:
 - a. Social Security benefits.
 - b. Veteran's benefits.
 - c. Victim's crime compensation.

HOMESTEAD EXEMPTION

By Statute 110-12-901, the homestead exemption is \$7,500. Sale

proceeds are exempt for 1 year. A married couple may double this exemption. A spouse or child of a deceased owner may claim a homestead exemption by Statute 110-12-902.

INSURANCE

There are several exemptions for different types of insurance proceeds by Illinois law:

1. By Statute 110-12-1001:
 - a. Disability or health benefits are exempt.
 - b. Life insurance policy if the beneficiary is the insured's spouse or child is exempt.
 - c. Life insurance proceeds needed for support.
2. Life insurance benefits if policy prohibits payment to creditors by Statute 73-853.
3. Benefits from fraternal societies by Statute 73-925.
4. Proceeds from homeowner's policy on destroyed home to \$7,500 by Statute 110-12-907.
5. Life insurance proceeds if the beneficiary is the debtor's child, parent, spouse or child are exempt by Statute 73-850.

PERSONAL PROPERTY

Illinois has exemptions for the following personal property:

1. By Statute 110-12-1001:
 - a. Bible, family pictures, portraits, school books and medical aids are exempt.
 - b. Motor vehicle is exempt to \$1,200.
 - c. Personal injury recoveries to \$7,500.
 - d. Wrongful death recoveries needed for support.
 - e. Proceeds for damages to exempt property are exempt.
 - f. Clothing as needed.
 - g. Child and spousal support needed for debtor's support.
2. Business property of partnership is exempt by Statute 106.5-25.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits, including IRAs, SEPs and Keoghs, to the extent payments being received by Statute 110-12-1006.
3. State employees by Statute 108.5-14-147.
4. State university employees by Statute 108-15-185.
5. Firefighters by Statutes 108-5-4-135 and 108.5-6-213.

6. Dependents of firefighters and disabled firefighters by Statutes 108.5-135 and 108.5-22-230.
7. Assembly members by Statute 108.5-2-154.
8. Correctional employees by Statute 108-19-117.
9. Municipal employees by Statutes 108.5-7-217 and 108.5-8-244.
10. Park employees by Statute 108.5-12-190.
11. Police officers by Statutes 108.5-3-144.1 and 108.5-5-218.
12. Library employees by Statute 108.5-19-218.
13. Sanitation employees by Statute 108.5-13-213.
14. Teachers by Statutes 108.5-16-190 and 105-17-151.
15. County employees by Statute 108.5-9-228.
16. Civil service employees by Statute 108.5-11-223.
17. Judges by Statute 108.5-18-161.

TOOLS OF THE DEBTOR'S TRADE

By Illinois law, tools, instruments, books of trade used in a debtor's trade or business are exempt to \$750 by Statute 110-12-1001.

WAGES

By Statutes 110-12-803, 85% of earned but unpaid wages are exempt.

INDIANA

(ALL STATUTES REFER TO THE INDIANA STATUTES ANNOTATED)

GENERAL EXEMPTION

\$4,000 of real or tangible property by Statute 34-2-28-1(a)(2) but with homestead exemption cannot exceed \$10,000 not including health aids.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 22-3-2-17.
2. Unemployment compensation by Statute 22-4-33-3.
3. Victim's crime compensation by Statute 16-7-3.6-15.

HOMESTEAD EXEMPTION

By Statute 34-2-28-1, the homestead exemption is \$7,500. The homestead exemption plus the personal property exemption can not exceed \$10,000. In addition, tenancies-by-the-entireties (a form of joint tenancy with a spouse) are exempt unless the debts incurred by both spouses are sought to be discharged (In re Jeffers 1 C.B.C. 559 and In the Matter of Haynes 4 C.B.C. 181 1981).

INSURANCE

There are several exemptions for different types of insurance proceeds by Indiana law:

1. Benefits from fraternal societies by Statute 27-11-6-3.

2. Group life insurance is exempt by Statute 27-1-12-29.
3. Life insurance policy if the beneficiary is the insured's spouse or dependent is exempt by Statute 27-1-12-14.
4. Life insurance benefits if policy prohibits payment to creditors by Statute 27-2-5-1.
5. Life insurance or accident proceeds needed by Statute 27-8-3-23.

PERSONAL PROPERTY

Indiana has exemptions for the following personal property:

1. By Statute 34-2-28-1:
 - a. Medical aids are exempt.
 - b. Money in Medical Care Savings Account
 - c. Any intangible personal property except money owed to the debtor can be exempted to \$100.
 - d. Any intangible personal property except money owed to creditors by Statute 27-2-5-1.
2. Business property of partnership by Statute 23-4-1-25.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. Firefighters by Statutes 36-8-7-22 and 36-8-8-17.
3. Police officers for benefits accumulating by Statutes 10-1-2-9 and 36-8-10-19.
4. Public employees by Statute 5-10.3-8-9.
5. Sheriffs for benefits accumulating by Statute 36-8-10-19.
6. Teachers by Statute 21-6.1-5-17.

TOOLS OF THE DEBTOR'S TRADE

By Indiana law, uniforms, arms & equipment of military and National Guard are exempt by Statute 102-6-3.

WAGES

By Statutes 24-4.5-5-105, 75% of earned but unpaid wages is exempt.

IOWA

(ALL REFERENCES ARE TO THE IOWA CODE)

GENERAL EXEMPTION

By Statute 627.6, the general exemption is \$100 that can be applied to any personal property including wages.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 627.13.
2. Social Security benefits by Statute 627.6.
3. Unemployment compensation by Statute 627.6.
4. Veteran's benefits by Statute 627.6.
5. Child assistance by Statute 627.6.
6. Assistance under AFDC by Statute 627.6.

HOMESTEAD EXEMPTION

By Statutes 499A-18, 561.2, 561.16, the homestead exemption is unlimited for a home on $\frac{1}{2}$ acre in a town or city and 40 acres elsewhere. The debtor may record a homestead declaration by Statute 561.4.

INSURANCE

There are several exemptions for different types of insurance proceeds by Iowa law:

1. Benefits from accident, disability, health or life insurance to \$15,000 paid to surviving spouse, child or dependent is exempt by Statute 627.6.
2. Group insurance policy or benefits by Statute 509.12.
3. Life insurance proceeds to \$10,000 are exempt if received within 2 years of the bankruptcy filing and paid to spouse, child or other dependent by Statute 627.6.
4. Life insurance benefits if policy prohibits payment to creditors by Statute 508.32.

PERSONAL PROPERTY

Iowa has exemptions for the following personal property:

1. By Statute 627.6:
 - a. Bible, family pictures, portraits to \$2,000 total are exempt.
 - b. Motor vehicle, musical instrument and tax refund to \$1,000 are exempt to a total of \$5,000.
 - c. Medical aids are exempt.
 - d. Rifle or shotgun is exempt.
 - e. Wedding and engagement rings are exempt.
 - f. Funeral plot.
 - g. Clothing to \$1,000.
 - h. Appliances and household furnishings to \$2,000.
 - i. Child and spousal support needed for debtor's support.
2. Business property of partnership is exempt by Stat. 544.25.
3. Liquor licenses by Statute 123.38.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension

plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).

2. Firefighters by Statute 411.3.
3. Disabled firefighters for payments being received by Statute 410.11.
4. Federal pension benefits being received by Statute 627.8.
5. Public employees by Statute 97B-39.
6. Police officers by Statute 411.13.
7. Peace officers by Statute 97A-12.
8. Other pensions, including IRA's, needed for support are exempt by Statute 627.6.

TOOLS OF THE DEBTOR'S TRADE

By Statute 627.6 the following property used in the debtor's trade or business is exempt:

1. Farming equipment and livestock except for an automobile are exempt to \$10,000.
2. Nonfarming equipment, except an automobile, to \$10,000.

WAGES

By Statutes 642.21, wages are exempt based on the following schedule: 0-\$12,000, \$250 not exempt, \$12,000-\$16,000 then 400 not exempt, \$16,000-\$24,000 then \$800 not exempt, \$24,000-\$35,000 then \$1,000 not exempt. \$35,000 -\$50,000 then \$2,000 not exempt, over \$50,000 then 10% is not exempt. No exemption for child or spousal support payments.

KANSAS

(ALL STATUTES REFER TO THE KANSAS STATUTES ANNOTATED)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 39-317:
 - a. Social Security benefits.
 - b. General assistance.
 - c. Assistance under AFDC.
2. Worker's compensation by Statute 44-514.
3. Unemployment compensation by Statute 44-718.
4. Victim's crime compensation by Statute 74-7313.

HOMESTEAD EXEMPTION

By Statute 60-2301 and the State Constitution Article XV Section 9, there is an unlimited homestead exemption for a home on 1 acre in

a city or 160 acres in a farm or ranch. The property must be occupied by the debtor at the time of the filing of the bankruptcy.

INSURANCE

There are several exemptions for different types of insurance proceeds by Kansas law:

1. By Statute 40-414:
 - a. Benefits from fraternal societies.
 - b. Life insurance cash and forfeiture value if the policy was bought more than one year before the bankruptcy filing.
 - c. Life insurance benefits if policy prohibits payment to creditors.
 - d. Life insurance proceeds or cash value deposited into a bank account.
2. Life insurance proceeds to \$1,000 paid to a deceased's estate and not a specific beneficiary is exempt by Statute 40-258.

PERSONAL PROPERTY

Kansas has exemptions for the following personal property:

1. By Statute 60-2304:
 - a. Appliances and furnishings.
 - b. Motor vehicle is exempt to \$20,000 but unlimited if equipped for a disabled person.
 - c. Clothing for 1 year.
 - d. Funeral plot.
 - e. Food and fuel for 1 year.
 - f. Jewelry to \$1,000.
2. Funeral plan prepayments by Statute 16-320.
3. Liquor licenses by Statute 16-320.
4. Business property of a partnership by Statute 56-325.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits by Statutes 60-2308 and 60-2313.
3. Federal pension benefits needed for support and paid within 3 months of the bankruptcy filing by Statute 60-2308.
4. City officials in cities with populations between 120,000 and 200,000 are exempt by Statute 13-14,12.
5. Firefighters by Statute 12-5005.
6. Judges by Statute 74-2618.

7. Public employees and police by Statute 74-4923.
8. Highway patrol officers by Statute 74-4989.
9. State school employees by Statute 72-5226.

TOOLS OF THE DEBTOR'S TRADE

By Kansas law, tools, instruments, books, animals and seeds used in a debtor's trade or business to a total value of \$7500 are exempt by Statute 60-2304.

WAGES

By Statute 60-2310, the lesser of 30 times the minimum wage or 75% of earned but unpaid wages are exempt.

KENTUCKY

(ALL STATUTES REFER TO THE KENTUCKY REVISED STATUTES)

GENERAL EXEMPTION

By Statute 427.160 there is a \$1,000 exemption that can be used against any property.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 342.180.
2. Unemployment compensation by Statute 341.470.
3. Victim's crime compensation by Statute 427.150.
4. Under Statute 205.220:
 - a. Assistance to the aged.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Assistance under AFDC.

HOMESTEAD EXEMPTION

By Statute 427.060, the homestead exemption is \$5,000.

INSURANCE

There are several exemptions for different types of insurance proceeds under Kentucky law:

1. Disability or health benefits are exempt by Statute 304.14-310.
2. Group insurance benefits by Statute 304.14-320.
3. Benefits from annuity to \$350 per month by Statute 304.14-330.
4. Life insurance policy if the beneficiary is a married woman is exempt by Statute 304.14-340.
5. Life insurance benefits if beneficiary isn't the insured by Statute 304.14-350.
6. Life insurance benefits if policy prohibits payment to creditors by Statute 304.14-350.

7. Benefits from fraternal societies by Statute 427.110.
8. Benefits from cooperative life or casualty insurance policies by Statute 427.110.

PERSONAL PROPERTY

Kentucky has exemptions for the following personal property:

1. Furnishing, jewelry and clothing to \$3,000 total by Statute 427.010.
2. Funeral plot to \$5,000 in lieu of homestead by Statute 427.060.
3. Medical aids are exempt by Statute 427.010.
4. Lost earnings needed for support are exempt by Statute 427.150.
5. Motor vehicle is exempt to \$2,500 by Statute 427.010.
6. Personal injury recoveries not including pain and suffering or pecuniary loss to \$7,500 are exempt by Statute 427.150.
7. Wrongful death recoveries needed for support are exempt by Statute 427.150.
8. Payments received under the motor vehicle reparation law are exempt by Statute 304.39-260.
9. Child and spousal support needed for debtor's support by Statute 427.150.
10. Business property of partnership is exempt by Statute 362.270.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. State employees by Statute 61.690.
3. Teacher by Statute 161.700.
4. Other pension benefits, including IRAs, SEPS and Keoghs, funded more than 120 days before filing by Statute 427.150.
5. Firefighters and police officer by Statutes 67A.520, 95.878, 427.120, 427.125.
6. County government employees by Statute 67A.350.

TOOLS OF THE DEBTOR'S TRADE

Under Kentucky law the following property, used in the debtor's trade or business is exempt:

1. Tools of a nonfarmer are exempt to \$300 by Statute 427.030.
2. Tools, equipment and livestock of farmer to \$3,000 in value by Statute 427.010.
3. Office equipment and library of minister, attorney, doctor, veterinarian or dentist to \$1,000 by Statute 427.040.

4. Motor vehicle to \$2,500 in value for attorney, doctor, veterinarian, dentist, mechanic, and mechanical or electrical services by Statute 427.010.

WAGES

By Statute 427.101, 75% of earned but unpaid wages are exempt.

LOUISIANA

(ALL STATUTES REFER TO THE LOUISIANA REVISED STATUTES)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 23:1205.
2. Unemployment compensation by Statute 23:1693.
3. By Statute 46:111:
 - a. Assistance to the aged.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Assistance under AFDC.
4. Victim's crime compensation by Statute 46:1811.

HOMESTEAD EXEMPTION

By Statute 20:1 the homestead exemption is \$25,000 for a home on up to 5 acres in town and up to 200 acres elsewhere. The spouse or child of a deceased owner may claim the exemption. The debtor must occupy the property when the exemption is claimed. A married couple may not double this exemption. May be an unlimited exemption if debt is from catastrophic or terminal illness.

INSURANCE

There are several exemptions for different types of insurance proceeds by Louisiana law:

1. Benefits from fraternal societies by Statute 22:558.
2. Disability or health benefits are exempt by Statute 22:646.
3. Life insurance proceeds or cash value are exempt by Statute 22:647.
4. Group insurance benefits by Statute 22:649.

PERSONAL PROPERTY

Louisiana has exemptions for the following personal property:

1. Furnishing, appliances, clothing, family pictures, musical instruments, poultry, one cow, sewing machine, military arms and uniforms by Statute 13:3881.
2. Funeral plot by Statute 8:313.

3. Medical aids are exempt by Statute 13:3881.
4. Lost earnings needed for support are exempt by Statute 427.150.
5. Wedding and engagement rings worth to \$5,000 by Statute 13:3881.
6. Spendthrift trusts under Statute 9:2004.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. By Statute 20:33:
 - a. ERISA benefits to the extent tax-deferred, if the contributions were made over one year prior to the bankruptcy filing.
 - b. IRA's, SEP's and Keoghs.
 - c. Gifts by employer or the employee or employee's heirs.
3. Assessor's pensions by Statute 11:1401
4. Court Clerk's pensions by Statute 11:1526
5. District Attorney's pensions by Statute 11:1583
6. Firemen pensions by Statute 11:2263
7. Judge's pensions by Statute 11:1378
8. Louisiana University employees' pensions by Statute 17:1613
9. Municipal employees' pensions by Statute 11:1735
10. Parochial employees' pensions by Statute 11:1905
11. Police pensions by Statute 11:3513
12. School employees' pensions by Statute 11:1003
13. Sheriff pensions by statute 11:2182
14. Teacher pensions by Statute 11:704
15. Voting registrar's pensions by Statute 11:2033.

TOOLS OF THE DEBTOR'S TRADE

By Louisiana law, tools, equipment, instruments and pickup truck to three tons or a nonluxury auto and utility trailer needed for the debtor's trade or business are exempt by Statute 13:3881.

WAGES

By Statute 13:3881, 75% of earned but unpaid wages are exempt.

MAINE

(ALL STATUTES REFER TO THE MAINE REVISED
STATUTES ANNOTATED)

GENERAL EXEMPTION

By Statute 14-4422, there is an exemption of \$400 that can be

applied to any property plus any unused portion of other exemptions up to \$6,000.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. By Statute 14-4422:
 - a. Social Security benefits.
 - b. Unemployment compensation.
 - c. Veteran's benefits.
 - d. Victim's crime compensation.
2. Assistance under AFDC by Statutes 22-3753 and 14-1422.
3. Worker's compensation by Statute 39-67.

HOMESTEAD EXEMPTION

By Statute 14-4422, the homestead exemption is \$35,000 increasing to \$70,000 for a person over age 60 or physically or mentally disabled or increasing to \$70,000 if minor dependents in residence. A married couple may double this exemption.

INSURANCE

There are several exemptions for different types of insurance proceeds by Maine law:

1. Disability or health benefits are exempt by Statute 24 A-2429.
2. Benefits from annuity to \$450 per month by Statute 24-A-2431.
3. Group insurance benefits by Statute 24 A-2430.
4. Unmatured life insurance policy except credit insurance policy is exempt by Statute 14-4422.
5. Life, accident, annuity policy, proceeds or cash value by Statute 24 A-2428.
6. Life insurance, policy, interest, cash value or proceeds on insured that debtor relied upon for support up to \$4,000 by Statute 24-A-2428.
7. Benefits from fraternal societies by Statute 24-A 4118.

PERSONAL PROPERTY

Maine has exemptions for the following personal property:

1. Balance due on the sale of repossessed goods providing the amount financed didn't exceed \$2,000 by Statute 9 A-5-103.
2. By Statute 14-4422:
 - (a) Funeral plot in lieu of a homestead exemption.
 - (b) Medical aids are exempt.
 - (c) Jewelry is exempt to \$750.
 - (d) Furnaces and stoves used for heat.
 - (e) Motor vehicle is exempt to \$5,000
 - (f) Personal injury recoveries not including pain and suffering to \$12,500.

- (g) Wrongful death recoveries needed for support are exempt.
 - (h) Wedding and engagement rings.
 - (I) Tools to harvest food.
 - (j) Seeds and fertilizer to raise food for one season.
 - (k) Lost earnings needed for support by Statute 14:4422.
 - (l) Animals, crops, musical instruments and books are exempt to \$200 each.
 - (m) Food to last 6 months, fuel not to exceed 10 cords of wood, 5 tons of coal or 200 gallons of fuel.
 - (n) Child and spouse support to the extent needed for support.
2. Business property of partnership is exempt by Statute 31-305.
 3. Arms and uniforms for military personnel by Statute 37-B-262.
 4. Exempt property obtained within 90 days of filing by Statute 14-4423.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits by Statute 14-422.
3. State employees by Statute 5-17054.
4. Legislators by Statute 3-703.
5. Judges by Statute 4-1203.

TOOLS OF THE DEBTOR'S TRADE

By Maine law the following property used in the debtor's trade or business is exempt by Statute 14-4422:

1. Stock, materials and books used in business to a total value of \$5,000.
2. A commercial fishing boat not exceeding 5 tons.
3. One of each type of farm instruments used by a farmer.

WAGES

None.

MARYLAND

(ALL REFERENCES ARE TO THE ANNOTATED CODE OF
MARYLAND EXCEPT WHERE INDICATED)

GENERAL EXEMPTION

By Maryland's Courts and Judicial Proceedings Section 11-504, there is an exemption of \$5,500 that can be applied toward any

property but no more than \$3,000 in cash.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Maryland Labor Code 9-732.
2. Unemployment compensation by Maryland Labor Code 8-106.
3. Victim's crime compensation by Annotated Code of Maryland Section 26A-13.
4. Public assistance by Annotated Code of Maryland Section 88A-73.
5. Assistance by AFDC by Annotated Code of Maryland Section 88A-73.

HOMESTEAD EXEMPTION

None but tenancies-by-the-entireties were held exempt in the cases *In re Ford*, 1 C.B.C.2d 840 1980 and *Sumy vs. Schlossberg* 777 F.2d 921 1985 unless the debts of both spouses is sought to be discharged or both spouses are liable on the debts.

INSURANCE

There are several exemptions for different types of insurance proceeds by Maryland law:

1. Disability or health benefits are exempt by Courts & Judicial Proceedings Section 11-504.
2. Medical benefits paid from wage deductions by Maryland's Commercial Code 15-601.1.
3. Life insurance or annuity proceeds if beneficiary is the insured's dependent or spouse by Maryland's Estate and Trusts Code Section 8-115 and Annotated Code of Maryland Section 48A-328.
4. Benefits from fraternal societies by Maryland's Estate and Trusts Code Section 8-115 and Annotated Code of Maryland Section 48A-328.

PERSONAL PROPERTY

Maryland has exemptions for the following personal property:

1. Furnishings, appliances, clothing, books and pets to \$500 total, under Courts & Judicial Proceedings Section 11-504.
2. Funeral plot by Annotated Code of Maryland Section 23-164.
3. Medical aids are exempt by Courts & Judicial Proceedings Section 11-504.
4. Lost earnings needed for support are exempt by Courts & Judicial Proceedings Section 11-504.
5. Business property of a partnership by Corporations Code Section 9502.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits, not including IRAs, by Courts and Judicial Proceedings Section 11-504.
3. Benefits for deceased Baltimore police officers by the Annotated Code of Maryland Section 73B-49.
4. State employees by the Annotated Code of Maryland Sections 73B-17 and 73B-125.
5. State police by the Annotated Code of Maryland Section 88B-60.
6. Teachers by the Annotated Code of Maryland Sections 73B-96 and 73B-152.

TOOLS OF THE DEBTOR'S TRADE

By Maryland law, tools, equipment, instruments, appliances, clothing used in the debtor's business (but not an automobile) are exempt to \$2,500 by Courts & Judicial Proceedings Section 11-504.

WAGES

Under Maryland's Commercial Code Section 15-601.1, 75% of earned but unpaid wages to \$145 per week are exempt. In Kent, Caroline, Queen Anne's or Worchester's counties the greater of 75% of the actual unpaid wages or 30% of the federal minimum wage is exempt.

MASSACHUSETTS

(ALL STATUTES REFER TO THE MASSACHUSETTS GENERAL LAWS)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 152-47.
2. Unemployment compensation by Statute 151A-36.
3. Veteran's benefits by Statute 115-5.
4. Assistance to aged and disabled by Statute 235-34.
5. Assistance by AFDC by Statute 118-10.

HOMESTEAD EXEMPTION

By Statutes 188-1 and 188-1A, the homestead exemption is \$300,000. A married couple may not double this exemption. In addition by Statute 209-1 a debtor's interest in tenancy-by-the-entireties property is exempt unless it is a joint debt or for the necessities of life. Must record homestead declaration before filing.

INSURANCE

There are several exemptions for different types of insurance proceeds by Massachusetts law:

1. Disability benefits to \$400 per week are exempt by Statute 175-110A.
2. Benefits from group annuity by Statute 173-132C.
3. Group insurance benefits by Statute 175-135.
4. Proceeds from life or endowment policies by Statute 175 - 125.
5. Proceeds from an exempt life insurance annuity contract by Statute 172-125.
6. Proceeds from a life insurance policy that prohibits payment to creditors by Statute 175-119A.
7. Benefits from fraternal societies by Statute 176-22.
8. Medical malpractice self-insurance by Statute 175F-15.

PERSONAL PROPERTY

Massachusetts has exemptions for the following personal property:

1. Under Statute 235-34:
 - (a) Bank accounts to \$125.
 - (b) Food or cash to \$300.
 - (c) A Bible and books to \$200 total.
 - (d) A sewing machine to \$200.
 - (e) Funeral plots and pews.
 - (f) Cash for utilities to \$75 per month.
 - (g) Cash for rent to \$200 per month in lieu of a homestead.
 - (h) Shares in a cooperative to \$100.
 - (i) Animals: 2 cows, 12 sheep, 2 swine and 4 tons for hay.
 - (j) Furniture to \$3,000.
 - (k) Motor vehicle to \$700.
2. Eminent domain moving expenses by Statute 79-6A.
3. Deposits in banks, credit unions or trust companies to \$500 in value by Statute 246-28A.
4. Business property of partnership by Statute 108-A-25.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112. S.Ct. 2442).
2. ERISA benefits including IRA's by Statute 235-34A.
3. Employees of savings banks by Statute 168-41.
4. Public employees by Statute 32-19.

5. Private retirement benefits by Statute 32-41.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 235-34, the following property used in the debtor's trade or business are exempt:

1. Arms and uniforms of military personnel.
2. Boats, fishing tackle and equipment of fishermen to \$500.
3. Products that the debtor designed to \$500.
4. Tools, instruments and equipment used in business to \$500.

WAGES

Massachusetts has the following exemptions regarding wages by Statute 246-28:

1. Earned but unpaid wages are exempt to \$125 per week.
2. Wage and pension payments are exempt to \$100 per week.

MICHIGAN

(ALL STATUTES REFER TO THE MICHIGAN COMPILED LAWS)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 418.821.
2. Veteran's benefits by Statutes 35.977, 35.926 and 35.1027.
3. Unemployment compensation by Statute 421.30.
4. Victim's crime compensation by Statute 18.362.
5. General assistance, welfare by Statute 400.63.
6. Assistance by AFDC by Statute 330.1158a.

HOMESTEAD EXEMPTION

Under Statutes 600,6023, 600.6027 and 559.214, there is an exemption to \$3,500 for a lot in a town or 40 acres elsewhere. A spouse or child of a deceased owner may claim the exemption. In Michigan National Bank vs. Chrystker 5 C.B.C. 85, the court held that a debtor's interest in tenancy-by-the-entireties property (a special form of joint tenancy with a spouse) is exempt unless the debts of both spouses are sought to be discharged or it is a joint debt.

INSURANCE

There are several exemptions for different types of insurance proceeds by Michigan law:

1. Benefits from fraternal societies by Statute 500.8046.
2. Life insurance proceeds or cash value by Statute 500.2207.
3. Disability, health and mutual life benefits by Statute 600.6023.

4. Proceeds from life or endowment policies if the beneficiary is the insured's spouse or child by Statute 500.2207.
5. Life insurance benefits if policy prohibits payment to creditors by Statute 500.4054.
6. Proceeds from life insurance to \$300 per year if the beneficiary is a married person by Statute 500.2209.

PERSONAL PROPERTY

Michigan has exemptions for the following personal property:

1. Business property of a partnership by Statute 449.25.
2. Under Statute 600.6023:
 - (a) Appliances and furnishings to a total of \$1,000.
 - (b) Shares in building and loan association to \$1000 par value in lieu of a homestead.
 - (c) Animals:-2 cows, 100 hens, 5 roosters, 10 sheep, 5 swine, hay and grain to last 6 months if head-of-household.
 - (d) Funeral plot.
 - (e) Food and fuel for 6 months if head-of-household.
 - (f) Church pew, clothing and family pictures.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
2. Legislators by Statute 38.1057.
3. ERISA and IRA plans to the extent tax-deferred by Statute 600.6023.
4. Firefighters by Statutes 38.559.
5. Public school employees by Statute 38.1346.
6. Judges by Statute 38.826.
7. Police officers by Statute 38.559.
8. State employees by Statutes 38.40.
9. Probate judges by Statute 38.927.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 600.6023, the following property used in the debtor's trade and business is exempt:

1. Tools, instruments, books, motor vehicle, horse and harness to \$1,000.
2. Arms and uniforms for military personnel.

WAGES

Under Statute 600.5311, 60% of earned but unpaid wages of head-

of-household and 40% for everyone else are exempt. In addition, a head-of-household may keep \$15 per week and \$2 per week for each dependent other than a spouse. All other debtors can keep only \$10 per week.

MINNESOTA

(ALL STATUTES REFER TO THE MINNESOTA STATUTES)

Published in Minnesota State Register

www.comm.media.state.mn.us/bookstore/stateregister.asp

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 176.175,
2. Veteran's benefits by Statute 550.38.
3. Unemployment compensation by Statute 268.17.
4. Victim's crime compensation by Statute 611A.60.
5. General assistance, welfare, aid by AFDC by Statute 550.37.

HOMESTEAD EXEMPTION

Under Statutes 510.01, 510.01 and 550.37, there is an unlimited exemption for a home on $\frac{1}{2}$ acre in a city or 160 acres elsewhere. Real property with mobile home or manufactured home \$200,000 but if primarily agricultural then \$500,000. Husband and wife cannot double.

INSURANCE

There are several exemptions for different types of insurance proceeds by Minnesota law:

1. Benefits from fraternal societies by Statute 64B.18.
2. Benefits from beneficiary, police or fire associations by Statute 550.37.
3. Disability and accident benefits by Statute 550.39.
4. Proceeds from life or endowment policies if the beneficiary is the insured's spouse or child to \$36,000 plus \$9,000 per dependent by Statute 500.2207.
5. Life insurance benefits if policy prohibits payment to creditors by Statute 61A.04.
6. Unmatured life insurance policy and cash value to \$7,200 if the insured is the debtor or someone to whom the debtor looks for support by Statute 550.37.
7. Life insurance and endowment proceeds or cash value if the beneficiary is not the insured by Statute 61A.12.

PERSONAL PROPERTY

Minnesota has exemptions for the following personal property:

1. Under Statute 500.37:

- (a) Appliances and furnishings to a total of \$8,100.
- (b) Books, Bible and musical instruments.
- (c) Funeral plot.
- (d) Church pew, motor vehicle to a total of \$3,600 up to \$36,000 if modified for disabled person.
- (e) Clothing as needed.
- (f) Food and utensils.
- (g) Wrongful death recoveries.
- (h) Personal injury recoveries.
- (i) Proceeds from damage to exempt property.
- 2. For business property of a partnership by Statute 323-24.
- 3. For earnings of a minor child by Statute 550.37.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

- 1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
- 2. ERISA benefits, including IRAs needed for support that do not exceed \$54,000 in present value by Statute 550.37.
- 3. Private retirement benefits only to the extent benefits are accumulating by Statute 181B.16.
- 4. Public employees by Statute 353.15.
- 5. State employees by Statute 352.96.
- 6. State troopers by Statute 352B.071.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 550.37 the following property used in the debtor's trade or business is exempt:

- 1. Tools, instruments, books, machines, furniture, inventory to \$9,000.
- 2. Teaching materials of public school teacher.
- 3. Farm equipment, livestock, tools and equipment for farmer.

WAGES

Minnesota has the following wage exemptions:

- 1. Under Statute 571.922, 75% of earned but unpaid wages are exempt.
- 2. Under Statute 550.37:
 - a. Wages of inmates paid within 6 months of release.
 - b. Earned but unpaid wages that are paid within 6 months after returning to work if the debtor received welfare in the past.
 - c. Wages deposited in bank account are exempt for 20 days.

NOTE: SOME COURTS IN MINNESOTA DO NOT AWARD UNLIMITED EXEMPTIONS

AND INSTEAD ONLY AWARD REASONABLE AMOUNTS IF LIMIT IS NOT STATED. SEE
IN RE TVETEN 402 N.W.2D 551 (1987) and IN RE MEDILL 119 BR 685 (1990)

MISSISSIPPI

(ALL REFERENCES ARE TO THE MISSISSIPPI CODE)

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 71-3-43.
2. Social Security benefits by Statute 25-11-129.
3. Unemployment compensation by Statute 71-5-539.
4. Old age assistance by Statute 43-9-19.
5. Assistance to the blind by Statute 43-3-71.
6. Assistance to the disabled by Statute 43-29-15.

HOMESTEAD EXEMPTION

Under Statute 85-3-21 the homestead exemption is \$75,000 on property that cannot exceed 160 acres. The debtor must occupy the property prior to the filing of bankruptcy unless over age 60 and either married or widowed. May file homestead declaration by statutes 85-3-27 and 85-3-31.

INSURANCE

There are several exemptions for different types of insurance proceeds by Mississippi law:

1. Disability benefits are exempt by Statute 85-3-1.
2. Insurance proceeds to homeowners to \$75,000 by Statute 85-3-23.
3. Life insurance policy or proceeds to \$50,000 by Statute 85-3-11.
4. Life insurance benefits to \$5,000 if beneficiary is the deceased's estate by Statute 85-3-13.
5. Life insurance benefits if policy prohibits payment to creditors by Statute 83-7-5.
6. Benefits from fraternal societies by Statute 83-2939.

PERSONAL PROPERTY

Mississippi has exemptions for the following personal property:

1. Any type of tangible personal property to a total of \$10,000 by Statute 83-3-1.
2. Personal injury recoveries to \$10,000 by Statute 85-3-17.
3. Proceeds for damages to exempt property are exempt by Statute 85-3-1.
4. Business property of a partnership is exempt by Statute

79-12-49.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
2. ERISA benefits, including Keogh and IRA's, deposited more than 1 year before the bankruptcy filing by Statute 85-3-11.
3. Private tax-deferred retirement plans by Statute 71-1-43.
4. Firefighters by Statute 21-29-257.
5. Public employees by Statute 25-11-129.
6. Highway patrol officers by Statute 25-13-31.
7. State employees by Statute 25-14-5.
8. Teachers by Statute 25-11-123.

TOOLS OF THE DEBTOR'S TRADE

None. beyond that of the personal property exemption.

WAGES

Under Statutes 85-3-4, all earned but unpaid wages for the 30 days prior to filing the bankruptcy petition are exempt after the 30 days. 75% of earned but unpaid wages are exempt.

MISSOURI

(ALL STATUTES REFER TO THE ANNOTATED MISSOURI STATUTES)

GENERAL EXEMPTION

Under Statutes 513.430 and 513.440, the general exemption is \$1,250 for a head of household plus \$250 for each child. For other debtors, the exemption is \$400.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 287.260.
2. Social Security benefits by Statute 513.430.
3. Unemployment compensation by Statutes 288.430 and 513.430.
4. AFDC assistance by Statute 513.430.

HOMESTEAD EXEMPTION

Under Statute 513.430 and 513.475 the homestead exemption is \$8,000 for real property and \$1,000 for a mobile home. A married couple may not double this exemption. Tenancies-by-the-entireties were held exempt in the case In re Anderson 12 B.R. 483 1981 unless

the debts of both spouses are sought to be discharged or there is joint liability.

INSURANCE

There are several exemptions for different types of insurance proceeds by Missouri law:

1. Disability, health and medical benefits needed for support by Statute 513.430.
2. Stipulated insurance premiums by Statute 377.330.
3. An unmatured life insurance policy by Statute 513.430.
4. Life insurance policy, proceeds or cash value to \$5,000 bought more than 6 months prior to filing the bankruptcy petition by Statute 513.430.
5. Life insurance benefits proceeds if the policy is owned by an unmarried woman and her father or brother is the beneficiary by Statute 376.550.
6. Benefits from fraternal societies to \$5000 if policy was purchased more than 6 months prior to the filing of the bankruptcy petition by Statute 513.430.
7. Assessment or insurance premium proceeds by Statute 377.090.
8. Fraternal benefits to \$5,000 bought more than 6 months before filing for bankruptcy relief by Statute 513.430.

PERSONAL PROPERTY

Missouri has exemptions for the following personal property:

1. Funeral plot or \$100 by Statute 214.190.
2. Business property of a partnership by Statute 358.250.
3. Under Statute 513.430:
 - (a) Appliances, clothing, household furnishings, animals, crops and musical instruments to \$1000 total.
 - (b) Medical aids.
 - (c) Jewelry to \$500.
 - (d) Motor vehicle to \$1,000.
 - (e) Wrongful death recoveries needed for support.
 - (f) Spousal and child support to \$500 per month.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
2. ERISA benefits needed for support by Statute 513.430.
3. Public employees for cities over 100,000 people by Statute 71.207.

4. Transportation employees by Statute 104.250.
5. Firefighters by Statutes 87.090, 87.365, 87.485.
6. Police employees by Statutes 86.190, 86.353, 86.493, 86.780.
7. State employees by Statute 104.540.
8. Public employees by Statute 70.695.
9. Teachers by Statute 169.090.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 513.430, tools, instruments and books used in the debtor's business are exempt to \$2,000.

WAGES

Under Statutes 525.030 and 513.470, 90% for a head-of-household and 75% for other debtors of earned but unpaid wages are exempt. Also, wages of a laborer or servant are exempt to \$90.

MONTANA

(ALL STATUTES REFERRED TO THE MONTANA CODE)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Veteran's benefits by Statute 25-13-698.
2. Social Security benefits by Statute 25-13-608.
3. Worker's compensation by Statute 39-71-743.
4. Unemployment compensation by Statute 39-51-3105.
5. Silicosis benefits by Statute 39-73-110.
6. Under Statute 53-2-607:
 - (a) Victim's crime compensation.
 - (b) Old age assistance.
 - (c) Assistance to the disabled.
 - (d) Assistance by AFDC.
 - (e) Assistance to the blind.
 - (f) Adoptions payments if subsidized.

HOMESTEAD EXEMPTION

Under Statutes 70-32-101 and 70-32-104, the homestead exemption is \$60,000. Sale proceeds are exempt for 18 months. A homestead declaration must be recorded prior to the filing of the bankruptcy to get a homestead exemption. The debtor must occupy the property prior to the filing of the bankruptcy petition.

INSURANCE

There are several exemptions for different types of insurance proceeds by Montana law:

1. Disability, health, death benefits are exempt by Statute

- 33-15-573.
2. Benefits from annuity to \$350 per month by Statute 33-15-514.
3. Group insurance benefits by Statute 33-15-512.
4. Life insurance benefits or cash value if the yearly premiums do not exceed \$500 by Statute 33-15-511.
5. Life insurance benefits if policy prohibits payment to creditors by Statute 33-20-120.
6. Benefits from fraternal societies by Statute 33-7-511.
7. Unmatured life insurance policies to \$4,000 by Statute 25-13-609.
8. Hail insurance benefits by Statute 25-13-609.

PERSONAL PROPERTY

Montana has exemptions for the following personal property:

1. Under Statute 25-13-608:
 - a. Funeral plot.
 - b. Medical aids are exempt.
 - c. Child and spouse support needed for the debtor's support.
2. \$600 is exempted for each of the following: appliances, furnishings, firearms, heirlooms, household goods, books, musical instruments and clothing for a total of \$4,500 total by Statute 25-13-608.
3. Shares in cooperative associations to \$500 by Statute 35-15-404.
4. Motor vehicle to \$1,200 by Statute 25-13-609.
5. Proceeds for damages exempt property are exempt for 6 months by Statute 25-13-610.
6. Business property of partnership by Statute 35-10-502.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
2. ERISA benefits deposited over 1 year prior to the bankruptcy filing by Statute 31-02-106.
3. Public employees by Statute 19-3-105.
4. Game Wardens by Statute 19-8-805.
5. Firefighters by Statute 19-11-612 and 19-13-1004.
6. Police officers by Statute 19-9-1006 and 19-10-504.
7. Sheriffs by Statute 19-7-705.
8. Teachers by Statute 19-4-706.
9. Judges by Statute 19-5-704.
10. Highway patrol officers by Statute 19-6-705.

TOOLS OF THE DEBTOR'S TRADE

Under Montana law the following property used in the debtor's trade or business is exempt:

1. Tools, instruments, books of trade to \$3,000 by Statute 25-13-609.
2. Arms, uniforms that peace officer or member of military is required to keep by Statute 25-13-613.

WAGES

Under Statute 25-13-614, 75% of earned but unpaid wages are exempt.

NEBRASKA

(ALL STATUTES REFER TO THE REVISED STATUTES OF NEBRASKA)

GENERAL EXEMPTION

Under Statute 25-1552, there is a general exemption to \$2,500 in lieu of a homestead exemption on any personal property except wages.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 48-149.
2. Unemployment compensation by Statute 48-647.
3. Under Statute 68-103:
 - a. Old age assistance.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Aid by AFDC.

HOMESTEAD EXEMPTION

Under Statute 40-101 the homestead exemption is \$12,500 on property that cannot exceed 2 lots in a city or 160 acres elsewhere. Sale proceeds are exempt for 6 months after a sale. May file homestead declaration by Statute 40-105.

INSURANCE

There are several exemptions for different types of insurance proceeds by Nebraska law:

1. Insurance or annuity proceeds or cash value to \$10,000 by Statute 44-371.
2. Disability benefits to \$200 per month are exempt by Statute 44-754.
3. Benefits from fraternal societies to \$10,000 by Statute 44-1089.

PERSONAL PROPERTY

Nebraska has exemptions for the following personal property:

1. Funeral plot, crypts, vaults by Statutes 12-517 and 12-605.
2. Proceeds from perpetual care contracts or savings by Statute 12-511.
3. Personal injury recoveries by Statute 24-1563.02.
4. Under Statute 25-1556:
 - a. Clothing as needed.
 - b. Food and fuel to last 6 months.
 - c. Furniture and kitchen utensils to \$1,500.
 - d. Personal possessions.
5. Business property of a partnership by Statute 67-325.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension plan constitutes a restriction transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.2442).
2. ERISA benefits needed for support by Statute 25-1563.01.
3. County employees by Statute 23-2322.
4. Military disability benefits to \$2,000 by Statute 25 1559.
5. School employees by Statutes 79-1060 and 79-1552.
6. State employees by Statute 84-1324.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 25-1556, tools, equipment and instruments used in a trade or business are exempt to \$2,400. A married couple may double this amount.

WAGES

Under Statute 25-1558, 85% for heads-of-household and 75% for all other debtors of earned but unpaid wages or pension payments are exempt.

NEVADA

(ALL STATUTES REFER TO THE NEVADA REVISED STATUTES)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Under Statute 422.291:
 - a. Old age assistance.
 - b. Assistance to the blind.
 - c. Assistance to the disabled.
 - d. Assistance to AFDC.
2. Unemployment compensation by Statute 612.710.
3. Worker's compensation by Statute 616.550.

4. Vocational training benefits by Statute 615.270.

HOMESTEAD EXEMPTION

Under Statutes 21.090 and 115.010, the homestead exemption is \$200,000 on property. A married couple may not double this exemption. A homestead declaration must be filed before filing for bankruptcy relief.

INSURANCE

There are several exemptions for different types of insurance proceeds under Nevada law:

1. Life insurance benefits or policy if the annual premium does not exceed \$1,000 by Statute 21.090.
2. Annuity proceeds to \$350 per month by Statute 687B.290.
3. Life insurance proceeds if the debtor is not the insured by Statute 687B.260.
4. Group life insurance policy or proceeds and Health insurance proceeds or cash value by Statute 687B.280.
5. Benefits from fraternal societies by Statute 695A.290.

PERSONAL PROPERTY

Nevada has exemptions for the following personal property:

1. Under Statute 21.090:
 - (a) Appliances, household furnishings, one gun and yard equipment to \$3,000.
 - (b) Books are exempt to \$1,500.
 - (c) Family pictures and heirlooms
 - (d) Motor vehicle to \$15,000 unlimited if equipped for disabled person.
 - (e) Restitution for criminal acts
 - (f) Personal injury awards to \$16,000.
2. Metal ores, geologic specimens and paleopathological remains by Statute 21.100.
3. Savings for funeral plot held in trust by Statute 452.550.
4. Funeral Service contract by Statute 689.700.
5. Business property of a partnership by Statute 87.250.

RETIREMENT BENEFITS

1. The pensions of public employees by Statute 286.670.
2. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code which excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
3. ERISA qualified benefits to \$500,000 by Statute 21.090(1)(q)

TOOLS OF THE DEBTOR'S TRADE

Under Statute 21.090, the following items are exempt if used in the debtor's trade or business:

1. Farm truck, stock, tools, equipment, implements and seed to \$4,500.
2. Tools, materials, instruments, supplies and library to \$4,500.
3. Miner or prospector's cabin or dwelling and implements, vehicles and equipment to \$4,500.

WAGES

Under Statute 21.090, 75% of earned but unpaid wages are exempt.

NEW HAMPSHIRE

(ALL STATUTES REFER TO THE NEW HAMPSHIRE
REVISED STATUTES)

GENERAL EXEMPTIONS

\$1,000 for any property plus unused portion of exemption for automobile, bibles, books, food, fuel, furniture, jewelry and tools up to \$7,000 by statute 511:2(XVIII).

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Under Statute 167:25:
 - (a) Assistance to the disabled.
 - (b) Assistance under AFDC.
 - (c) Assistance to the blind.
 - (d) Assistance to the aged.
2. Worker's compensation by Statute 281A:52.
3. Unemployment compensation by Statute 282A:159.

HOMESTEAD EXEMPTION

Under Statute 480:1 the homestead exemption is \$100,000.

INSURANCE

There are several exemptions for different types of insurance proceeds under New Hampshire law:

1. Benefits from firefighters' insurance by Statute 402:69.
2. Life insurance or endowments where debtor is not the insured by Statute 408:2.
3. Life insurance or endowment where the beneficiary is a married woman by Statute 408:1.
4. Benefits from fraternal societies by Statute 418:24.
5. Homeowner's insurance proceeds to \$5,000 by Statute 512:21.

PERSONAL PROPERTY

New Hampshire has exemptions for the following personal property:

1. Under Statute 511:2:
 - a. Bed, bedsteads, bedding and cooking utensils.
 - b. Bible and books to \$800.
 - c. Funeral plot.
 - d. Clothing as needed.
 - e. Stove and refrigerator.
 - f. Food and fuel to \$400.
 - g. Furnishings to \$3,500.
 - h. Jewelry to \$500.
 - i. Sewing machine.
 - j. A hog or pig.
 - k. Cow, 6 sheep and 4 tons of hay.
 - l. Motor vehicle to \$4,000.
2. Proceeds for damage or loss of exempt property Stat 512:21
3. Child and spouse support needed for debtor's support by Statute 161-C-11.
4. Business property of partnership is exempt by Stat 304A:25.
5. Jury and witness fees by Statute 512:21.
6. Minor child's wages by Statute 512:21.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits for benefits accumulating by Statute 512:21.
3. Public employees by Statute 100A:26.
4. Firefighters by Statute 102:23.
5. Police officers by Statute 103:18.

TOOLS OF THE DEBTOR'S TRADE

Under New Hampshire statute 511:2 the following property used in the debtor's trade or business is exempt:

1. Tools, instruments, books of trade to \$1,500.
2. Arms, uniforms that peace officer or member of military is required to keep.
3. Yoke for oxen or horses used by a farmer.

WAGES

Under Statute 512:21, all of the debtor's and the debtor's spouse's earned but unpaid wages are exempt. The bankruptcy court may exempt more for low-income debtors.

NEW JERSEY

(ALL STATUTES REFER TO THE NEW JERSEY
STATUTES ANNOTATED)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 34:15-29.
2. Unemployment compensation by Statute 43:21-53.
3. Old age assistance by Statute 44:7-35.
4. Assistance to the disabled by Statute 44:7-35.
5. Crime victim's compensation by Statute 52:4B-30.

HOMESTEAD EXEMPTION

None. However in *Freda vs. Commercaill trust Co.* 570 A2d 409 (1990), the court held that a debtor could exempt property held in tenancy by the entireties unless a discharge is sought for debts of both spouses.

INSURANCE

There are several exemptions for different types of insurance proceeds under New Jersey law:

1. Annuity proceeds to \$500 per month by Statute 17B:24-7.
2. Life insurance proceeds if the debtor is not the insured by Statute 17B:24-6.
3. Group life insurance policy or proceeds by Statute 17B:24-9.
4. Health or disability proceeds by Statute 17:18-12, 17B:24-8.
5. Life insurance benefits if the policy forbids payment to creditors by Statute 17B:24-10.
6. Benefits from fraternal societies by Statute 17:44A-19.
7. Disability, health or death benefits for a military member by Statute 38A:4-8.

PERSONAL PROPERTY

New Jersey has exemptions for the following personal property:

1. There is a total exemption of \$1,000 for personal property and shares in a corporation by Statute 2A:17-19.
2. Funeral plots by Statute 8A:5-10.
3. Clothing by Statute 2A:17-19.
4. Furniture and household goods to \$1,000 by Statute 2A:25-4.
5. Business property of a partnership by Statute 42:1-25.

RETIREMENT BENEFITS

The following pensions are exempt under New Jersey law:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability that Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Alcohol control officers by Statute 43:8A-20.
3. Civil defense workers by Statute A:057.6.
4. County and public employees by Statutes 43:10-57, 43:10-155, 43:13-9 and 43:15A-53.
5. Firefighters, police and traffic officers by Statutes 43:16-7 and 43:10-105.
6. Health boards' employees by Statute 43:18-12.
7. Judges by Statute 43:6A-41.
8. Municipal employees by Statute 43:13-44.
9. Prison employees by Statute 43:15A-53.
10. School district employees by Statute 18A:66-116.
11. State police by Statute 53:5A-45.
12. Water and street department employees by Statute 43:19-17.
13. Teachers by Statute 18A:66-51.
14. IRA's In Re Yuhas No: 96-5146 (3rd Cir. 1/22/97)

TOOLS OF THE DEBTOR'S TRADE

None.

WAGES

Under Statute 2A:17-56, 90% of earned but unpaid wages if the debtor's income is less than \$7,500. By Statute 38A:4-8 wages of military personnel are exempt.

NEW MEXICO

(ALL STATUTES REFER TO THE NEW MEXICO STATUTES)

GENERAL EXEMPTIONS

Under New Mexico law, there is an exemption of \$2,000 to be applied against any property in lieu of a homestead by Statute 42-10-10 plus \$500 under Statute 42-10-1.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 52-1-52.
2. Unemployment compensation by Statute 51-1-37.
3. Victim's crime compensation by Statute 31-22-15.
4. Occupational disability benefits by Statute 52-3-57.
5. Assistance under AFDC by Statute 27-2-21.
6. General welfare assistance to by Statute 27-2-21.

HOMESTEAD EXEMPTION

Under Statute 42-10-9, there is a homestead exemption of \$30,000 for a person who is married, widowed or supporting another person. Joint owners may double this exemption.

INSURANCE

There are several exemptions for different types of insurance proceeds under New Mexico law:

1. Benefits from fraternal societies by Statute 42-10-4.
2. Benevolent association benefits to \$5,000 by Statute 59A-44-18.
3. Life, annuity, health or accident benefits or cash value where the beneficiary is a New Mexican citizen by Statute 42-10-3.
4. Life insurance proceeds by Statute 42-10-5.

PERSONAL PROPERTY

New Mexico has exemptions for the following personal property:

1. Under Statutes 42-10-1 and 42-10-2:
 - (a) \$500 in personal property other than cash.
 - (b) Books, medical aid, furniture.
 - (c) Clothing as needed.
 - (d) Jewelry to \$2,500.
 - (e) Motor vehicle to \$4,000.
2. Cooperative association shares to the extent needed to maintain membership by Statute 53-4-28.
3. Materials to drill or repair oil well, gas well or pipeline by Statute 70-4-12.
4. Building materials as needed by Statute 48-2-15.
5. Property in a business partnership by Statute 54-1-25.
6. Interests in unincorporated associations by Statute 53-10-2.

RETIREMENT BENEFITS

Under New Mexican law, retirement benefits are exempted as follows:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Public school employees by Statute 22-11-42.
3. Pension and retirement benefits, in general, by Statutes 42-10-1 and 42-10-2.

TOOLS OF THE DEBTOR'S TRADE

Under New Mexico law, tools, instruments, books of trade, used

in the debtor's trade or business to \$1,500 are exempt by Statutes 42-10-1 and 42-10-2.

WAGES

Under Statute 35-12-7, 75% of earned but unpaid wages are exempt.

NEW YORK

(ALL STATUTES REFER TO THE CIVIL PRACTICE LAW AND RULES OF THE CONSOLIDATED LAWS OF NEW YORK EXCEPT AS INDICATED)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Under Debtor & Creditor Code Section 282:
 - (a) Worker's compensation.
 - (b) Veteran's benefits.
 - (c) Assistance under AFDC.
 - (d) Victim's crime compensation.
 - (e) Old age assistance.
 - (f) Social security.
 - (g) Assistance to the disabled.
 - (h) Home relief.
 - (i) Assistance to the blind.
2. Unemployment compensation under C.P.L. 5205.

HOMESTEAD EXEMPTION

Under C.P.L. Section 5206, the homestead exemption is \$10,000. A married couple may double this exemption.

INSURANCE

There are several exemptions for different types of insurance proceeds under New York law:

1. Disability, health death benefits to \$400 per month under Insurance Code Statute 3212.
2. Benefits to \$5,000 from annuity purchased more than 6 months before the bankruptcy filing and not tax deferred under Debtor and Creditor Code, Statute 282.
3. Life insurance proceeds or cash value if the beneficiary is not the insured under Insurance Code Statute 3213.
4. Insurance proceeds for damage to exempt property under C.P.L. Section 5205.
5. Life insurance benefits if policy prohibits payment to creditors under Estates, Powers & Trusts Code Section 7-1.5.
6. Benefits from fraternal societies by Statute under

Insurance Code Statute 3212.

PERSONAL PROPERTY

New York has exemptions for the following personal property:

1. Under Debtor and Creditor Code, Statute 282:
 - (a) Motor vehicle to \$2,400.
 - (b) Personal injury recoveries up to one year after recovery.
 - (c) Recoveries for lost earnings needed for support.
 - (d) Wrongful death recoveries for a person on whom the debtor depended for support.
 - (e) Child and spouse support needed for debtor's support.
2. Bible and schoolbooks are exempt; other books to a value of \$50, stoves and fuel for 60 days, sewing machine, a pet worth to \$450, 60 days of food, furniture, refrigerator, television, radio, cooking utensils to a total of \$5,000 under C.P.L. Section 5205 and Debtor & Creditor Code Section 283;
3. Funeral plot by C.P.L. Statute 5206.
4. Money in the form of cash to \$2,500 increasing to \$5,000 if a homestead exemption is not taken by Debtor & Creditor Code Section 283.
5. Medical aids by C.P.L. Section 5205.
6. Security deposits for rent or utilities by C.P.L. Statute 5205.
7. Trust fund principal and 90% of the trust income under C.P.L. Statute 5205.
8. Business property of partnership is exempt under Partnership Code section 51.

RETIREMENT BENEFITS

1. Under Debtor & Creditor Code Section 282 and C.P.L. Section 5205, ERISA retirement benefits including Keoghs that are needed for support are exempt.
2. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
3. Public Insurance Benefits are exempt under Insurance Code section 4607
4. State Employees Retirements are exempt under Social Security section 110
5. Teachers' pensions are exempt under Education Section 524
6. Village Police Officers plans are exempt under Unconsolidated Section 5711-0

TOOLS OF THE DEBTOR'S TRADE

Under C.P.L. Section 5205, tools, instruments, implements,

library, furniture to \$600 and food for 60 days used in the debtor's trade or business along with arms, uniforms, equipment of military personnel are exempt.

WAGES

Under C.P.L. section 5205, 90% of earned but unpaid wages received within 60 days of filing for bankruptcy relief are exempt as needed for support.

NORTH CAROLINA

(ALL STATUTES REFER TO THE GENERAL STATUTES
OF NORTH CAROLINA)

GENERAL EXEMPTION

Under Statute 1C-1601 there is a general exemption of \$3,500 reduced by any amount claimed as a homestead or taken as a funeral plot exemption plus \$500 of any personal property by Const.Art. X section 1.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Victim's crime compensation by Statute 15B-17.
2. Unemployment compensation by Statute 96-17.
3. Worker's compensation by Statute 97-21.
4. Adult special assistance by Statute 108A-36.
5. Assistance under AFDC by Statute 108A-36.
6. Assistance to the blind by Statute 111-18.

HOMESTEAD EXEMPTION

Under Statute 1C-1601, there is a homestead exemption of \$10,000. \$3,500 of the unused exemption may be applied to any other property. The cases In Re Woodward 13 B.R. 105 and In re Martin 20 B.R. 374 permitted a married debtor to exempt the debtor's interest in tenancy-by-the-entireties property except where the discharge of the debts for both spouses is sought or both spouses are liable for the debts.

INSURANCE

There are several exemptions for different types of insurance proceeds under North Carolina law:

1. Benefits from fraternal societies by Statute 58-340.18.
2. Group life policy or proceeds by Statute 58-213.
3. Life insurance proceeds or cash value by Statute 58-206.
4. Life insurance policy where the beneficiary is the insured's spouse or child under Constitution 10-5.

PERSONAL PROPERTY

North Carolina has exemptions for the following personal property:

1. Under Statute 1C-1601:
 - (a) Animals, appliances, books, clothing, crops, household goods, furnishings to \$3,500 plus \$750 per dependent up to another \$3,000.
 - (b) Funeral plot to \$10,000 in lieu of a homestead.
 - (c) Medical aids.
 - (d) Motor vehicle to \$1,500.
 - (e) Personal injury recoveries for a person on whom the debtor relied for support.
 - (f) Wrongful death recoveries for a person on whom the debtor relied.
2. Business property of a partnership by Statute 59-55.

RETIREMENT BENEFITS

Retirement benefits are exempted as follows to:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Firefighters and rescue squad workers by Statute 118-49.
3. Legislators by Statute 120-4.29.
4. Public employees by Statute 128-31.
5. Teachers by Statute 135-9.
6. State employees by Statute 135-95.
7. Law enforcement officers by Statute 143-166.30.

TOOLS OF THE DEBTOR'S TRADE

Under North Carolina law, tools, instruments, books of trade used in the debtor's trade or business to \$750 are exempt by Statute 1C-1601.

WAGES

Under Statute 1-362, earned but unpaid wages received within 60 days prior to the bankruptcy filing are exempt.

NORTH DAKOTA

(ALL STATUTES REFER TO THE NORTH DAKOTA CENTURY CODE)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Assistance to AFDC by Statute 28-22-19.
2. Crime victim's compensation by Statute 28-22-19.
3. Social security by Statute 28-22-03.1.

4. Viet Nam veterans assistance by Statute 37-25-07.
5. Unemployment compensation by Statute 52-06-30.
6. Worker's compensation by Statute 65-05-29.

HOMESTEAD EXEMPTION

Under Statutes 28-22-02 and 47-18-01, the homestead exemption is \$80,000 on real property, house trailer or mobile home used as a residence. Husband and wife cannot double the exemption.

INSURANCE

There are several exemptions for different types of insurance proceeds under North Dakota law:

1. Life insurance proceeds payable to a decedent's estate by Statute 26.1-33-40.
2. Life insurance cash value to \$100,000 per policy, if the beneficiary is insured's relative & owned over 1 year before filing for bankruptcy. There is no limit if needed for support by Statute 28-22-03.1.
3. Benefits from fraternal societies by Statutes 26.1-15.118 and 26.1-33-40.

PERSONAL PROPERTY

North Dakota has exemptions for the following personal property:

1. Under Statute 28-22-02:
 - (a) A Bible is exempt along with books to \$100, family pictures and clothing as needed.
 - (b) Funeral plot and church pew.
 - (c) Crops grown on 160 acres.
 - (d) Food and fuel to last 1 year.
2. Cash to \$7,500 in lieu of a homestead by Statute 28-22-03.1.
3. Personal injury recoveries to \$7,500 not to include pain and suffering by Statute 28-22-03.1.
4. Wrongful death recoveries by Statute 28-22-03.1.
5. Under Statute 28-22-03, a head of household not claiming crops or grain (item 1(c)) has the option of exempting \$5,000 of any personal property or by Statute 28-22-04.
 - (a) Books and musical instruments to \$1,500.
 - (b) Furniture to \$1,000.
 - (c) Professional's library and instruments.
 - (d) Farmer's stock and equipment.
 - (e) Tools of mechanic and stock in trade.
6. Nonhead of household not claiming crops or grain may exempt \$2,500 of personal property by Statute 28-22-05.
7. Business property of a partnership is exempt by Statute 45-08-02.
8. Motor vehicle to \$1,200 by Statute 28-22-03.1(2).

RETIREMENT BENEFITS

The following retirement plans and pension benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Annuities, pensions, IRAs, Keoghs, SEPs and ERISA qualified benefits to \$100,000 per plan or as needed for support if with exempt insurance not need for support total exemption %200,000 by Statute 28-22-03.1.
3. Disabled veteran's benefits, not including military pay, by Statute 28-22-03.1.
4. Public employees plans by Statute 28-22-19.
5. State employees' plans by Statute 54-52-12.

TOOLS OF THE DEBTOR'S TRADE

None.

WAGES

Under Statute 32-09.1-03, 75% of earned but unpaid wages is exempt.

OHIO

(ALL STATUTES REFER TO THE OHIO REVISED CODE)

GENERAL EXEMPTION

Under Statute 2329.66, there is a \$400 general exemption that can be applied toward any type of property.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 2329.66 and 4123.67.
2. Vocational benefits by Statute 3304.19.
3. Unemployment compensation by Statutes 2329.66 and 4141.32.
4. Crime victim's compensation by Statute 2743.66.
5. AFDC assistance by Statutes 2329.66 and 5107.12.

HOMESTEAD EXEMPTION

Under Statute 2329.66, the homestead exemption is \$5,000 for real property, mobile home, house trailer or house boat used as a residence. In the cases In Re Thomas 14 B.R. 423 and In Re Hicks 1 C.B.C. 963 1980 the court held that a debtor could exempt property held in tenancy-by-the-entireties unless a discharge is sought for the debts of both spouses.

INSURANCE

There are several exemptions for different types of insurance proceeds under Ohio law:

1. Disability benefits to \$600 per month by Statutes 2329.66 and 3923.19.
2. Benefits from fraternal benefit societies by Statutes 2329.66 and 3923.18.
3. Benefits from benevolent societies to \$5,000 by Statutes 2329.66 and 2329.63.
4. Group life policy or proceeds by Statutes 2329.66 and 3917.05.
5. Life insurance proceeds for a spouse by Statute 3911.12.
6. Life insurance proceeds if the policy forbids payment to creditors by Statute 3911.14.
7. Life insurance, endowment or cash value proceeds for a policy on a spouse, child or dependent by Statute 3911.10.

PERSONAL PROPERTY

Ohio has exemptions for the following personal property:

1. Under Statute 2329.66:
 - (a) \$200 per item in animals, appliances, books, crops, furnishings, household goods, hunting and fishing equipment, firearms, jewelry (to \$400) and musical instruments for a total of \$1,500 that increases to \$2,000 if no homestead exemption is claimed.
 - (b) Beds and clothing to \$200 per item.
 - (c) Funeral plot.
 - (d) Cash, money due within 90 days and tax refund (provided the debtor has income) to \$400.
 - (e) Medical aids.
 - (f) Personal injury recoveries to \$5,000 not including pain or suffering.
 - (g) Wrongful death recoveries for a person on whom the debtor relied for support.
 - (h) Motor vehicle to \$1,000.
 - (i) Stove and refrigerator to \$300 each.
 - (j) Spousal and child support needed for support.
2. Business property of a partnership by Statute 1775.24.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Under Statute 2329.66
 - (a) ERISA benefits, including Keogh and IRA's, needed for support.
 - (b) Death benefits for firefighters and police.
 - (c) Firefighters and police.

3. Public employees by Statute 145.56.
4. Highway patrol employees by Statute 5505.22.
5. Volunteer firefighters' dependents by Statute 146.13.

TOOLS OF THE DEBTOR'S TRADE

Under Ohio law, the following property used in the trade or business of the debtor are exempt:

1. Implements, instruments, books, tools of trade to \$750 by Statute 2329.66.
2. The seal and register of a notary public by Statute 147.04.

WAGES

Under Statute 2329.66, 75% of earned but unpaid wages are exempt.

OKLAHOMA

(ALL STATUTES REFER TO THE OKLAHOMA STATUTES)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 85-48.
2. Social Security benefits by Statute 56-173.
3. Unemployment compensation by Statute 40-2-203.
4. Victim's crime compensation by Statute 21-142.13.
5. Assistance under AFDC by Statute 56-173.

HOMESTEAD EXEMPTION

Under Statute 31-2, the homestead exemption is unlimited on real property or manufactured home provided the property does not exceed 1 acre in town, 160 acres elsewhere. If more than 25% used in business, then the exemption is \$5,000.

INSURANCE

There are several exemptions for different types of insurance proceeds under Oklahoma law:

1. Benefits from fraternal societies by Statute 36-2720.
2. Mutual benefits or assessment by Statute 36-2410.
3. Group life policy or proceeds if the debtor is not the insured by Statute 36-3632.
4. Life insurance proceeds if the debtor is not the insured by Statute 36-3631.
5. Limited stock insurance proceeds by Statute 36-2510.
6. Pre-paid funeral benefits if held in trust Statute 36-6125.

PERSONAL PROPERTY

Oklahoma has exemptions for the following personal property:

1. Under Statute 31-1:
 - (a) Books, family portraits, pictures and a gun.
 - (b) Two bridles and saddles.
 - (c) Clothing to \$4,000.
 - (d) Furniture.
 - (e) Medical aids.
 - (f) Food to last 1 year.
 - (g) \$50,000 total recovery for personal injury, wrongful death and worker's compensation. This exemption does not include a recovery for punitive damages.
 - (h) Animals as follows: 100 chickens, 10 hogs, 2 horses, 5 cows, 20 sheep and feed for 1 year.
 - (i) Child and spousal support needed for debtor's support.
 - (k) Motor Vehicle to \$3,000.
2. Business property of partnership is exempt by Statute 54-225.
3. Funeral plots by Statute 8-7.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits including IRAs, SEPs, and Keoghs needed for support to the extent tax-deferred by Statute 31-1. Public employees by Statute 74-923.
4. Firefighters by Statute 11-49-126.
5. Police officers by Statute 11-50-124.
6. Tax exempt bonds by Statute 60-328.
7. Law enforcement employees by Statute 47-2-303.3.
8. Teachers by Statute 70-17-109.
9. County employees by Statute 19-959.
10. Disabled veterans by Statute 31-7.

TOOLS OF THE DEBTOR'S TRADE

Under Oklahoma law, tools, instruments, books and farming implements are exempt to a total of \$5,000 by Statute 31-1.

WAGES

Under Statutes 12-1171.1 and 31-1, 75% of earned but unpaid wages (earned in the 90 days prior to the filing for bankruptcy relief) are exempt.

OREGON

(ALL STATUTES REFER TO THE OREGON REVISED STATUTES)

GENERAL EXEMPTION

Under Statute 23.160, there is a \$400 general exemption that can be applied to any personal property. A married couple may double this exemption.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Crime victim's compensation by Statutes 23.160 and 147.325.
2. Vocational benefits by Statute 344.580.
3. Welfare and general assistance by Statute 411.760.
4. Assistance for old age by Statute 413.130.
5. Assistance to the blind by Statute 412.115.
6. Assistance to the disabled by Statute 412.610.
7. Assistance under AFDC by Statute 418.040.
8. Disaster relief by Statute 401.405.
9. Medical assistance by Statute 414.095.
10. Inmates benefits by Statute 655.530.
11. Worker's compensation by Statute 656.234.
12. Unemployment compensation by Statute 657.855.

HOMESTEAD EXEMPTION

Under Statutes 23.164 and 23.240, the homestead exemption for real property, mobile home or houseboat is \$25,000 increasing to \$33,000 for a married couple. If the debtor does not own the land on which a mobile home is located, the exemption is \$23,000 increasing to \$30,000 for a married couple. The property cannot exceed 1 block in a city, town or village or 160 acres elsewhere. The debtor must occupy the property when the bankruptcy petition is filed. Sale proceeds are exempt for 1 year if the debtor intends to roll the proceeds into the purchase of another home.

INSURANCE

There are several exemptions for different types of insurance proceeds under Oregon law:

1. Life insurance benefits if the policy prohibits payments to creditors by Statute 743.240.
2. Life insurance benefits or cash value if the debtor is not the insured by Statute 743.099.
3. Annuity benefits to \$250.00 per month by Statute 743.105.
4. Disability benefits are exempt by Statute 743.108.
5. Group life benefits or cash value by Statute 743.102.
6. Benefits from fraternal societies by Statute 749.207.

PERSONAL PROPERTY

Oregon has exemptions for the following personal property:

1. Under Statute 23.160:

- (a) Books, pictures and musical instruments to total of \$600. A married couple may double this exemption.
- (b) Clothing and jewelry to a total of \$1,800. A married couple may double this exemption.
- (c) Pets and food to last 60 days to \$1,000.
- (d) Motor vehicle to \$1,700. A married couple may double this exemption.
- (e) Personal injury recoveries to \$10,000, not including pain and suffering. This exemption may be doubled by a married couple.
- (f) Furniture and appliances to \$3,000.
- (g) Spousal and child support as needed for support.
- 2. Under Statute 23.166:
 - (a) Bank account to \$7,500.
 - (b) Proceeds from the sale of exempt property.
- 3. Firearm by Statute 23.200.
- 4. Funeral plot by Statute 61.770.
- 5. Business property of a partnership by Statute 68.420.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

- 1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
- 2. ERISA benefits, including IRAs and SEPs deposited more than a year before filing for bankruptcy relief by Statute 23.170.
- 3. Government and public employees (state, federal and local) by Statute 237.201.
- 4. Employees of school districts by Statute 239.261.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 23.160, there is an exemption for tools, library, implements, instruments and a team of animals used in a debtor's trade or business to \$3,000. A married couple may double this amount.

WAGES

Under Oregon law, there are the following wage exemptions available to debtors:

- 1. 75% of earned but unpaid wages by Statute 23.185.
- 2. Wages that have been placed in an employee's bond savings account by Statute 292.070.

PENNSYLVANIA

(ALL STATUTES REFER TO THE PENNSYLVANIA

CONSOLIDATED STATUTES)

GENERAL EXEMPTION

Under Statute 42-8123, there is a general exemption of \$300 that can be applied towards any property.

GOVERNMENT BENEFITS

The following government benefits are exempt to a debtor under state law:

1. Unemployment compensation by Statute 43-863.
2. Korean veteran benefits by Statute 51-20098.
3. Veteran's benefits by Statute 51-20012.
4. Crime victim's compensation by Statute 71-180-7.10.
5. Worker's compensation by Statute 42-8124.

HOMESTEAD EXEMPTION

There is no homestead exemption. Court decisions In re Thacker 5 B.R. 592 and In re Barsotti 3 C.B.C.2d 306 1980 permit a debtor to exempt tenancy-by-the-entireties property unless the debts of both spouses are discharged or both spouses are jointly liable for the debts.

INSURANCE

There are several exemptions for different types of insurance proceeds by Statute 42-8124:

1. Accident or disability benefits.
2. Annuity contract payments and cash value to \$100 per month.
3. Annuity policy, cash value or proceeds if the beneficiary is the insured's dependent, spouse, or child.
4. Benefits from fraternal benefit societies.
5. Group life policy or proceeds.
6. Life insurance proceeds if the policy prohibits payment to creditors.
7. Insurance proceeds from no-fault auto insurance.

PERSONAL PROPERTY

Pennsylvania has exemptions for the following personal property:

1. Business property of a partnership by Statute 15-8341.
2. Under Statute 42-1824:
 - (a) Bibles and school books.
 - (b) Sewing machine.
 - (c) Clothing as needed by Statute.
 - (d) Uniforms.
3. Personal property at a U.S. sponsored international exhibit by Statute 42-8125.

RETIREMENT BENEFITS

The following retirement plans and pension benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Employees of cities by Statutes 53-13445, 53-23572 and 53-39383.
3. Employees of counties by Statute 16-4716.
4. Employees of a municipality by Statute 53-881.115.
5. Employees of the state by Statute 71-5953.
6. Private retirement plans that forbid the payment to creditors by Statute 42-8124.
7. Police officers by Statutes 53-764, 53-776 and 53-23666.
8. Public school employees by Statute 24-8533.
9. Self-employment benefits by Statute 42-8124.

TOOLS OF THE DEBTOR'S TRADE

None.

WAGES

Under Statute 42-8127, earned but unpaid wages are exempt.

RHODE ISLAND

(ALL STATUTES REFER TO THE GENERAL LAWS OF RHODE ISLAND)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt to a debtor under state law:

1. Unemployment compensation by Statute 28-44-58.
2. Veteran and survivor's benefits by Statute 30-7-9.
3. Disability benefits by Statute 28-41-32.
4. Welfare and general assistance by Statute 40-6-14.
5. Worker's compensation by Statute 28-33-27.
6. Assistance to aged, blind, disabled and AFDC by Statute 40-6-14.

HOMESTEAD EXEMPTION

\$150,000 exemption in land and buildings used as a primary residence. Tenancy-by-the-entireties property may be exempt if it is not liable for joint debts or the debts of both spouses are not being discharged (Cull vs. Vadnais (1979) A.2d 1241). Husband and wife cannot double.

INSURANCE

There are several exemptions for different types of insurance

proceeds for a debtor:

1. Accident or health benefits by Statute 27-18-24.
2. Benefits from fraternal benefit societies by Stat 27-25-18.
3. Life insurance proceeds if the policy prohibits payment to creditors by Statute 27-4-12.
4. Life insurance proceeds or cash value if the beneficiary is not the insured by Statute 27-4-11.
5. Proceeds from temporary disability insurance by Statute 28-41-32.

PERSONAL PROPERTY

Rhode Island has exemptions for the following personal property:

1. Cooperative association holdings to \$50 by Statute 7-8-25.
2. Business property of a partnership is exempt by Statute 7-12-36.
3. Body of a deceased person by Statute 9-26-3.
4. Under Statute 9-26-4:
 - (a) Bibles and books to \$300.
 - (b) Clothing as needed.
 - (c) Debt secured by a promissory note or bill of exchange.
 - (d) Funeral plot by Statute 9-26-4.
 - (e) Furniture including bedroom set to a total of \$8,600.
 - (f) Earnings of a minor child.
 - (g) Jewelry to \$1,000.
 - (h) Motor Vehicle to \$10,000.
 - (i) Prepaid tuition program or tuition savings account.

RETIREMENT BENEFITS

The following retirement plans and pension benefits are exempt to debtors under state law:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA qualified benefits and IRA's by Statute 9-26-4.
3. Employees of a municipality by Statute 36-10-34.
4. Employees of the state by Statute 36-10-34.
5. Private retirement plans by Statute 28-17-4.
6. Police officers and firefighters by Statute 9-26-5.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 9-26-4, Rhode Island has the following exemptions for a debtor's tools of trade:

1. The library of a professional person in active practice.
2. Tools, instruments, implements used in the trade and

business to \$500.00.

WAGES

Rhode Island has the following exemptions for wages of a debtor:

1. Earned but unpaid wages to \$50 by Statute 9-26-4.
2. Under Statutes 7-7-25 and 30-7-9:
 - (a) Earned but unpaid wages due military members on active duty.
 - (b) Earned but unpaid wages to seamen.
 - (c) Earned but unpaid wages if the debtor received welfare during the year prior to the filing of bankruptcy relief.
 - (d) Wages of a spouse.
 - (e) Wages paid by charity to the debtor.

SOUTH CAROLINA

(ALL STATUTES REFER TO CODE OF LAWS OF SOUTH CAROLINA)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Under Statute 15-41-30:
 - (a) Unemployment compensation.
 - (b) Crime victim's compensation.
 - (c) Veteran benefits.
 - (d) Social Security.
2. Under Statute 43-5-190:
 - (a) Old age assistance.
 - (b) Assistance to the blind.
 - (c) Assistance to the disabled.
 - (d) Assistance under AFDC.
3. Worker's compensation by Statute 42-9-360.

HOMESTEAD EXEMPTION

Under Statute 15-41-30, the homestead exemption for real property, mobile home or houseboat used as a residence is \$5,000. Joint owners may double this exemption.

INSURANCE

There are several exemptions for different types of insurance proceeds under South Carolina law:

1. Disability and health benefits by Statute 15-41-30.
2. Life insurance cash value on policy on which debtor relied \$4,000 by Statute 15-41-30.
3. Life insurance policy or proceeds to \$25,000 on a spouse or child by Statute 38-63-40.

4. Life insurance benefits on a person whom the debtor relied for support by Statute 15-41-30.
5. Life insurance benefits if policy prohibits payment to creditors by Statute 38-63-50.
6. Benefits from fraternal societies by Statute 38-37-870.
7. Unmatured life insurance contract by Statute 15-41-30.
8. Group Life Insurance cash value to \$50,000 by Statute 38-65-70.
9. Proceeds from Group Life Insurance by Stat. 38-63040©
10. Proceeds from life insurance annuity contract 38-63040(b)
11. Unmatured life insurance contract except credit insurance policy by statute 15-41(30)(7)
12. Accident and disability benefits by statute 38-63040(D).

PERSONAL PROPERTY

South Carolina has exemptions for the following personal property:

1. Under Statute 15-41-30:
 - (a) Animals, appliances, books, clothing, crops, household goods, furniture, and musical instruments to a total of \$2,500.
 - (b) Funeral plot to \$5,000 in lieu of a homestead exemption. A married couple may double this exemption.
 - (c) Cash, stocks and bonds to \$1,000 in lieu of a homestead exemption.
 - (d) Medical aids.
 - (e) Jewelry to \$500.
 - (f) Motor vehicle to \$1,200.
 - (g) Personal injury recoveries.
 - (h) Wrongful death recoveries.
 - (i) Alimony.
 - (j) Child support.
2. Business property of a partnership by Statute 33-41-720.

RETIREMENT BENEFITS

The following retirement benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits by Statute 15-41-30.
3. Public employees' plans by Statute 9-1-1680.
4. Firefighters' plans by Statute 9-13-230.
5. Police officers' plans by Statute 9-11-270.
6. Judges' plans by Statute 9-8-190.
7. Legislators' plans by Statute 9-9-180.
8. IRA's under Statute 15-41(30)(12)

TOOLS OF THE DEBTOR'S TRADE

Under Statute 15-41-30, there is an exemption for tools, library, implements, instruments and a team of animals used in a debtor's trade or business to \$750.

WAGES

None.

SOUTH DAKOTA

(ALL STATUTES REFER TO THE SOUTH DAKOTA CODIFIED LAW)

GENERAL EXEMPTIONS

None

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Unemployment compensation by Statute 61-6-28.
2. Worker's compensation by Statute 62-4-42.
3. Assistance under AFDC by Statute 28-7-16.

HOMESTEAD EXEMPTION

Under Statutes 43-31-1 through 43-31-4, there is an unlimited homestead exemption on real property not exceeding 1 acre in town or 160 acres elsewhere. The exemption also applies to a mobile home larger than 240 square feet. Sale proceeds are exempt to \$30,000 or unlimited for a debtor over age 70 or widowed for 1 year after a sale. A spouse or child of a deceased owner can claim the homestead exemption. May file homestead declaration by statute 43-31-6.

INSURANCE

There are several exemptions for different types of insurance proceeds available to a debtor:

1. Benefits from life insurance, endowments and cash value to \$20,000 by Statute 58-12-4.
2. Annuity contract payments and cash value to \$250 per month by Statute 58-12-8.
3. Life insurance proceeds to \$10,000 if the beneficiary is surviving spouse or child by Statute 43-45-6.
4. Benefits from fraternal benefit societies by Statute 58-37A-18.
5. Benefits from health policies to \$20,000 by Statute 58-12-4.
6. Life insurance proceeds if the policy prohibits payment to creditors by Statute 58-15-70.
7. Endowment, life insurance policy, proceeds or cash value to \$20,000. Can not double In Re James 31 BR 67(1983) Statute 58-12-4.

PERSONAL PROPERTY

South Dakota has exemptions for the following personal property:

1. A Bible is exempt along with books to \$200, burial plots, church pews, family pictures, clothing and food for 1 year and fuel for 1 year by Statute 43-45-2.
2. Under Statute 43-45-5, a head of family may claim \$6,000 of any personal property or elect the following exemptions instead:
 - (a) Books and musical instruments to \$200.
 - (b) Animals: 2 cows, 5 swine, 25 sheep and food enough to last 1 year.
 - (c) Farming machinery, utensils, tackle for teams, wagon to a total of \$1,250.
 - (d) Furniture including bedroom set and bedding to \$200.
 - (e) Library and tools and instruments of a professional to \$300.
 - (f) Tools of mechanic and stock in trade to \$200.
 - (g) Animals: 2 oxen, horses and mules.
3. Under Statute 43-45-4, a nonhead of family may claim \$4,000 of any personal property.
4. Business property of a partnership by Statute 48-4-14.

RETIREMENT BENEFITS

The following retirement plans and pension benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code which excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Employees of cities plans by Statutes 9-16-47.
3. Public employees' plans by Statute 3-12-115.
4. Erisa benefits limited to \$250,000 under statute 43-45-16.

TOOLS OF THE DEBTOR'S TRADE

None.

WAGES

Under state law, the following exemptions exist for the wages of debtors:

1. Earned but unpaid wages owed 60 days prior to filing for bankruptcy relief are exempt if needed for support by Statute 15-20-12.
2. Wages of prisoners employed in work programs by Statute 24-8-10.

TENNESSEE

(ALL STATUTES REFER TO THE TENNESSEE CODE)

GENERAL EXEMPTION

Under Statute 26-2-102, there is a general exemption of \$4,000 that can be applied toward any personal property of the debtor.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 50-6-223.
2. Unemployment compensation by Statute 26-2-111.
3. Public assistance by Statute 26-2-111.
4. Old age assistance by Statute 71-2-216.
5. Assistance to the blind by Statute 71-4-117.
6. Assistance to the disabled by Statute 71-4-1112.
7. Assistance under AFDC by Statute 71-3-121.
8. Crime victim's compensation to \$5,000 by Statutes 29-13-111 and 26-2-111. A maximum total exemption of \$15,000 exists for victim's compensation, personal injury and wrongful death.
9. Veteran benefits by Statute 26-2-111.
10. Social Security by Statute 26-2-111.

HOMESTEAD EXEMPTION

Under Statute 26-2-301, the homestead exemption is \$5,000, but a married couple may claim \$7,500. Under court decision, Ray vs. Dawson 5 C.B.C. 404 1981 a debtor is permitted to exempt tenancy-by-the entirety property provided a discharge is not being sought for the debts of both spouses.

INSURANCE

There are several exemptions for different types of insurance proceeds under Tennessee law:

1. Disability and health benefits by statute 26-2-111.
2. Disability, accident and health benefit by Statute 26-2-110.
3. Life insurance policy or proceeds on a spouse, dependent or child by Statute 56-7-201.
4. Insurance proceeds under a homeowner's policy to \$5,000 by Statute 26-2-304.
5. Benefits from fraternal societies by Statute 56-25-1403.

PERSONAL PROPERTY

Tennessee has exemptions for the following personal property for a debtor:

1. Bible, school books, pictures and portraits by Statute 26-2-103.
2. Clothing as needed by Statute 26-2-103.
3. Medical aids by Statute 26-2-111.
4. Recoveries of lost earnings by Statute 26-2-111.
5. Personal injury recoveries to \$7,500 not including pain and

- suffering by Statute 26-2-111.
6. Wrongful death recoveries to \$10,000 by Statute 26 2-111. (Maximum exemption for both wrongful death and personal injuries is \$15,000)
 7. Alimony owed for more than 30 days before filing for bankruptcy relief by Statute 26-2-111.
 8. Funeral plot to 1 acre by Statute 26-2-305.
 9. Business property of a partnership is exempt by Statute 61-1-124.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability that Section 541(2) of the bankruptcy Code which excludes the pension from the bankruptcy estate regardless of whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct.) 2442.
2. ERISA benefits by Statute 26-2-111.
3. Public employees' plans by Statute 8-36-111.
4. State government employees' plans by Statute 26-2-104.
5. Local government employees' plans by Statute 26-2-104.
6. Teachers' plans by Statute 49-5-909.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 26-2-111, there is an exemption for tools, library, implements, instruments used in a debtor's trade or business are exempt to \$1,900.

WAGES

Under Statutes 26-2-106 and 26-2-107, 75% of the debtor's earned but unpaid wages plus \$250 per week per child are exempt.

TEXAS

(ALL REFERENCES ARE TO THE TEXAS REVISED CIVIL STATUTES)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt to the debtor under state law:

1. Worker's compensation by Civil Statutes 8306-3.
2. Unemployment compensation by Civil Statutes 5221b-13.
3. Medical benefits by Human Resources Statute 32.036.
4. Assistance under AFDC by Human Resources statute 31.040.
5. Crime victim's compensation by Civil Statute 8309-1.

HOMESTEAD EXEMPTION

Under Property Statutes Sections 41.001 and 41.002, there is an unlimited homestead exemption on real property that cannot exceed 10 acre in a town, city or village or 100 acres elsewhere (increasing to 200 acres for a family). Sale proceeds are exempt for 6 months after sale. Must file a homestead exemption 41.005.

INSURANCE

There are several exemptions for different types of insurance proceeds under Texas law:

1. Accident, annuity, health or life benefits under Insurance Statutes section 21-22.
2. Life insurance policy proceeds or cash value where policy was purchased over 2 years before filing for bankruptcy relief under Insurance Statutes Section 10.28.
3. Life insurance benefits where the policy forbids payment to creditor under Insurance Statutes Section 21:22.
4. Public school employees' plans group life insurance under Insurance Statutes section 3.50-4.
5. Benefits from fraternal societies by Insurance Statutes Section 10.28.
6. Group insurance under Insurance Statute 3.50-2.
7. State college or university employee benefits under Insurance Statute Section 3.50-3.

PERSONAL PROPERTY

Texas has a total personal property exemption, not including a funeral plot, of \$30,000 for an individual that increases to \$60,000 for a head of household. The amount of this exemption includes the value of any exemption taken as tools of trade, insurance and unpaid commissions.

Specifically, the personal property exemptions are:

1. Under Property Statutes Sections 42.001 and 42.002, 5 cows, 20 hogs, 50 chickens, 30 geese, 20 goats, 20 sheep and food, clothing, food, furniture, heirlooms, jewelry (not more than 25% of total exemption), motor vehicle, sporting equipment, 2 firearms, wagon, horse and harness.
2. Funeral plot under Property Statutes 41.001.
3. Business property of a partnership is exempt under Civil Statute Section 6132b-25.
4. Alimony and Child Support under Property Statute 42.001(b)(3).

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt to debtors:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension

from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).

2. ERISA benefits, including SEPs, Keoghs and IRAs, under Property Statutes Section 42.0021.
3. County employees by Statute 110B-51.006.
4. Firefighters under Civil Statutes Sections 6243e, 6243e.1, 6243 e.2.
5. Police officers under Civil Statutes Section 6243d-1, 6243j, 6243g-1.
6. Judges under Civil Statutes Section 110B-41.004.
7. State employees' plans by Civil Statutes Section 110B-21.005.
8. Teachers' plans under Civil Statutes Section 110B-31.005.
9. Municipal employees' plans under Civil Statutes Section 6243g, 110B 61.006.
10. Law enforcement survivor's plans under Civil Statutes Section 6228f.

TOOLS OF THE DEBTOR'S TRADE

Under Property Statutes Section 42.002, there is an exemption for tools, library, implements, instruments used in a debtor's trade or business.

WAGES

Under Property Statutes Section 42.002, the debtor has a wage exemption for earned but unpaid wages.

UTAH

(ALL STATUTES REFER TO THE UTAH CODE)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 35-1-80.
2. Unemployment compensation by Statute 35-4-18.
3. Assistance under AFDC by Statute 55-15-32.
4. Crime victim's compensation by Statute 63-63-21.
5. Veteran benefits by Statute 78-23-5.
6. Welfare and general assistance by Statute 55-15-32..
7. Occupational disability benefits by Statute 35-2-35.

HOMESTEAD EXEMPTION

Under Statute 78-23-3, the homestead exemption is \$20,000, \$5,000 if not primary residence and a married couple may double. A homestead declaration must be filed before any sale of the home in order to protect the proceeds.

INSURANCE

There are several exemptions for different types of insurance proceeds under Utah law:

1. Disability and health benefits by Statute 78-23-5.
2. Life insurance policy or proceeds where the beneficiary is the insured's spouse, child or dependent as needed for support by Statute 78-23-6.
3. Cash surrender value of life insurance policies to \$1,500 by Statute 78-23-7.
4. Benefits from fraternal societies by Statute 31A-9-903.

PERSONAL PROPERTY

Utah has exemptions for the following personal property:

1. Under Statute 78-23-5:
 - (a) Funeral plot to 1 acre.
 - (b) Medical aids.
 - (c) Clothing as needed.
 - (d) Personal injury recoveries for the debtor or a person on whom the debtor relied for support.
 - (e) Wrongful death recoveries for a person on whom the debtor depended on for support.
 - (f) Family portraits, pictures and artwork by a member of the debtor's family.
 - (g) Bedroom set, bedding, washer and dryer.
 - (h) Freezer, refrigerator, sewing machine and stove.
 - (i) Food for 3 months.
 - (j) Child support.
2. Under Statute 78-23-8:
 - (a) \$500 total for animals, books and musical instruments.
 - (b) Furniture and appliances to \$500.
 - (c) Heirlooms to \$500.
 - (d) Motor vehicle to \$2,500.
3. Alimony needed for support by Statute 78-23-6.
4. Recoveries for damages to exempt property by Statute 78-23-9.
5. Business property of a partnership is exempt by Statute 48-1-22.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt to debtors:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate regardless of whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits by Statute 78-23-5.
3. Other pension plan benefits needed for support by Statute

78-23-6.

4. Public employees' plans by Statute 49-1-609.

TOOLS OF THE DEBTOR'S TRADE

Utah has the following exemptions for the tools of trade used by a debtor:

1. Books, tools and implements of trade to \$3,500 by Statute 78-23-8.
2. Uniforms and equipment required to be kept by a National Guard member by Statute 391-47.

WAGES

Under Statute 70C-7-103, 75% of the debtor's earned but unpaid wages are exempt.

VERMONT

(ALL STATUTES REFER TO THE VERMONT STATUTES ANNOTATED)

GENERAL EXEMPTION

Under Statute 12-2740, there is a general exemption of \$400 that can be applied towards any personal property of the debtor. In addition, there is another \$7,000 maximum exemption that is reduced by the value of the personal property exemptions that the debtor has taken.

GOVERNMENT BENEFITS

The following government benefits are exempt to the debtor under state law:

1. Worker's compensation by Statute 21-681.
2. Unemployment compensation by Statute 21-1367.
3. Under Statute 33-2575:
 - (a) Public assistance .
 - (b) Old age assistance.
 - (c) Assistance to the blind.
 - (d) Assistance to the disabled.
 - (e) Assistance under AFDC.
4. Crime victim's compensation by Statute 12-2740.
5. Veteran benefits by Statute 12-2740.
6. Social Security by Statute 12-2740.

HOMESTEAD EXEMPTION

Under Statute 27-101, the homestead exemption is \$75,000 that may also apply to rents, profits and out buildings. A spouse of a deceased owner may also claim the homestead exemption. Under Lowell vs. Lowell 1980, 419 A.2d 321 and In Re D'Avignon 34 B.R. 790 1982 a debtor is permitted to exempt tenancy-by-the-entireties property provided a discharge is not being sought for the debts of both spouses. Husband and wife may double.

INSURANCE

There are several exemptions for different types of insurance proceeds under Vermont law:

1. Disability and health benefits by Statute 12-2740.
2. Annuity benefits to \$350 per month by Statute 8-3709.
3. Life insurance policy or proceeds if the beneficiary is not the insured by Statute 8-3706.
4. Group life or health insurance benefits by Statute 8-3708.
5. Benefits from fraternal societies by Statute 8-4478.
6. Health benefits to \$200 per month by Statute 8-4086.
7. Life insurance proceeds for a person on whom the debtor relied for support by Statute 12-2740.
8. Life insurance proceeds if the policy prohibits payment to the creditors by Statute 8-3705.
9. Unmatured life insurance contract by Statute 12-2740.

PERSONAL PROPERTY

Vermont has exemptions for the following personal property:

1. Under Statute 12-2740:
 - (a) \$2,500 total for animals, appliance, books, clothing, crops, furniture, goods and musical instruments.
 - (b) Animals: 1 cow, 2 goats, 10 sheep, 3 swarms of bees along with feed for 1 winter, 10 cords of firewood, 5 tons of coal or 500 gallons of oil, 2 horses, harnesses, growing crops to \$5,000, 2 halters, plow and ox yoke. By Statute 12-2740(6) (9-14)
 - (c) Wedding ring, jewelry to \$500.
 - (d) Motor vehicle to \$2,500.
 - (e) Bank deposits to \$700.
 - (f) Personal injury recoveries for a person on whom the debtor relied for support.
 - (g) Wrongful death recoveries for a person on whom the debtor relied for support.
 - (h) Recoveries of lost earnings the debtor needs for support.
 - (i) Medical aids.
 - (j) Appliances and sewing machine.
 - (k) Alimony and child support needed for support.
2. Business property of a partnership by Statute 11-1282.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt to debtors:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability under Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate regardless of whether or not federal or state exemptions are used by the debtor

- (Patterson vs. Shumate 112 S.Ct. 2442).
- 2. Municipal employees' plans by Statute 24-5066.
- 3. State government employees' plans by Statute 3-476.
- 4. IRAs, Keoghs and SEPs to \$10,000 by Statute 12-2740.
- 5. Teachers' plans by Statute 16-1946.
- 6. Other pension plans by Statute 12-2740.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 12-2740, there is an exemption for tools, library, implements, instruments used in a debtor's trade or business to \$5,000.

WAGES

Under Statute 12-3170, 75% of the debtor's earned but unpaid wages are exempt. In addition, wages are exempt if the debtor received welfare within 2 months of the filing for bankruptcy relief.

VIRGINIA

(ALL STATUTES REFER TO THE CODE OF VIRGINIA)

GENERAL EXEMPTION

Under Statutes 34-4 and 34-13, there is a general exemption of \$5,000 plus \$500 per dependent that can be applied toward any personal property of the debtor in lieu of a homestead exemption. The exemption is only available for a debtor who is a householder. Under Statute 34-4.1, there is a \$2,000 general exemption for any property of a disabled veteran.

GOVERNMENT BENEFITS

The following government benefits are exempt:

- 1. Unemployment compensation by Statute 60.2-600.
- 2. Under Statute 63.1-88:
 - (a) Public assistance.
 - (b) Old age assistance.
 - (c) Assistance to the blind.
 - (d) Assistance to the disabled.
 - (e) Assistance under AFDC.
- 3. Worker's compensation by Statute 65.1-82.
- 4. Crime victim's compensation by Statute 19.2-368.12.

HOMESTEAD EXEMPTION

Under Statutes 34-4 and 34-18, the homestead exemption is \$5,000 plus \$500 per dependent that may also apply to rents and profits and a mobile home under In Re Goad 161 BR 161 (1993). A married couple may double. Under In re Costley 39 B.R. 585 1984 and Ragsdale vs. Genesco 674 F.2d 277 1982 a debtor is permitted to exempt tenancy-by-the-entireties property provided a discharge is not being sought for the debts of both spouses or both spouses are not liable for the debts. The debtor must file a homestead declaration prior to filing

for bankruptcy relief to get this exemption. Surviving spouse may claim \$10,000 exemption if none but minor children they can claim \$10,000 under Statute 64-1-151-3.

INSURANCE

There are several exemptions for different types of insurance proceeds under Virginia law:

1. Accident and health benefits by Statute 38.2-3549.
2. Cooperative life insurance benefits by Statute 38.2-3811.
3. Life insurance policy or proceeds if the beneficiary is not the insured by Statute 38.2-3123.
4. Group life or accident proceeds for government officers by Statute 51-111.67:8.
5. Group life or accident proceeds or policy by Statute 38.2-3339.
6. Benefits from fraternal societies by statute 38.2-4118.
7. Funeral benefits by Statute 38.2-4021.
8. Occupational medical benefits by Statute 38.2-3549.
9. Life insurance cash values to \$10,000 by Statute 38.2 3123. The exemption is only available for a debtor who is a householder.

PERSONAL PROPERTY

Virginia has exemptions for the following personal property for a debtor:

1. Under Statute 34-26:
 - (a) Bible, portraits, heirlooms to \$5,000.
 - (b) Clothing to \$1,000.
 - (c) Health and medical aids.
 - (d) Furniture to \$5,000.
 - (e) Funeral plots.
 - (f) Pets.
 - (g) Wedding and engagement rings.
 - (h) Family portraits and heirlooms \$5,000
 - (i) Motor Vehicle \$2,000.
2. Under Statute 34-28.1:
 - (a) All personal injury causes of action.
 - (b) Recoveries for personal injuries.
3. Business property of a partnership by Statute 50-25.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code which excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).

2. ERISA qualified benefits to \$17,500 per year by Statute 34-34.
3. County employees' plans by Statute 51-127-7.
4. State government employees' plans by Statute 51-111-15.
5. Judges' plans by Statute 51-180.

TOOLS OF THE DEBTOR'S TRADE

Virginia has the following exemptions for debtor engaged in a trade or business and who is also a householder:

1. Under Statute 34-26, tools, books, instrument and motor vehicle to \$10,000 if needed for the debtor's trade or education.
2. Under Statute 34-27:
 - (a) \$3,000 for horses, 2 mules, gear, wagon and tractor.
 - (b) Plows, implements, equipment to a farmer to \$1,000.
3. Uniforms and arms of military personnel by Statute 44-96.

WAGES

Under Statute 34-29, 75% of the debtor's earned but unpaid wages and pension benefits are exempt.

WASHINGTON

(ALL STATUTES REFER TO THE REVISED CODE OF WASHINGTON)

GENERAL EXEMPTION

Under Statute 6.15-010, there is a general exemption of \$2,000 that can be applied towards any personal property of the debtor except that no more than \$200 can be applied to cash, stock bonds, securities and bank accounts.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 51.32.040.
2. Unemployment compensation by Statute 50.40.020.
3. Public assistance by Statute 74.04.280.
4. Old age assistance by Statute 74.08.210.
5. Assistance under AFDC by Statute 74.13.070.
6. Crime victim's compensation by Statute 7.68.070.

HOMESTEAD EXEMPTION

Under Statutes 6.13.010 and 6.13.030, the homestead exemption is \$40,000, unimproved proeprty is \$15,000. A homestead declaration must be filed prior to the filing of the bankruptcy petition if the property is unimproved or unoccupied. Spouses cannot double.

INSURANCE

There are several exemptions for different types of insurance proceeds under Washington law:

1. Disability benefits by Statute 48.18.400.
2. Annuity contract proceeds to \$250 per month by Statute 48.18.430.
3. Group life insurance policy or proceeds by Statute 48.18.420.
4. Insurance proceeds or policy if the beneficiary is not the insured by Statute 48.18.410.
5. Benefits from fraternal societies by Statute 48.36A.180.
6. Fire insurance proceeds for damage to exempt property by Statute 6.15.030.

PERSONAL PROPERTY

Washington has exemptions for the following personal property for a debtor:

1. Under Statute 6.15.010:
 - (a) \$2,500 for appliances, furniture, household goods, home and yard tools.
 - (b) Books to \$1,500.
 - (c) Clothing as needed.
 - (d) Jewelry and furs to \$1,000.
 - (e) Food and fuel to last 3 months.
 - (f) Heirlooms and family pictures.
 - (g) One Motor vehicle to \$2,500. Spouses can double the exemption if filing together.
2. Business property of a partnership by Statute 25.04.250.
3. Funeral plot if sold by nonprofit association by Statute 68.20.120.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits including IRAs by Statute 6.15.020.
3. Public employees' plans by Statute 41.40.380.
4. State patrol employees' plans by Statute 43.43.310.
5. Local government employees' plans by Statute 41.28.200.
6. Volunteer firefighters plans by Statute 41.24.240.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 6.15.010, there are the following exemptions:

1. \$5,000 for the equipment of a farmer including trucks, stock, tools and supplies.
2. Library, office supplies, equipment and furniture of a professional to \$3,000.

3. Tools and materials used in the debtor's trade or business to \$3,000.

WAGES

Under Statute 6.27.150, 75% of the debtor's earned but unpaid wages are exempt.

WEST VIRGINIA

(ALL REFERENCES ARE TO THE VIRGINIA CODE)

GENERAL EXEMPTION

Under Statute 38-10-4, there is a general exemption of \$800 plus any unused portion of the homestead and burial exemption.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Under Statute 9-5-1:
 - (a) Old age assistance.
 - (b) Assistance to the blind.
 - (c) Assistance to the disabled.
 - (d) Assistance under AFDC.
2. Worker's compensation by Statute 23-4-18.
3. Under Statute 38-10-4:
 - (a) Crime victim's compensation.
 - (b) Veteran benefits.
 - (c) Social Security.
 - (d) Unemployment compensation.

HOMESTEAD EXEMPTION

Under Statute 38-10-4, the homestead exemption for real property, mobile home or houseboat used as a residence is \$25,000. Any unused portion of the homestead exemption may be used with any other property.

INSURANCE

There are several exemptions for different types of insurance proceeds under West Virginia law:

1. Disability and health benefits by Statute 38-10-4.
2. Life insurance cash value on policy on which debtor relied to \$4,000 by Statute 38-10-4.
3. Group life insurance policy or proceeds by Statute 33-6-28.
4. Life insurance benefits if debtor is both beneficiary and policy owner by Statute 33-6-27.
5. Life insurance benefits if beneficiary is a married woman by Statute 48-3-23.
6. Benefits from fraternal societies by Statute 33-23-21.
7. Unmatured life insurance contract by Statute 38-10-4.

PERSONAL PROPERTY

West Virginia has exemptions for the following personal property:

1. Under Statute 38-10-4:
 - (a) Animals, appliances, books, clothing, crops, household goods, furniture, and musical instruments to \$400 per items to a total of \$8,000.
 - (b) Funeral plot to \$15,000 in lieu of a homestead exemption.
 - (c) Lost earnings need for support.
 - (d) Medical aids.
 - (e) Jewelry to \$1,000.
 - (f) Motor vehicle to \$2,400.
 - (g) Personal injury recoveries to \$15,000 not including pain and suffering.
 - (h) Wrongful death recoveries for a person on whom the debtor relied for support.
 - (i) Spouse and child support as needed for support.
2. Business property of a partnership by Statute 47-8A-25.

RETIREMENT BENEFITS

The following retirement benefits are exempt to debtors:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. ERISA benefits needed for support by Statute 38-10-4.
3. Public employees' plans by Statute 5-10-46.
4. Teachers plans by Statute 18-7A-30.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 38-10-4, there is an exemption for tools, library, implements, instruments and a team of animals used in a debtor's trade or business to \$1,500.

WAGES

Under Statute 38-5A-3, there is an exemption for 80% of any earned but unpaid wages.

WISCONSIN

(ALL STATUTES REFER TO THE WISCONSIN STATUTES ANNOTATED)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt to the debtor under

state law:

1. Worker's compensation by Statute 102.27.
2. Unemployment compensation by Statute 108.13.
3. Welfare or social services benefits by Statute 49.41.
4. Assistance under AFDC by Statute 49.41.
5. Veteran benefits by Statute 45.35.
6. Crime victim's compensation by Statute 949.07.

HOMESTEAD EXEMPTION

Under Statute 815.20, the homestead exemption is \$40,000. The debtor must have intended to occupy the property when the bankruptcy petition was filed in order to get this exemption. Sale proceeds are exempt for 2 years if the debtor intends to roll them into another home.

INSURANCE

There are several exemptions for different types of insurance proceeds under Wisconsin law:

1. Disability, accident and health benefits to \$150 per month by Statute 815.18.
2. Life insurance proceeds or cash value if the beneficiary is not the insured by Statute 815.18.
3. Fire proceeds to damages to exempt property by Statute 815.18.
4. Life insurance benefits if the policy forbids payment to creditors by Statute 632.42.
5. Life insurance benefits if beneficiary is a married woman to \$5,000 by Statute 766.09.
6. Benefits from fraternal societies by Statute 614.96.
7. Benefits from federal disability insurance by Statute 815.18.
8. Unmatured life insurance contracts accrued dividends, interest or cash value to \$4,000 if insured is debtor or someone whom debtor is dependent upon by Statute 815.18(3)(f).

PERSONAL PROPERTY

Wisconsin has exemptions for the following personal property:

1. Under Statute 815.18:
 - (a) Funeral plots.
 - (b) Deposit accounts to \$1,000.
 - (c) Household furnishings to \$5,000.
 - (d) Recoveries for lost future income needed for support.
 - (e) Motor vehicle to \$1,200. Husband and wife may double.
 - (f) Personal injury recoveries to \$25,000.
 - (g) Wrongful death recoveries needed for support.
 - (h) Alimony and child support as needed for support.
2. Business property of a partnership by Statute 178.21.

3. College Savings and Trust Account 14.64(7), 14.63(18).

RETIREMENT BENEFITS

The following retirement benefits are exempt to debtors:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Designated municipal employees plans by Statute 66.81.
3. Public employees' plans by Statute 40.08.
4. Firefighters' and police officers' plans by Statute 815.18.
5. Military pension plans by Statute 815.18.
6. ERISA, IRAs, Keoghs, SEPs and other private retirement plans by Statute 815.18.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 815.18, there is an exemption of \$7,500 for equipment, instruments, books and tools used in the debtor's trade or business including arms and uniforms of a member of the military or National Guard.

WAGES

Under Statute 815.18, there is an exemption for any earned but unpaid wages.

WYOMING

(ALL STATUTES REFER TO THE WYOMING STATUTES ANNOTATED)

GENERAL EXEMPTIONS

None.

GOVERNMENT BENEFITS

The following government benefits are exempt:

1. Worker's compensation by Statute 27-14-702.
2. Unemployment compensation by Statute 27-3-319.
3. Public assistance by Statute 42-2-113.
4. Assistance under AFDC by Statute 42-2-113.
5. Crime victim's compensation by Statute 1-40-113.

HOMESTEAD EXEMPTION

Under Statutes 1-20-101 and 1-20-104, the homestead exemption is \$10,000 for real property and \$6,000 for a house trailer. A married couple may double this exemption. The property must be occupied by the debtor at the time of filing for the exemption to get this exemption. A spouse or child of a deceased owner may claim this exemption. Under the court decision In re Anselmi 52 B.R. 479 a

debtor is permitted to exempt tenancy-by-the-entireties property provided a discharge is not being sought for the debts of both spouses.

INSURANCE

There are several exemptions for different types of insurance proceeds under Wyoming law:

1. Benefits from annuity contracts to \$350 per month by Statute 26-15-132.
2. Disability benefits if the policy forbids the payment to creditors by Statute 26-15-130.
3. Life insurance proceeds if the policy forbids the payment to creditors by Statute 26-15-133.
4. Insurance proceeds if the beneficiary is not the insured by Statute 26-15-129.
5. Benefits from fraternal societies by statute 26-29-116.
6. Group life or disability policy or proceeds by Statute 26-15-131.

PERSONAL PROPERTY

Wyoming has exemptions for the following personal property for a debtor:

1. Clothing and wedding rings to \$1,000 by Statute 1- 20-105.
2. Under Statute 1-20-106:
 - (a) Bible, school books, pictures and portraits.
 - (b) Funeral plot.
 - (c) Furniture, household articles and food to \$2,000 person in the debtor's home (debtor and dependents).
 - (d) Motor Vehicle to \$2,400.
3. Business property of a partnership by Statute 17-13-502.
4. Liquor licenses by Statute 12-4-604.
5. Prepaid funeral contracts by Statute 26-32-102.

RETIREMENT BENEFITS

The following retirement plans and benefits are exempt:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. Public employees' plans by Statute 9-3-426.
3. Fish and game wardens by Statute 9-3-620.
4. Highway patrol and criminal investigators' plans by Statute 9-3-620.
5. Firefighters' and police officer's plans to the extent of payments being received by Statute 15-5-209.
6. All retirement plans of a self-employed person by Statute 1-20-110.

7. All retirement plans where plan states that benefits are not assignable by Statute 1-20-110.

TOOLS OF THE DEBTOR'S TRADE

Under Statute 1-20-106, there are the following exemptions for tools of trade:

1. A professional's tools, library, implements, instruments of a profession to \$2,000.
2. Tools, motor vehicle, implements, stock in trade of the debtor's business to \$2,000.

WAGES

Under Wyoming law, there are the following wage exemptions available to a debtor:

1. 75% of the debtor's earned but unpaid wages are exempt by Statute 1-15-511. The Bankruptcy court may increase the exemptions for low income debtors.
2. National guard members' earnings by Statute 19-2-501.
3. Wages of prisoners on work release by Statute 7-16-308.

IV. FEDERAL BANKRUPTCY EXEMPTIONS

These exemptions can be taken only for debtors that live in the following states or District of Columbia and elect not to use the state's or District of Columbia's exemptions.

ARKANSAS	CONNECTICUT	DISTRICT OF COLUMBIA	HAWAII
MASSACHUSETTS	MICHIGAN	MINNESOTA	NEW HAMPSHIRE
NEW JERSEY	NEW MEXICO	PENNSYLVANIA	RHODE ISLAND
TEXAS	VERMONT	WASHINGTON	WISCONSIN

(All statutes refer to Bankruptcy Code 11 U.S.C. Section-522)

GENERAL EXEMPTION

Under 11 U.S.C. Section 522(d)(5), there is a general exemption of \$925 that can be applied against any property of the debtor. In addition, the unused portion the homestead exemption up to \$8,725 can be applied towards any property of the debtor.

GOVERNMENT BENEFITS

The following government benefits are exempted under the Bankruptcy Code by the person receiving them:

1. Welfare or public assistance under 11 U.S.C. Section 522(d)(10)(A).
2. Unemployment compensation under 11 U.S.C. Section 522(d)(10)(A).
3. Social Security benefits by 11 U.S.C. Section

- 522(d)(10)(a).
- 4. Veteran's benefits under 11 U.S.C. Section 522(d)(10)(A).
- 5. Victim's compensation under 11 U.S.C. section 522(d)(10)(A).

HOMESTEAD

Under 11 U.S.C. Section 522 (d)(1), there is an aggregate homestead exemption of \$17,425 for real or personal property used as a residence and a burial plot for the debtor or dependent. Unused portion up to \$8,725 can be applied to any property.

INSURANCE

The following insurance benefits or policies are exempt:

- 1. Life insurance contract that has not matured other than a credit life insurance contract (policy to cover a loan) under 11 U.S.C. Section 522(d)(7).
- 2. Life insurance policy with a cash value of \$8,000 under 11 U.S.C. Section 522(d)(8).
- 3. Disability, illness or unemployment benefits under 11 U.S.C. Section 522(d)(10)(c).
- 4. Life insurance payments on the life of a person on whom the debtor relied for support to the extent necessary for support under 11 U.S.C. Section 522(d)(11)(C).

PERSONAL PROPERTY

The following personal property is exempt under the Bankruptcy Code for a debtor using the federal exemptions:

- 1. \$450 each for a total aggregate amount of \$8,075 in the following property under 11 U.S.C. Section 522(d)(3): household furnishings and goods, clothing, appliances, books, animals, crops, and musical instruments held primarily for benefit of the debtor or the debtor's dependents.
- 2. Jewelry for a total value of \$1,150 under 11 U.S.C. Section 522(d)(4).
- 3. Motor vehicle to \$2,775 in value under 11 U.S.C. Section 522(d)(2).
- 4. Health aids prescribed by a doctor under 11 U.S.C. Section 522(d)(9).
- 5. Recoveries for wrongful death of a person on whom the debtor depended for support to the extent needed for support under 11 U.S.C. Section 522(d)(11)(B).
- 6. Personal injury recoveries to \$17,425, not including pain and suffering or pecuniary loss under 11 U.S.C. Section 522(d)(11)(D).
- 7. Lost earnings payments as needed for support under 11 U.S.C. Section 522(d)(11)(E).

RETIREMENT PLANS

Under 11 U.S.C. Section 522(d)(10)(E), the payments from an ERISA pension plan and IRA's are exempt to the extent needed for support of the debtor or a dependent.

TOOLS OF TRADE

Under 11 U.S.C. Section 522(d)(6), there is an exemption of \$1,750 for the implements, books and tools of trade of the debtor or dependent.

WAGES

None.

V. FEDERAL NONBANKRUPTCY EXEMPTIONS

When a debtor uses the state exemptions or the exemptions of the District of Columbia, the debtor is permitted to also claim the following nonbankruptcy exemptions:

GENERAL EXEMPTION

None.

GOVERNMENT BENEFITS

1. Railroad workers' unemployment insurance under 45 U.S.C. Section 352(e).
2. Social Security benefits under 42 U.S.C. Section 407.
3. Veteran's benefits under 38 U.S.C. Section 3101.

HOMESTEAD

None.

INSURANCE

The following insurance benefits are exempt for a debtor not using the federal exemptions:

1. Group life insurance for the military under 38 U.S.C. Section 770(g).
2. Death and disability benefits to government employees under 5 U.S.C. Section 8130.
3. Death and disability payments to harbor workers and longshoremen under 33 U.S.C. Section 916.
4. Death and disability payments for military service under 42 U.S.C. Section 1717.

PERSONAL PROPERTY

The following personal property is exempt for a person using the state exemptions of District of Columbia:

1. Seaman's clothing under 46 U.S.C. Section 11110.
2. Savings accounts of military deposits while on duty outside the U.S. under 10 U.S.C. Section 1035.
3. Tribe benefits for Klamath Indians residing in Oregon under

- 25 U.S.C. Sections 534 and 545.
4. Survivor's benefits for military service under 10 U.S.C. Section 1450.
5. Benefits for lighthouse workers' survivors under 33 U.S.C. Section 916.
6. Benefits for survivors of Judges, judicial directors, U.S. court directors under 28 U.S.C. Section 376.

RETIREMENT BENEFITS

The following retirement plans can be claimed as exempt by a debtor using state exemptions or the exemptions of the District of Columbia:

1. An anti-alienation provision in an ERISA qualified pension constitutes a restriction on transferability by Section 541(2) of the Bankruptcy Code that excludes the pension from the bankruptcy estate whether or not federal or state exemptions are used by the debtor (Patterson vs. Shumate 112 S.Ct. 2442).
2. CIA employees under 50 U.S.C. Section 403.
3. Civil Service employees under 5 U.S.C. Section 8346.
4. Foreign Service employees under 22 U.S.C. Section 4060.
5. Military employees under 10 U.S.C. Section 1440.
6. Railroad workers under 45 U.S.C. Section 231m.
7. Military honor roll pensions under 38 U.S.C. Section 562.

TOOLS OF TRADE

None.

WAGES

The following exemptions exist for debtors using the state exemptions or the District of Columbia exemptions:

1. 75% of earned but unpaid wages under 15 U.S.C. Section 1673.
2. Seamen's wages while on a voyage and pursuant to a written contract under 46 U.S.C. Section 11111.

CHAPTER 9

LIEN AVOIDANCE

The reader must realize by now that a Chapter 13 proceeding the bankruptcy generally does not affect the amount of money that ultimately must be paid to secured creditors. While secured creditors may have their payment schedules adjusted, most secured creditors will not have their interests in the collateral securing their debts reduced or eliminated. The sole exceptions are in the areas of judgment liens and nonpurchase money liens on exempt consumer goods. These liens can be set aside or avoided with the effect that the creditor generally becomes an unsecured creditor and is treated accordingly. The major exception to setting aside a judgment lien is where a judgment is based upon child or support claims. The Bankruptcy Act of 1994 prohibits a debtor from avoiding such judgment liens even though they may impair otherwise permitted exemptions under either state or federal law.

It is common for a debtor in a Chapter 13 proceeding to want to avoid paying a judgment lien or nonpurchase money lien on exempt property. The purpose of the bankruptcy law is to provide a reasonable means for the debtor to begin again when the debtor's debts are such that they cannot all be paid. Toward this end, the U. S. Congress and state legislatures have created an overall scheme of exemptions.

Often the debtor's exempt property will be encumbered by a judicial lien or a security interest that prevents the exemption. Unless the lien can be removed from the property in some fashion, the debtor will be unable to claim an exemption on the property. If the exemption is not claimed, it will be lost in the bankruptcy. It tends to defeat the purpose of the Bankruptcy Code to give a debtor exemptions but allow them to be cancelled because of liens on the property. Congress attempted to resolve this problem by permitting a debtor to reduce or avoid altogether a lien on certain personal property.

I. DEFINITION

Under section 522(f) of the Bankruptcy Code a procedure is created whereby a debtor may eliminate or reduce the amount of liens on certain exempt property:

"(f) Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if the lien is;

(1) a judicial lien; or

(2) a nonpossessory, nonpurchase money security interest in any:

(A) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(B) implements, professional books, or tools of the trade of the debtor, or the trade of a

dependent of the debtor, or

- (C) professionally prescribed health aids for the debtor or a dependent of the debtor.

Lien avoidance permits the debtor to reduce or remove liens on otherwise exempt property to the extent they impair an exemption. In other words, if the property would be an exemption under whatever exemption schedule the debtor employs (the federal or state schedule), the lien may be removed from the property if it is one of the following:

1. A JUDICIAL LIEN. A judicial lien is a lien created by virtue of a court decree or judgment (usually resulting from a lawsuit). For example, assume that a debtor has had a judgment taken against him. Recordation of the judgment, by the judgment creditor, creates a lien on the real property of the debtor that impairs the debtor's homestead exemption. The debtor can seek to have the judicial lien reduced to the extent of the homestead exemption.

Judicial liens can be avoided on any exempt property of the debtor, including real estate, automobiles, and pensions.

In order to get a loan, the lender sometimes has a debtor execute a "confession of judgment" for use against the debtor in the event the debtor defaults on making the loan payments. A confession of judgment permits the creditor to go to court immediately upon a debtor's default and get a judgment against the debtor without ever serving a complaint or giving the debtor an

opportunity to offer a defense. A confession of judgment is used in conjunction with a security agreement. Under the law, however, a confession of judgment is construed more liberally as a judicial lien. A lien secured by a confession of judgment can be avoided as a judicial lien, even if it might not be avoidable as a nonpurchase security interest. (In re Fisher 13 B.R. 286, 1981, and In re Gardner 685 F.2d 106).

2. A statutory lien imposed on the debtor's property is different from a judicial lien. A statutory lien is one imposed by operation of law automatically, such as a mechanic's lien or a lien from a divorce decree. Most statutory liens cannot be avoided; judicial liens can. Yet, some statutory liens can be avoided by the trustee under section 545:

"545. Statutory Liens. The Trustee may avoid the fixing of a statutory lien on the property of the debtor to the extent that such lien:

- (1) first becomes effective against the debtor:
 - (A) when a case under this title is commenced;
 - (B) when an insolvency proceeding other than under this title concerning the debtor is commenced;
 - (C) when a custodian is appointed or authorized to take possession;
 - (D) when the debtor becomes insolvent;
 - (E) when the debtor's financial condition fails to meet a specified standard; or
 - (F) at the time of an execution against property of the debtor levied at the instance of an entity other than the holder of such statutory lien;

- (2) is not perfected or enforceable at the time of the commencement of the case against a bona fide purchaser that purchases such property at the time of the commencement of the case, whether or not such a purchaser exists;
- (3) is for rent; or
- (4) is a lien of distress for rent."

To perfect a statutory lien, the creditor is required to comply with all of the filing requirements under state law. Example: A mechanic's lien requires that appropriate notices be filed within set time periods with the county recorder and be followed by a lawsuit. If the filings are not made, the lien lapses.

The majority of liens are judicial, not statutory, in nature and can be avoided to the extent they impair an exemption.

2. NONPURCHASE MONEY SECURITY INTERESTS. In addition to judicial liens that can be avoided on any exempt property, liens on nonpurchase money security interests can be avoided for the following property:

- 1. Household furnishings, goods, clothing, appliances, books, animals, crops, musical instruments or jewelry used primarily for the debtor's personal, family or household use.
- 2. Implements, professional books or tools of trade the for either the debtor or a dependent (some states do not have a tools of the trade exemption and no lien on this property can be avoided if the federal exemptions are not used);
- 3. Health aids for debtor or dependent if prescribed.

As with a judicial lien, the nonpurchase money security lien must attach property that would otherwise be totally or partially

exempt. A nonpurchase money security interest is defined as a lien given as a pledge or collateral for a loan. For example, assume that George borrows \$5,000 from Ed and signs a security agreement putting his house up for collateral to Ed. George has given Ed a nonpurchase money security interest on the house. Motor vehicles are not specifically mentioned as the type of property for which a nonpurchase money lien can be avoided. Therefore, unless the motor vehicle qualifies for an exemption under "tools of the trade," the lien on it cannot be avoided in this manner. Still, a lien on a motor vehicle might be avoided if it met the requirements for a judgment lien.

II. HOW THE AMOUNT AVOIDED IS CALCULATED

Once it is determined that a lien on exempt property can be avoided, the next matter is to decide how much of the lien is avoidable. The amount of the lien avoidance depends on how much the exemption is allowed on the property, the size of the lien on the property and the value of the property.

If all of the property is exempt, then the size of the lien makes no difference because the entire lien will be avoided. Example: In Pennsylvania, sewing machines are exempt. A judicial lien or nonpurchase security lien on a sewing machine will be entirely avoided regardless of the amount.

Remember, lien avoidance merely avoids a lien that inhibits a full exemption: it does not cancel any part of a debt. If the

property is worth more than the exemption limit, the lien is reduced to guarantee the exemption , secure the remainder to the creditor, and provide the creditor an unsecured lien for the balance owed. For example. assume that Ohio permits an exemption of \$200 for a piano. The piano is worth \$400 and the creditor has a lien of \$500. The court will reduce the value of the lien to \$200, giving the creditor an unsecured lien for \$300.

The lien avoidance works as follows:

Value of the Property	\$400
minus the exemption amount	<u>-\$200</u>
remaining part of lien	\$200

After the lien avoidance, the debtor still owes \$200 secured by the piano and \$300 that is unsecured. If the lien balance is not paid, the creditor can still foreclose. When he sells the piano, it may bring only \$350. He must then pay the debtor \$200 (the exempted amount) and retain \$150. He now has two unsecured liens: One for \$300 and one for \$50 (the amount the piano sale did not bring to him).

III. PROCEDURE

After the debtor has determined that a lien on exempt property is avoidable, the next step is to list the property on which the lien is to be avoided on the "Statement of Intention" that is filed with the court. If the creditor objects to the lien avoidance (which almost always happens) the debtor must petition the court to avoid the lien. The bankruptcy court will not reduce or eliminate

a lien on its own discretion. The bankruptcy code requires that the debtor request lien avoidance from the court.

The procedure for a debtor to request lien avoidance is relatively simple and moderately painless. The request for lien avoidance is made in the form of a motion. A pleading (a writing requesting lien avoidance) is filed with the court and mailed to the creditor having the lien. The creditor may object to the lien avoidance and file a pleading in opposition to it. The creditor cannot prevent a lien avoidance if it is proper under the law. The most that a creditor can do is contest the fair market value given to the property in the calculation of the amount of lien to be avoided if there is a valid exemption available.

Following this chapter are sample forms for motions seeking lien avoidance. A debtor wishing to avoid a lien can retype the correct lien avoidance form inserting the debtor's information where indicated and file it with the court.

The steps for filing a motion are simple:

1. Consult the local rules for the bankruptcy court for any special rules or format regarding motions. There probably will be no special requirements. The general rule is that requires a minimum of 30 days notice to the other party (the creditor). Notice means that the hearing on the motion is set on a date at least 30 days after the motion was mailed to the creditor. The date of mailing is shown by the

"Proof of Service" that is filed along with the motion.

2. The debtor should call the clerk and ask when motions for lien avoidance are heard. Some courts only hear these motions on certain days and times of the week. The debtor can also ask if there are any special local notice requirements for the motion or if the standard 30 days minimum notice is followed (it usually is). Armed with this knowledge, the debtor types the motion and the "notice of motion." All court pleadings must be on lined paper and in the format shown by the sample motion. This paper can be purchased at any stationary store.

3. Preparing the motion is nothing more than filling the blanks. The sample motions following this chapter cover avoiding both judicial and nonpurchase security liens. Once the correct type of motion is chosen based on the type of lien to be avoided, the debtor simply fills the blanks with the information from his case. In the case of a judicial lien, the debtor should attach a copy of the judgment giving rise to the lien. If he is unable to do so, the information should be detailed enough that the bankruptcy court will be fully informed as to what the other court ordered in its judgment.

4. After the motion is typed, complete a proof of service and blank order approving the lien avoidance for the

judge to sign. Some courts prepare their own orders, but it doesn't hurt to be prepared. When everything is done ~~make~~ at least five copies.

5. After the copies are made, a copy should be given to a person over 18 years of age to mail. That person fills out the proof of service and mails it to the creditor. The date of the hearing must be at least 30 days after the date of mailing. The person then must sign the proof of service for the original motion and other copies.
6. After the motion has been mailed to the creditor (along with the proof of service and Order Avoiding the Lien) the debtor goes to the clerk's office and files the motion. The clerk will put a time and date stamp on the original and keep it with the number of additional copies local rules require. The remaining copies will be ~~stamped~~ and returned to the debtor.
7. After filing, all that remains is for the debtor to wait for the date of the hearing. On that date, the court will hold a hearing that the debtor must attend to determine how much of the lien should be avoided. The creditor may appear to challenge the exemption, but more likely than not the creditor will just send written objections. If no objection is filed, the lien will be avoided by the court automatically.

If arguments are necessary, the debtor speaks first and simply says that the property would be exempt under the applicable state or federal exemption and states the current value of the property. The creditor responds, but his reply is limited to challenging the right to claim the exemption and challenging the value of the property. The judge decides whether to grant or deny the lien avoidance. Usually, the judge announces the decision from the bench. Sometimes the judge will take the matter under submission and mail the decision to each of the parties in a few days.

The one thing to remember is that nothing is final until the discharge is granted. Therefore, if mistakes are made in the form of the motion or in giving notice, the hearing might be dropped (taken off calendar so that it can be redone), but the creditor will not lose his rights under the bankruptcy because of such procedural errors. The debtor will simply be allowed to do it again, this time knowing the mistakes to be avoided.

IV. EFFECT OF STATE LAWS ON LIEN AVOIDANCE

Several states have laws that prevent a debtor from engaging in lien avoidance when state exemptions are used. The validity of these had been in question for many years. In *re Pelter* 16 C.B.C. 306 (1986) held that even if the state "opts out" of the federal exemption scheme under Section 522(d) there is no similar option under 522(f): The debtor's lien avoidance powers remains intact.

Finally, in its decision *Owen vs. Owen* 114 L.Ed.2d 350,111

S. CT 1833 the United States Supreme Court held that a debtor was permitted to avoid a lien even though state law (Florida) prohibited the lien avoidance.

In its decision, the Supreme Court stated:

"Nothing in the text of Section 522(f) remotely justifies treating the two categories of exemptions differently. The provision refers to the impairment of exemptions to which the debtor would be entitled under subsection (b) and that includes federal and state exemptions alike...

On the basis of the analysis we have set forth above with respect to federal exemptions and in light of the equivalency of treatment accorded to federal and state exemptions by section 522(f), we conclude that Florida's exclusion of certain liens from the scope of its homestead protection does not achieve a similar exclusion from the Bankruptcy Code's lien avoidance provision."

As a result of this decision, the Supreme Court made it clear that where a lien impairs an exemption that would otherwise be allowed if not for the presence of the lien, the lien can be avoided.

V. FORMS

Following hereafter are 8 basic forms that should be adequate in the bankruptcy courts for all 50 states and the District of Columbia:

1. Notice of Motion to Avoid Nonpossessory Nonpurchase Money Security Interest
2. Motion to Avoid Lien
3. Proof of Service
4. Order Avoiding Lien
5. Notice of Motion to Judicial Lien
6. Motion to Avoid Lien
7. Proof of Service (completed)
8. Order Avoiding Lien (completed)
9. Lined paper (2 sheets)

1 DEBTOR'S NAME
2 JOHN Q. DOE
3 643 B SOUTH MAIN STREET
4 UKIAH, CA 95482
5 (707) 468-0268

6 IN PRO PER

7 UNITED STATES BANKRUPTCY COURT

8 (NORTHERN) DISTRICT OF (CALIFORNIA)
9 (insert name) (insert State)

10 IN RE:) CASE NUMBER:
11 (type in debtor's name, for) (insert filing number from
12 example JOHN Q. DOE)) the petition)
13) CHAPTER 7
14)

15 NOTICE OF MOTION TO AVOID NONPOSSESSORY

16 NONPURCHASE MONEY SECURITY INTEREST

17 NOTICE IS HEREBY GIVEN that on (insert date of the hearing)
18 at (insert time) at (insert address of the bankruptcy court)
19 _____ in courtroom (insert number) a motion will be
20 heard to avoid the nonpossessory, nonpurchase security interest of
21 (insert the name of the creditor) in the exempt property of the debtor.
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DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

MOTION TO AVOID LIEN

The debtor, JOHN Q. DOE respectfully declares as follows:

1. A voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on (date petition filed).

2. This motion is brought under the provisions of 11 U.S.C. Section 522(f) and Bankruptcy Rule 4003 to avoid a nonpossessory, nonpurchase money security interest in household and personal goods.

3. On or about (date debt incurred), the debtor borrowed the amount of insert amount of loan from (insert name of creditor, for example ABCDE Corporation). As security for the loan, the creditor insisted on and received a note and security agreement granting to the creditor a security interest in and to the debtor's personal property that consisted of household furnishings, appliances, books and musical instruments which are held primarily for family and household use of the debtor and his dependents, or tools or implements used in the trade of the debtor or the debtor's dependent, or prescribed health aids.

1 4. Debtor's interest in the property referenced to in the
2 preceding paragraph has been claimed as exempt in the bankruptcy case.

3 5. The money so borrowed from the respondent does not represent
4 any part of the purchase money of any of the articles covered in the
5 security agreement that debtor executed, and all of the articles so
6 covered remain in the possession of the debtor and his family.

7 6. The existence of the respondent's lien on the debtor's
8 household and personal property impairs exemptions to which the debtor
9 would be entitled under 11 U.S.C. Section 522(b).

10 WHEREFORE plaintiff prays for the cancellation and avoidance of the
11 security interest in the debtor's personal and household goods and for
12 such other and further relief as the court may find just and proper.

13 Dated: _____

14 _____

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16 (insert debtor's name and address)
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DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

PROOF OF SERVICE

I, (Name of person doing the mailing, for example MARK P. SMITH), declare as follows:

1. I am a resident of the County of (insert name of county)
_____ State of (California). I am over the age of eighteen years,
and I am not a party to the within-entitled action.

2. My residence/business address and phone number are: insert
address and phone number of person mailing the motion, for example 643
B South Main Street, Ukiah, CA. 95482 (707) 468-0268.

3. On (insert date mailed, for example June 25, 2015) I served the
within motion to avoid a nonpossessory, nonpurchase security interest
lien by personally placing a true and correct copy thereof enclosed in
a sealed envelope with postage fully prepaid in the United States mail
at (insert city where motion is mailed, for example Ukiah, California)
addressed as follows:

1 ABCD CORPORATION
2 12356 Hazelton Blvd.
3 Allentown, Pa. 23657

4 I declare under penalty of perjury under the laws of the State of

5 _____ that the foregoing is true and correct.

6 Executed this 15th day of JUNE 2015 at (place where executed, for
7 example Ukiah, California).

8
9 _____
10 Mark P. SMITH
11 (person doing the mailing)
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DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

ORDER AVOIDING LIEN

On _____, there came before this court the motion of the debtor (INSERT NAME, FOR EXAMPLE JOHN Q. DOE) against the creditor (INSERT THE NAME OF THE CREDITOR , EXAMPLE: ABCDE CORPORATION) to cancel a security interest that impaired an exemption of the debtor.

Upon consideration of the evidence, the argument of the parties and the pleadings submitted by the parties, the court finds that the lien is a nonpossessory, nonpurchase money lien that impairs the debtor's exemption in the property covered by the security agreement.

IT IS ORDERED that unless debtor's bankruptcy case is dismissed, the lien of the respondent is hereby extinguished, and the lien shall not survive bankruptcy or affix to or remain enforceable against the aforementioned property and is hereby canceled.

(INSERT NAME OF CREDITOR, EXAMPLE: ABCDE CORPORATION) shall take all steps necessary to remove any record of the lien from the aforementioned property of the debtor.

Dated: _____

U.S. Bankruptcy Judge

DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

NOTICE OF MOTION TO JUDICIAL LIEN

NOTICE IS HEREBY GIVEN that on (insert date of the hearing) at
(insert time) at (insert address of the bankruptcy court)
 in courtroom (insert number) a motion will be heard to avoid
the judicial lien of (state the name of the creditor holding the
judicial lien) on exempt property of the debtor.

DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

MOTION TO AVOID LIEN

The debtor, JOHN Q. DOE respectfully declares as follows:

1. A voluntary petition for relief under Chapter 7 of Title 11 of the United States Code on (date petition filed).

2. This motion is brought under the provisions of 11 U.S.C. Section 522(f) and Bankruptcy Rule 4003 to avoid a nonpossessory, nonpurchase money security interest in household and personal goods.

3. On or about (date debt incurred), the debtor borrowed the amount of insert amount of loan from insert name of creditor, for example, ABCDE Corporation. As security for the loan, the creditor insisted upon and received a note and security agreement granting to the creditor a security interest in and to the debtor's personal property that consisted of household furnishings, appliances, books and musical instruments that are held primarily for family and household use of the debtor and his dependents, or tools or implements used in the trade of the debtor or the debtor's dependent, or prescribed health aids.

1 4. Debtor's interest in the property referenced to in the
2 preceding paragraph has been claimed as exempt in the bankruptcy case.

3 5. The money so borrowed from the respondent does not represent
4 any part of the purchase money of any of the articles covered in the
5 security agreement that debtor executed, and all of the articles so
6 covered remain in the possession of the debtor and his family.

7 6. The existence of the respondent's lien on the debtor's
8 household and personal property impairs exemptions to which the debtor
9 would be entitled under 11 U.S.C. Section 522(b).

10 WHEREFORE, plaintiff prays for the cancellation and avoidance of
11 the security interest in the debtor's personal household goods and for
12 such other and further relief as the court may find just and proper.

13 Dated: _____

14 _____
15 (insert debtor's name and address)
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DEBTOR'S NAME
JOHN Q. DOE
643 B SOUTH MAIN STREET
UKIAH, CA 95482
(707) 468-0268

IN PRO PER

UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:	) CASE NUMBER:
(type in debtor's name, for	) (insert filing number from
example JOHN Q. DOE)	) the petition)
	) CHAPTER 7
)

PROOF OF SERVICE

I, (Name of person doing the mailing for example MARK P. SMITH,
declare as follows:

1. I am a resident of the County of (insert name of county),
State of (California). I am over the age of eighteen years and am not
a party to the within-entitled action.

2. My residence/business address and phone number are: insert
address and phone number of person mailing the motion, for example 643
B South Main Street, Ukiah, CA. 95482 (707) 468-0268.

3. On (insert date mailed, for example June 25, 2015) I served
the within motion to avoid a judicial lien by personally placing a true
and correct copy thereof enclosed in a sealed envelope with postage
fully prepaid in the United States mail at (insert city where motion is
mailed, example: Ukiah, California) addressed as follows:

ABCD CORPORATION
12356 Hazelton Blvd.
Allentown, Pa. 23657

1 I declare under penalty of perjury under the laws of the State of
2 _____ that the foregoing is true and correct.

3 Executed this 15th day of JUNE 2015 at (place where executed, for
4 example Ukiah, California).

5 _____
6 MARK P. SMITH
7 (person doing the mailing)
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UNITED STATES BANKRUPTCY COURT

(NORTHERN) DISTRICT OF (CALIFORNIA)
(insert name) (insert State)

IN RE:) CASE NUMBER:
(type in debtor's name, for) (insert filing number from
example JOHN Q. DOE)) the petition)
) CHAPTER 7
)

ORDER AVOIDING LIEN

On _____, there came on before this Court the motion of the debtor (INSERT NAME, FOR EXAMPLE JOHN Q. DOE) against the creditor (INSERT THE NAME OF THE CREDITOR, EXAMPLE ABCDE CORPORATION) to cancel a judicial lien which impaired an exemption of the debtor.

Upon consideration of the evidence, the argument of the parties and the pleadings submitted by the parties, the court finds that the lien is a judicial lien that impairs the debtor's exemptions in the following property:

(LIST THE PROPERTY FROM WHICH THE JUDICIAL LIEN IS BEING AVOIDED, PARTICULARLY THE REAL PROPERTY AND ANY PROPERTY THAT IS COVERED BY A CONFESSION OF JUDGMENT)

IT IS ORDERED that unless debtor's bankruptcy case is dismissed, the lien of the respondent is hereby extinguished, and the lien shall not survive bankruptcy or affix to or remain enforceable against the aforementioned property of the debtor and is hereby cancelled.

(INSERT NAME OF CREDITOR, EXAMPLE: ABCDE CORPORATION)

1 shall take all steps necessary to remove any record of the lien from the
2 aforementioned property of the debtor.

3 Dated: _____

4 _____
5 U.S. Bankruptcy Judge
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CHAPTER 10

THE MEETING OF CREDITORS AND CONFIRMATION HEARING

A debtor in a Chapter 13 proceeding is required to make a minimum of two court appearances. These court appearances are the Meeting of Creditors and the Confirmation Hearing for the proposed Chapter 13 Plan. The Bankruptcy Court prefers to set both the Meeting of Creditors and the Confirmation Hearing for the same day, but that does not always occur. If the proposed Plan is filed with the Petition, the court will set the two matters for the same date. Otherwise, the matters are separately scheduled. Local rules should be consulted for any special requirements for the Plan that may affect the filing.

I. THE MEETING OF CREDITORS

Under section 341 of the Bankruptcy Court, the trustee is required to hold a meeting of creditors within a reasonable period of time after the filing of the bankruptcy petition. Notice of the time and place of the meeting will be mailed to the debtor and all of the designated creditors by the clerk of the bankruptcy court.

Section 341 reads as follows:

- (a) Within a reasonable time after the order for relief in a case under this title, the United States Trustee shall convene and preside at a meeting of creditors.
- (b) The United States Trustee may convene a meeting of any equity security holders.

- (c) The court may not preside at, and may not attend, any meeting under this section including any final meeting of creditors.

The meeting of creditors is conducted pursuant to section 341 by the trustee. In order not to intimidate the parties and to allow free and unhindered discussion and possible settlements, the bankruptcy judge is specifically ordered by the law not to preside over or even attend any meeting of creditors. The clerk of the bankruptcy court usually presides over the meeting, but the creditors may elect another presiding officer under Rule 2003.

Bankruptcy Rule 2003 calls for the first Creditor's Meeting to be held between 20 and 40 days of the filing of the Petition. Under Rule 2003 if the court designates the place for the meeting and there is no clerk regularly assigned at that place, the time in which to hold the meeting is extended to 60 days.

The usual location of the Creditors Meeting is where the regular sessions of the bankruptcy court are held. The court, however, may designate other locations for the Meeting that are convenient for the parties. The time and place of the Meeting is not set in stone and can be delayed or changed for various reasons, such as a motion to dismiss the Petition or illness of any of the parties. In some courts, postponement of the Meeting is easy; in others it is more difficult. Basic questions are asked of the debtor at the Meeting by the trustee and then by the creditors.

The purpose of the Meeting is for the creditors to examine the

debtor to ensure that all the debts and assets of the debtor have been listed. Bankruptcy Rule 2004(b) governs the scope of the debtor's examination and reads as follows:

(b) Scope of Examination. The examination of an entity under this rule or of the debtor under Section 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge.

Secured creditors are particularly interested in their collateral. In fact, most of the secured creditors will want to know where their collateral is located, its condition and how the debtor determined its value. Understandably, the secured creditors will be somewhat hostile if the debtor is attempting to reduce or eliminate a lien on the property through a lien avoidance. Even so, there is nothing that they can do about it if the law permits the lien avoidance on the exempt property. If the creditors become overly obnoxious, the debtor can complain to the clerk, who will admonish the creditors.

The trustee is required to notify the debtor that there are other bankruptcy chapters that the debtor might be able to use instead of a Chapter 13 proceeding. Primarily, there is a Chapter 7 liquidation, and farmers can avail themselves of the special Chapter 12 proceeding; some debtors can use the more complicated Chapter 11 reorganization proceeding.

A. Hearing Date

The Plan confirmation hearing is to be held between 20 days and 45 days following the date of the meeting of creditors. The court can decide to hold the conformation hearing earlier if it finds that earlier hearing would be in the best interests of both the creditors and the estate and there is no objection. §1324(b)

Under the Act, the Court will not confirm a plan where the debtor until the debtor has become current with all post-petition domestic support obligations §1325(a). In addition, a final discharge will not be granted at the conclusion of the Plan until a certificate is filed with the Court stating that all post-petition domestic support obligations and pre-petition domestic support obligations under the plan have been paid. §1328(a)

If during the Plan period the court finds that a debtor is not timely making post-petition domestic support payments, the case may be dismissed or converted to a Chapter 7. All pre-petition domestic support obligations owed to third parties must be paid in full as a priority claim in a Ch 13 plan. If, however, the obligations are owed to a governmental unit, then the plan can provide for less than 100% payment in the situation where the debtor proposes to pay all of his projected disposable income in a five year plan. §1307(c)(11) §1322(a)(4)

B. Annual Reports and Privacy

Under the 2005 Act, a debtor will be required to file an

annual financial statement with the court if any party in interest along or the Court requests it. Such a statement must disclose the amount and sources of the income of the debtor; the identity of any other person responsible for the support of a dependent; and the identity of and the amount contributed by any person to the debtor's household. This provision opens up the debtor's home life to the public. §521(f)(4) §521(g)(1)

C. Interest on Non-Dischargeable Debt

If a debt is non-dischargeable interest and penalties continue to accrue. If interest is payable on a tax claim or administrative tax expense, or to enable a creditor to receive the present value of a tax claim, the rate of interest is the rate under nonbankruptcy law, and if paid under a confirmed plan, the rate is determined based on the month of confirmation. § 511 A Ch 13 plan may now provide for payment of post-petition interest on nondischargeable unsecured claims IF the plan provides for full payment of all allowed claims. §1322(b)(10)

This provision would be advantageous where creditors do not file significant amounts of dischargeable unsecured claims. In which case, the debtor's attorney should be alert to filing claims for them with interest and penalties when amounts otherwise paid to general unsecured creditors would be paid on nondischargeable

debt. A debtor may file claims for a Creditor up through 90 days after the 341 meeting for general creditors and 180 days for governmental units with the exception that in a Ch 13 case a claim with respect to a prepetition tax return must be filed on or before 60 days after the date the return was filed. §502

At the hearing, debtor should be prepared for some form the following questions:

BY THE TRUSTEE

1. What is your name and address?
2. Are you married? If so, state spouse's name, address and date of marriage.
3. If married, has your spouse filed bankruptcy separately or prior to your petition?
4. Have you ever used another name?
5. Why are you unable to pay your debts?
6. How will you be able to pay your debts in the future if a Chapter 13 plan is approved?
7. Are you expecting any inheritances, insurance payments or property settlements in the future?
8. Have you made any sales of your property within the last year? If so, what was sold, to whom, for how much and how was the value calculated?
9. Have you made any gifts within the last year? If so, what was given, to whom and what was its value?

10. Are you still using credit cards? If no, have they been canceled or returned?
11. Have you listed all of your creditors having priority on (1) The appropriate form? (2) What form?
12. Have you listed all of your secured creditors on (1) The appropriate form? (2) What form?
13. Have you listed all of your unsecured creditors on (1) The appropriate form? (2) What form?
14. Have you listed all of your real property on (1) The appropriate form? (2) What form?
15. Have your listed all of your personal property on (1) The appropriate form? (2) What form?
16. Have you listed all your other property on (1) The appropriate form? What form?
17. Have all of the property that you claim as exempt been listed in (1) The appropriate form? What form?
18. Is your Summary of Assets and Debts correct?
19. Did you prepare the petition yourself? If not, who helped?
20. Did you pay an attorney or typing service for assistance in preparing this petition? If so, who and how much?
21. Are you engaged in any lawsuits, either as a plaintiff or defendant?
22. Do you have any expectation of any money coming to you in the future, including tax refunds, that has not been stated?

23. Have you surrendered or have you had any property repossessed during the last year?

Creditors and secured creditors, in particular, will usually ask some version of the following:

1. Where is the collateral located?
2. Have you disposed of any of the collateral? If so, to whom and for how much?
3. What is the condition of the collateral?
4. If you are surrendering the collateral, when can it be repossessed and by whom?
5. Did you previously sell nonexempt property and use the proceeds to increase your equity in exempt property? If so, what property was sold and in what exempt property were the proceeds invested?
6. If the lien is being reduced, the creditors will ask:
 - (a) How much is the collateral now worth?
 - (b) How did you determine the property's value?

Ordinarily, there is only one Creditor's Meeting. Still, if the first meeting is not completed or new information (such as an undisclosed creditor) later arises, more Creditor Meetings may be held.

II. CREDITORS OBJECTIONS

A. TO EXEMPTIONS CLAIMED BY DEBTOR

If after the meeting a creditor objects to an exemption claimed by the debtor, the creditor uses Bankruptcy Rule 4003 to file objections with the court. Bankruptcy Rule 4003:

(b) Objections to Claims of Exemptions. The Trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list or supplemental schedules unless, within such period, further time is granted by the Court. Copies of the objections shall be delivered or mailed to the Trustee and to the person filing the list and the attorney for such person.

If creditor objections are filed, a hearing will be scheduled to determine if the exemption should be denied. The burden of proof is entirely on the creditor. Unless ordered to do so by the local rules of court, the debtor is not even required to file a response to the creditor's objections. Given the importance of exemptions, the debtor should consult a bankruptcy attorney.

B. TO DISCHARGE OF A DEBT

Usually only a secured creditor will object to an exemption claimed by a debtor. The exemption usually will apply to property that is collateral for the secured creditor's debt. In contrast, it is usually an unsecured creditor who objects to discharge of a debt. Most of the discharged debts in any bankruptcy proceeding are unsecured in nature, and unsecured creditors are affected by a debtor filing for bankruptcy protection. When a debt is discharged,

it does not have to be paid (see Chapter 9).

Section 523 of the Bankruptcy Code states that a creditor may object to a discharge of the following debts:

(B) if such debt is of a kind specified in paragraph (2), (4) or (6) of this subsection, timely filing of a proof of claim and timely request for a determination of dischargeability of such debt under one of such paragraphs, unless such creditor had notice or actual knowledge of the case in time for such timely filing and request.

Bankruptcy Rule 4007(d) governs the procedure in which a creditor objects to a discharge of a debt. Rule 4007(d) reads as follows:

(d) Time for Filing Complaint under Section 523(c) in Chapter 13 Individual's Adjustment Case; Notice of Time Fixed. On motion by a debtor for a discharge under section 1328(b), the court may enter an order fixing as time for the filing of a complaint to determine the dischargeability of any debt pursuant to section 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest after hearing on notice the court may for cause extend the time fixed under this subsection. The motion shall be made before the time has expired.

Under the bankruptcy law, a creditor must file a complaint to challenge dischargeability based on false representation or financial statement, fiduciary fraud, theft, embezzlement or wilful and malicious injury within 60 days of the meeting of creditors.

If a creditor objects to a discharge, the debtor should see a bankruptcy attorney. If the creditor loses and the debt is

discharged, the court will usually order the creditor to pay the debtor's attorney fees.

III. CREDITORS' CLAIMS

In order for a creditor to be paid under the Plan, the creditor must file a Proof of Claim (Official Form 10) with the clerk of the bankruptcy court within 90 days following the Meeting of Creditors. The Court provides the Claim form to the Creditors. The Bankruptcy Code permits the trustee, debtor, co-debtor or guarantor of a creditor to file the Proof of Claim on behalf of the creditor. The creditors are given notice by the clerk of the bankruptcy court using an Official Form 9, Notice to Creditors. This notice states when the Meeting of Creditors is to be held and with the time for the filing of claims.

Under Bankruptcy Rule 3002(c), there are four exceptions to the 90 day period allowed for filing Proof of Claims. These exceptions deal with (1) claims by governmental units, (2) claims by infants or incompetents, (3) unsecured judgment claims, and (4) claims arising from the rejection of executory contracts. All of the above may be filed at such time as the court may direct provided they do not unnecessarily hinder or delay the administration of the case.

Bankruptcy Rule 3004 permits both the trustee and the debtor

to file a claim on behalf of a creditor who has not filed a claim on or before the First Meeting of Creditors. This is an important provision because it can be used to get nondischargeable debts and partially secured debts before the court for payment under the Plan. If the creditor subsequently files a Proof of Claim, it will supersede the claim filed by the trustee or debtor on the creditor's behalf. If no claim is filed by or on behalf of a secured creditor, and the creditor is not included in the plan, the lien held by that secured creditor is not discharged upon completion of the Chapter 13 plan.

A Proof of Claim can be filed by persons other than the creditor. A person or entity who is liable with the debtor on a debt to a creditor (such as a partner or guarantor on a loan) may file a Proof of Claim on behalf of that creditor. The claim must be filed within 30 days of the expiration of the 90 day period for filing claims. If the name of the creditor is unknown, the person may file the claim in his own name.

This provision in the Bankruptcy Code establishes a procedure to prevent a debtor avoiding debts involving a partner or guarantor who has not filed for bankruptcy protection. By allowing the codebtor to file a claim in a debtor's bankruptcy on behalf of their joint creditor, the codebtor ensures that the debtor will pay something on their joint debt. Without this provision, the creditor

could simply refuse to file a claim and proceed solely against the co-debtor or guarantor who has not filed bankruptcy. The effect of this could be that the debtor filing for bankruptcy protection would pay nothing on the joint debt whereas the codebtor would have to pay the entire debt. Should the creditor also file a Proof of Claim, the creditor's filing will supersede any claim filed by a codebtor on the creditor's behalf.

All Proof of Claims must be filed with the clerk of the bankruptcy court where the Chapter 13 Petition is filed. Some courts, under local rules, require the Proof of Claims to be filed in duplicate. Whenever a claim is based on a written document (such as a contract), supporting documentation must accompany the claim. This will usually mean a copy of the contract or other written document that is the basis for the claim against the debtor's estate.

Under Bankruptcy Rule 3001(d) when a creditor claims a security interest in property held by the debtor, the creditor is required to attach documentation proving that the security interest has been perfected. Unless such evidence accompanies the claim, the creditor will not be given secured status: he will be treated as an unsecured creditor.

A creditor is usually permitted under Bankruptcy Rule 3006 to cancel a previously filed claim simply by filing a Notice of

Withdrawal with the Court. The exceptions to a creditor voluntarily cancelling a claim without court approval are:

1. An objection to claim has been filed.
2. The creditor has filed a complaint against the debtor.
3. The creditor has previously accepted or rejected the Plan.
4. The creditor has materially participated in the case.

The claim can only be cancelled after a hearing in the court with due notice being given to the trustee, debtor and other creditors affected by the cancellation of the claim. Unless the court orders otherwise, any authorized withdrawal of a claim, constitutes withdrawal of any related acceptance or rejection by the creditor of the debtor's Plan.

Just because a claim is filed does not mean that it will or has to be paid. Both the debtor and trustee may object to a claim that either feels should not be paid. Objections to a claim filed by a creditor must be in writing and filed with the clerk of the bankruptcy court pursuant to Bankruptcy Rule 3007 which reads as follows:

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

When an objection to a claim seeks more than the mere denial of a claim (for example the quieting of title to property or the determining of the priority of other liens), the matter is converted into a full adversary proceeding. In such an event, the matter is then treated as a separate lawsuit under the Bankruptcy Court as governed by Bankruptcy Rules 7001 et seq. Local rules should be consulted before filing any objections to claims because some courts have additional requirements.

If no objection is filed against a claim, it deemed allowed. If, however, a proper objection has been filed, followed by proper notice to the parties, the court will hold a hearing on the objections. Under Section 502 (b) all claims against which objections are filed must be allowed except those for which:

- "(1) Such claim is unenforceable against the debtor and the debtor's property under any agreement or applicable law for a reason other than because such claim is contingent or unmatured;
- (2) Such claim is for unmatured interest;
- (3) If such claim is for a tax assessed against property of the estate, such claim exceeds the value of the interest of the estate in such property;
- (4) If such claim is for services of an insider or attorney of the debtor, such claims exceeds the reasonable value of such services;
- (5) Such claim is for a debt that is unmatured on the date of filing of the petition and that is excepted from

discharge under section 523(a)(5), Postpetition Alimony, Support or Maintenance, of this title.

- (6) If such claim is the claim of a lessor for damages resulting from the termination of a lease of real property, such claims exceed
 - (A) The rent reserved by such lease, without acceleration, for the greater of one year, or 15%, not to exceed three years, of the remaining term, of such lease, following the earlier of:
 - (i) The date of the filing of the petition; and
 - (ii) The date on which such lessor repossessed, or the lessee surrendered, the leased property; plus
 - (B) Any unpaid rent due under such lease, without acceleration, on the earlier of such dates;
- (7) If such claim is the claim of an employee for damages resulting from the termination of an employment contract, such claim exceeds:
 - (A) The compensation provided by such contract, with acceleration, for one year following the earlier of:
 - (i) The date of the filing of the petition, or
 - (ii) The date on which the employer directed the employee to terminate, or such employee terminated, performance under the contract; plus
 - (B) Any unpaid compensation due under such contract, without acceleration, on the earlier of such dates, or
- (8) Such claim results from a reduction, due to late payment, in the amount of an otherwise applicable credit available to the debtor in connection with an employment tax on wages, salaries, or commissions earned from the debtor.

Under section 502(d), the claim of a person or entity holding

property recoverable by the trustee or is a transferee of a voidable transfer must be disallowed unless the person or entity either pays the amount or transfer the property to the trustee.

Under section 502(e) the court is required to disallow any claim for reimbursement or contribution by an entity that is liable with the debtor provided security for the debt to the extent that:

- (A) Such creditor's claim against the state is disallowed,
- (B) Such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution, or
- (C) Such entity asserts a right of subrogation to the rights of such creditor under section 509 of this title.

This section deals with the claims of a codebtor or guarantor against the debtor for the payment of a joint creditor's debts. This again relates back to where a codebtor or guarantor may file a claim on behalf of a joint creditor.

In determining whether to grant or deny an allowance for a claim, the court is required under section 502(c) to estimate:

- (1) Any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case; or
- (2) Any right to payment arising from a right to an equitable remedy for breach of performance.

Under this section, the court is required to estimate the value of contingent claims which might result in a delay or otherwise interfere with the administration of the case. In applying this

section the court must distinguish between core and noncore proceedings. A bankruptcy court has authority over all core proceedings. Noncore proceedings are the province of the district court.

A bankruptcy court may not issue a final order or judgment in a noncore proceeding without the consent of the parties. Under 28 USC 157(b)(2)(b), proceedings to liquidate or estimate personal injury or wrongful death claims against the estate for the purposes of effecting a distribution are specially held not to be core proceedings. They are thus not within the jurisdiction of the bankruptcy court and thus not part of the Plan unless the parties agree otherwise.

If a claim is disallowed by the court, the creditor may make a motion for reconsideration of that denial pursuant to Bankruptcy Rule 3008. A decision to allow or disallow a claim may only be reconsidered for cause (for good reason).

When a creditor is a secured creditor, the extent of his lien on the secured property is the value of his interest in the property. The balance of his claim over the value of his interest in the collateral is unsecured. Section 506(a) states:

(a) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's

interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is unsecured to the extent that the value of such creditor's interest or the amount of setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of the property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

The gist of section 506(a) is that a secured creditor cannot have a lien on secured property for a value greater than the property is worth. The value of the creditor's lien in the secured property shall be determined while considering the purpose of the valuation and the proposed disposition or use of the property.

The significance of having the secured property valued is that the debtor need only pay the secured creditor the value in the plan of the secured property. To the extent that the secured lien exceeds the value of the property, the secured creditor will be treated as an unsecured creditor. The partially secured creditor will be paid as a secured creditor only to the value of the collateral, the remaining balance of the debt will be treated as an unsecured debt and usually discharged. Example: A secured creditor has a lien of \$5,000 on property worth \$3,000. The court will reduce the value of the lien to \$3,000 with the remaining \$2,000 being an unsecured debt. Thus once the creditor receives \$3,000 in payments on the secured debt, the lien on the property is paid, even though the creditor may not have received any of the remaining

\$2,000 owed as an unsecured debt. The court has the power to confirm such an arrangement under section 1325(a)(5)(B).

In a situation where the Plan calls for the secured creditor to receive full payment of the allowed claim, the creditor's objections to the Plan will not stop its confirmation. As long as the secured creditor will receive the value of the collateral under the Plan even though, the creditor will not be fully paid because the debt is undersecured, the Plan will be confirmed. This is called the "cramdown" aspect of a Chapter 13. Local rules should be consulted in determining how local courts deal with cramdowns. In some courts, cramdowns may also be imposed against partially secured creditors who only hold mortgages or liens against the debtor's residence.

The payment of allowed secured and unsecured claims are treated differently. Payments to secured creditors, if so provided in the Plan, may commence immediately upon confirmation of the Plan following the payment of the priority administrative claims or their waiver under section 1326(b)(1). Included in the priority administrative claims are the unpaid portion of the filing fee and the trustee's fee.

Payments to the unsecured creditors do not begin until the period for filing claims has run, not when the Plan was confirmed. This delay gives the debtor and the trustee an opportunity to

review the unsecured creditor claims and decide whether or not to file objections to them. Some bankruptcy courts have adopted local rules that govern when the unsecured creditors should begin receiving payment under the Plan. Under Bankruptcy Rule 3021, the members of a special class of unsecured claims may receive their payments earlier if the Plan provides for their early or immediate payment and all of the claims in the class have been approved. Under Bankruptcy Rule 3010(b), the trustee is not to make any payments below \$15 without a court order. Payments less than \$15 are to be accumulated until more than \$15 is held for a creditor and then are paid. This is a convenience for the trustee in order to avoid sending checks and maintaining paperwork for small payments.

One point for a debtor to bear in mind is that the statute of limitations under state law for a claim is tolled while the debtor is protected in bankruptcy. If the discharge is not granted because the petition is dismissed or withdrawn by the debtor, the statute of limitations on a debt will continue from the time when the debtor originally filed the bankruptcy petition.

Here is another factor to bear in mind from 11 USC 108 (c). If another entity (such as a law or a court judicial proceeding order or an agreement between the parties) sets a time for filing a legal action in a court other than in a bankruptcy court and that

time had not run prior to the debtor's filing of Chapter 13 petition, the time to file shall not expire until the latter of the end of the period (including any suspensions of the period occurring on or after the commencement of the case) or 30 days after notice of the termination or expiration of the automatic stay on the creditor's claim. In short the statute of limitations runs against the debtor the latter of (1) date of expiration if no bankruptcy filed, (2) 30 days after the order of the discharge, (3) 30 days after the notice of no discharge or (4) 30 days after the notice of dismissal of the case.

IV. CONFIRMATION HEARING

Either immediately or at a later date after the Meeting of Creditors, there is a hearing to confirm the debtor's Chapter 13 Plan. In a Chapter 13 proceeding, the debtor is required to submit for court approval a written Plan for the payment of creditors over a period of years. The Plan must last for three years and with court approval may be extended to five years. The plan must provide payments to the unsecured creditors that will, at a minimum, equal the amount that they would have received had the debtor filed a Chapter 7 liquidation instead of a Chapter 13 petition. The debtor is not required to pay all of the unsecured debts.

The procedure for obtaining court approval is set forth in the Bankruptcy Code. The bankruptcy proceeding begins when the

debtor files the Chapter 13 Petition. Following the filing, notice of the debtor's filing is given to the creditors which places an automatic stay on any collection actions by the creditors. The debtor then prepares and files with the court the proposed Chapter 13 payment Plan. Copies of the proposed Plan are served upon the trustee and each of the creditors.

A hearing date is then set for the confirmation of the Plan. Any creditor having objections to the Plan may file objections; they will be heard at the Hearing. As long as an unsecured creditor is paid the minimum amount he would have received had a Chapter 7 petition been filed and the debt is properly dischargeable, his objections will be overruled and the Plan approved.

The most common objection to the Plan is that the debtor is not paying all of the unsecured creditors an amount equal to at least as much as each unsecured creditor would have received had the debtor filed a Chapter 7 petition(instead of a Chapter 13 Petition). To determine how much the unsecured creditors receive, the debtor determines what property in the estate is exempt from attachment by unsecured creditors and what property is not exempt from unsecured creditors. The value of such nonexempt unsecured property is totalled, and that is the minimum value that must be split among the unsecured creditors. Each unsecured creditor is given a minimum payment amount based on that creditors percentage

share of all creditors. Since the payment schedule for the Plan extends over several years (no more than five years), it is permitted to pay a creditor more than the minimum amount as long as each unsecured creditor receives at least as much as he would have received if a Chapter 7 petition had been filed at the beginning.

Another objection to the Plan is that unsecured creditors are treated differently. This is a technical objection since it is permitted in a Chapter 13 proceeding to treat unsecured creditors differently under certain circumstances. The Bankruptcy Code permits a debtor to establish classes of unsecured creditors whose debts are paid in different percentages. As long as the classes are established in good faith and with a legitimate reason, the debtor may pay the creditors of one class a higher percentage of their debt than creditors of another class.

Secured Creditors may object to the treatment of their secured claims in the Chapter 13 proceeding. A proposed Plan may also provide for the payment of secured debts as well as unsecured debts. Under the Bankruptcy Code, fully secured debts must be paid in full if they are included in the plan. This means that the Bankruptcy Court cannot reduce the amount of the money owed to secured creditors.

The Bankruptcy Court can, however, structure the payment of that debt for the period of time that the debtor is in bankruptcy.

If secured creditors are not fully paid in the Plan, they can object and no discharge will be granted on their debts. A debtor is not required to deal with a secured creditor in the Plan and may continue to deal with him outside the Plan.

The main reason for listing a secured creditor is to deter a foreclosure. As long as the Plan provides for the curing of a default and the resumption of normal payments in a responsible time, the court will prevent the secured creditor from proceeding with a foreclosure action. If the debtor cannot cure the default and resume payments within the Plan, the court will release the debt from the automatic stay and permit the creditor to foreclose on the property. The debtor is required to pay interest on the debt of any creditor covered under the Plan.

Secured creditors are treated in one of four ways. In the first instance, each secured creditor is given the option of accepting a proposed payment Plan. This usually means that an agreeing secured creditor will be paid less than the creditor is actually owed under the security agreement.

Second, each secured creditor may reject the proposed payment Plan and stand on his security instrument. The creditor must be completely paid within the term of the Plan. The court will not approve any Plan which will not pay an objecting secured creditor within the term of the Plan. Interest must be paid on all secured

claims handled in the Plan.

Third, the debtor may surrender the collateral to the secured creditor. The secured creditor becomes an unsecured creditor to the extent of any deficiency resulting from a proper resale of the property. Fourth, the debtor may omit the creditor from the plan and continue to make the payments as before the filing.

When dealing with secured creditors it is important to remember that a secured creditor's lien only extends to the fair market value of the security. If a secured claim is handled in the plan, once the creditor receives the fair market value of the collateral, the lien is discharged, and the secured creditor becomes an unsecured creditor for any remaining unpaid balance.

Following the Confirmation Hearing, the court will either approve or reject the Plan. The court and the debtor may while in court restructure the Plan into a form acceptable to the Court. Once an acceptable Plan is submitted, the Court will approve it.

Once court approval for a debtor's plan has been received, it is the trustee's responsibility to receive the debtor's payments ordered under the Plan. The trustee then makes the payments to the debtor's creditors pursuant to the court-approved Chapter 13 Plan. Generally, the trustee receives 10% of all payments as the trustee's fee.

Payments under the Plan must begin within 30 days after the filing of the plan with the court. The Plan must be filed within 30 days of the filing of the Chapter 13 Petition. The payments must be regularly made, usually on a monthly basis. Some bankruptcy courts will order an attachment of the debtor's wages to assure payments are made under the Plan. These payments are then transmitted to the creditors in accordance to the payment schedule set up in the approved Plan. The trustee also has the power to bring or defend lawsuits on behalf of the bankruptcy estate.

Once the Plan has been completely fulfilled according to its terms, the debtor is given a discharge of all dischargeable debts. If the plan cannot be fully completed, the debtor can seek a partial discharge for certain debts as discussed in the Chapter 12.

A Chapter 13 Plan is not final and can be modified by the court upon the debtor showing good cause (such as a reduction in earnings). The debtor may convert a Chapter 13 Petition to a Chapter 7 liquidation at any time provided the debtor has not filed a previous Chapter 7 petition within the previous 6 years. In addition, the debtor may dismiss the Chapter 13 at any time prior to completion of the plan and thereafter be treated as though the bankruptcy petition had never been filed.

CHAPTER 11

AMENDMENT OF THE PETITION

I. INTRODUCTION

It is not uncommon for a debtor's circumstances to change during the Chapter 13 payment period and affect the debtor's ability to complete the Plan as approved. It may therefore become necessary to amend both the Petition and the Plan so the debtor can receive a Chapter 13 discharge. The bankruptcy petition is intended to reflect the life of the debtor. If that life changes, the Petition may have to be amended to reflect those changes.

From the contents of the Petition, a long measure of the debtor's life can be reconstructed. Given that fact, it is not surprising and perhaps even expected that the Petition will be incomplete or mistaken about certain aspects of a person's life. It is a rare person, with not much of a life, who can condense his life into 20 or so odd pages when specific detail is required.

Amendments exist to correct mistakes on the Petition that could otherwise jeopardize or limit a debtor's discharge. There is a filing fee of \$20 every time an amendment is filed, but that is usually punishment for filing an amendment. The most common mistakes that necessitate the filing of an amendment are:

1. The debtor forgot to list a creditor. If a creditor is not listed in the bankruptcy petition his debt is not

discharged. The following must be filed whenever a Petition is amended to add an overlooked creditor:

- a. An amended Mailing Matrix which will list all of the creditors and their addresses, including the new creditor,
 - b. An amended Schedule D if the creditor's debt is secured by personal or real property,
 - c. An amended Schedule A, if the creditor's debt is a priority debt that must be paid first,
 - d. An amended Schedule F if the payment to the creditor's is unsecured and not a priority,
 - e. If the creditor's debt is secured, in addition to an amended Schedule D, the debtor must also file an amended Schedule C if any portion of the property securing the debt (the collateral) will be claimed as exempt by the debtor, and
 - f. An amended Statement of Financial Affairs must be filed if listing the new creditor and any property changes the original form in any manner.
2. The next most common occurrence causing an amendment to be filed is the debtor changing the property claimed as exempt. A debtor may change his mind as to what property is to be taken as exempt. To add or delete exempt property the debtor must file the following:

- a. An amended Schedule C listing the property that the debtor now wants to take as exempt, and
- b. The following schedules may also have to be amended when Schedule C, Property Claimed as Exempt, is amended:
 - i. Schedule D may have to be amended if the change to Schedule C results in adding or taking secured property from the existing list,
 - ii. Schedule a if the change involves real property not previously listed or identified,
 - iii. Schedule B, if the change involves personal property not previously listed or identified,
 - iv. Schedules I and J if the use of the property was not previously listed or identified, and
 - v. The Summary Sheet may have to be amended if the changes to Schedule C alters the totals.
- 3. When the amendment is necessary to add property mistakenly omitted or acquired within 180 days of the filing such as insurance proceeds, inheritances or property settlements, then the following schedules may have to be amended:
 - a. Where the changes involve property that is collateral for secured debt, an amended Schedule D and Statement of Intention must be filed,

- b. Where real property is being added, a new Schedule A must be filed,
 - c. Where personal property is being added, an amended Schedule B must be filed,
 - d. Where the property being added is collateral for a secured debt and is being claimed as exempt then an amended Schedule C must be filed.
4. If the debtor changes his mind on what he intends to do with the debts on secured property (such as lien avoidance), then he must file an amended Plan for court approval as well.
5. A change of address is not really an amendment of the case. However, a debtor is required to keep the bankruptcy court fully informed of the debtor's address and phone number. If he moves the debtor is required to notify the court of his new address and phone number. Failure to do so will result in discharge being denied to the debtor. Following this chapter is a format of a change of address for a debtor. It should be filed with the bankruptcy court along with a proof of service showing that a copy was mailed to the trustee. (See the Chapter 9 for discussion of the proof of service).

II. PROCEDURE

Bankruptcy Rule 1009 governs when an amendment to a petition

can be filed. Rule 1009 reads as follows:

(a) General Right to Amend. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

(b) Statement of Intention. The statement of intention may be amended by the debtor at any time before the expiration of the period provided in Section 521(2)(B) of the Code. The Debtor shall give notice of the amendment to the trustee and to any entity affected thereby.

(c) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee a copy of every amendment filed pursuant to subdivision (a) or (b) of this rule.

Under Rule 1009, an amendment can be filed at any time. The steps to amending a schedule are simple and easy to follow for any debtor wishing to amend the petition:

1. Prepare the cover sheet for the amendments. Before preparing the amendments, the debtor should read the local rules and determine if the court uses its own cover sheet for amendments. If so, the debtor must get a copy of the approved form and use it. Most courts do not have an approved form for a cover sheet. Therefore, following this chapter is a representative format for a cover sheet for use in amending a petition.

2. Type the word "amended" before the title of every amended schedule. By typing the word "amended" the clerk will know that the schedule was changed and order the file in accordance. Some courts

also require that the word "amended" be placed at the bottom of each page. The debtor should read the local rules to ascertain such requirements.

3. When the amended schedules are completed, one copy is mailed by a third party who prepares a proof of service to the trustee. The original of the amended schedules and the cover sheet are filed with the clerk. The filing completes the amendment process.

If the meeting of creditors has been held and new creditors are being added, the court will have to hold a second meeting of creditors. Since it is the debtor's fault that a second meeting is being scheduled, some courts require the debtor to notify the creditors of the time and place of the meeting. If so, the debtor will simply mail the notice with a proof of service to each creditor. The debtor should ask the clerk if the debtor is required to give the notice for this second creditor meeting.

If the first meeting of creditors has not been held, either the clerk or the debtor (depending on local rules) will send a copy of the Notice for Creditors meeting and the amendments to the newly listed creditor along with a proof of service. From this point forward, the case will proceed as though the amended material had always been part of the original petition.

III. MODIFYING THE PLAN

A debtor may modify a proposed plan at any time prior to the

confirmation of the plan by the court. The debtor still has the right to amend or modify the plan even if a Confirmation Hearing is scheduled. Any modification of the plan still must comply with the requirements in sections 1322 and 1323 as discussed in the Chapter 5.

After the Plan has been confirmed by the court, the plan can only be modified with court approval. To obtain court permission to modify a Plan, the debtor must file a Motion to Modify with the court. The procedure for filing a motion is described in Chapter 9. After the motion to modify is filed, the court will schedule a hearing on the modification. The creditors of the debtor may once again come forward at the hearing and object to the modified plan.

Under section 1329(a), a Plan can only be amended after confirmation upon the request of a debtor, trustee or creditor to:

- (1) Increase or reduce the amount of payments of a particular class provided under the Plan,
- (2) Extend or reduce the time for payments, or
- (3) After the amount of the distribution to a creditor whose claim is provided for by the Plan, to the extent necessary to take account of any payment of such claim other than under the Plan.

The person seeking the modification of the Plan has the burden of proving that good cause exists for the modification. The requirement for good cause is eased somewhat when the debtor is the person seeking the modification. Changes in the debtor's financial or personal situation still must be shown, but these changes do not have to be terrible in nature or extremely significant to the plan.

In contrast, if the debtor's financial situation improves (such as getting a better job or winning a lottery) so that more disposable income is available, either the trustee or any unsecured creditor may request modification of the plan to have higher payments made to the unsecured creditors. As a general rule minor changes in a debtor's condition will not support modification of the plan by the trustee or a creditor.

At a hearing on a motion for modification, a secured creditor who has previously either accepted or rejected the plan is deemed to also have accepted or rejected the new proposed modified plan unless the new plan changes the creditors's rights or the creditor changes his previous plan acceptance or rejection.

The court will decide at the hearing whether or not the plan changes the claim of any secured creditor and whether or not the debtor's modified plan should be approved. If approved, the modified plan becomes the new payment plan for the debtor. A sample modified plan follows this chapter. The motion should be accompanied with a copy of the proposed plan as modified. This is nothing more than the original plan with the necessary changes made (such as reduction of monthly payments). A Proof of Service must accompany the motion (see Chapter 9 for the form).

IV. APPROVAL OF A CONSUMER DEBT

A consumer debt is defined, under USC section 101(8) to be one that was incurred primarily for a personal, family or household

purpose rather than for business or investment purposes.

Often while a Chapter 13 proceeding is in effect, the debtor needs to borrow money or obtain credit to purchase the necessities of life. This can play havoc with the payments due under the Chapter 13 Plan. Holders of certain post-petition claims may file claims for payment with the trustee under the plan. Section 1305(a) permits the proof of post-petition debts to be filed for a debt:

(2) that is a consumer debt, that arises after the date of the order for relief under this chapter, and that is for property or services necessary for the debtor's performance of the Plan.

Under section 1305(b), a qualifying post-petition claim is treated the same as any other claim except that its determination date is the date that the claim arose.

The important thing for a debtor to remember when dealing with consumer credit is that trustee approval should be obtained before obtaining the credit. Section 1305(c) reads as follows:

(c) A claim filed under subsection (a)(2) of this section shall be disallowed if the holder of such claim knew or should have known that prior approval by the trustee of the debtor's incurring the obligation was practicable and was not obtained.

If trustee approval was not obtained prior to the creditor rendering the credit and such approval was practicable (a yes or no could have easily been obtained), the claim is not to be allowed.

Section 1328(d) reads as follows:

(d) Notwithstanding any other provision of this section, a discharge granted under this section does not discharge the debtor from any debt based on an allowed claim filed under section 1305(a)(2) of this title if prior approval by the

trustee of the debtor's incurring such debt was practicable and was not obtained.

Even if the claim were to be subsequently allowed by the court, if the trustee's approval was practicable and not obtained before the credit was granted to the debtor, the debt is dischargeable in the bankruptcy proceeding. For this reason, the debtor should seek trustee approval before seeking to incur a consumer debt during the plan period. Following this chapter is a sample completed form for seeking such trustee approval.

1 JOHN Q. DOE
2 643 B SOUTH MAIN STREET
3 UKIAH, CA. 95482
4 (707) 468-0268

5 UNITED STATES BANKRUPTCY COURT
6
7 NORTHERN DISTRICT OF CALIFORNIA
8 (insert name) (insert State)

9 IN RE:) CASE NUMBER:
10 JOHN Q. DOE) (insert filing number
11 Debtor) from the petition)
12) CHAPTER 13
13) NOTICE OF CHANGE
14) OF ADDRESS

15 The Debtor of the above-entitled action hereby gives notice to the
16 Court of the Debtor's Change of Address and Phone Number. Effective
17 immediately the Debtor's address and phone number are as follows:

18 Address: _____

19 _____
20 Phone Number: _____

21 Dated: _____

22 _____
23 Debtor
24
25
26
27
28

1 JOHN Q. DOE
 2 643 B SOUTH MAIN STREET
 3 UKIAH, CA. 95482
 4 (707) 468-0268

5 UNITED STATES BANKRUPTCY COURT
 6 NORTHERN DISTRICT OF CALIFORNIA
 7 (insert name) (insert State)

8 IN RE:) CASE NUMBER:
 9) (insert filing number
 JOHN Q. DOE) from the petition)
 10) CHAPTER 13
 Debtor) AMENDMENTS TO
 11) PETITION

12 The Debtor _____ of the above-entitled action
 13 hereby respectfully submits the following amendments of CHAPTER 13
 14 VOLUNTARY PETITION on file herein in accordance with Bankruptcy Rule
 15 1009:

16 () Petition Cover Sheet

17 () Creditors List

18 () Schedules: () A, () B, () C, () D, () E

19 () F, () G, () H, () I, () J

20 () Statement of Financial Affairs

21 () Summary of Schedules

22 () Enclosed is \$20.00 as the fee for adding new creditors or
 23 changing addresses after the originak Notice for Meeting of Creditors
 24 has been sent.

25 Dated: _____

26 _____
 Debtor

27 Dated: _____

28 _____
 Debtor Spouse

1
2 I, (We) _____, Debtor of the
3 above-entitled action hereby declare under penalty of perjury that the
4 information contained in amendments attached hereto consisting of ____
5 pages are true and correct to the best of my information and belief.
6

7 Dated: _____
8 _____
9

10 Dated: _____
11 _____
12
13
14
15
16
17
18
19
20
21
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24
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28

1
2
3 UNITED STATES BANKRUPTCY COURT4 _____ DISTRICT OF _____
56 IN RE:) CASE NUMBER:
7 JOHN LESTER SMITH and)
8 JANE ALICE SMITH)
9) CHAPTER 1310 MOTION TO MODIFY THE DEBTORS' CHAPTER 13 PLAN
11 AFTER CONFIRMATION
1213 The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
14 declare as follows:15 1. A voluntary petition for relief under Chapter 13 of Title 11
16 of the United States Code has been properly filed in the above-entitled
17 case.18 2. This Court approved and confirmed the Debtors Plan under
19 Chapter 13 on December 15, 1992.20 3. This motion is brought under the provisions of 11 U.S.C.
21 Section 1329 of the Bankruptcy Code.22 4. Since the confirmation of the Plan, the debtor, John Lester
23 Smith, suffered a back injury and has been unable to work more than 25
24 hours per week.25 5. As a result of the debtor John Lester Smith's back injury, the
26 debtor's earnings have been reduced \$400 per month.27 6. Because of their reduction in earnings, the debtors are
28

1 no longer able to pay the \$820 per month required under the
2 original Plan as confirmed by this Court.

3 7. The debtor proposes to reduce the monthly payments by \$400 and
4 to extend the Plan for five years to compensate for the reduction in the
5 monthly payments to the unsecured creditors.

6 8. This modification will not affect the right of any secured
7 creditor under the Plan.

8 9. A copy of the proposed Plan as amended is attached to this
9 motion. A copy of this motion along with the proposed modified plan has
10 been served on the Trustee and all creditors.

11 WHEREFORE, the debtors respectfully request that this Court enter
12 an order granting this motion and confirming the Plan as modified.

13 DATED: January 15, 1993
14

15 _____
JOHN LESTER SMITH
16 DEBTOR

17 _____
JANE ALICE SMITH
18 DEBTOR
504 C LOW GAP ROAD
19 UKIAH, CA. 95482
20 (717) 468-0268
21
22
23
24
25
26
27
28

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH)
CHAPTER 13

DEBTORS' REQUEST FOR TRUSTEE'S APPROVAL
OF CONSUMER DEBT

The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
declare as follows:

1. A voluntary petition for relief under Chapter 13 of Title 11
of the United States Code has been properly filed in the above entitled
case.

2. This Court approved and confirmed the Debtors Plan under
Chapter 13 on December 15, 1992.

3. Under Bankruptcy Code section 1305(a)(2) prior Trustee
approval should be obtained for all post-petition consumer debts.

4. The Debtors' wish to obtain the Trustee's approval to incur
the following consumer debt:

The purchase of a 1980 Toyota pickup for \$1,200 with funds to be
borrowed from GABRIEL FINANCE COMPANY which will carry a lien against
the vehicle to secure payment.

5. The need for the vehicle arose when the engine in the debtor's
vehicle seized and the estimate to fix it would be more than the
vehicle would subsequently be worth.

6. Gabriel Finance would be paid \$150 per month for 15 months. The annual rate of interest on the loan is 12%. The debtor proposes to pay the debt as a secured claim under the modified Plan and to reaffirm the unpaid balance of the claim upon completion of the plan.

7. Without the vehicle, the debtors will be unable to continue to operate their business and as a result will be unable to complete their Plan.

DATED: January 25, 1994

JOHN LESTER SMITH
DEBTOR

JANE ALICE SMITH
DEBTOR
504 C LOW GAP ROAD
UKIAH, CA. 95482
(717) 468-0268

DEBT APPROVED:

DATE _____

TRUSTEE

DEBT DISALLOWED:

DATE _____

TRUSTEE

CHAPTER 12

DISCHARGE

Congratulations! When a person has reached this point, the hard parts are over. When the Judge swings his gavel the case is over. It is the rare bankruptcy case that will have anything else occur after the bankruptcy. The debtor has had to go through the meeting of creditors, prepare a Plan, go through a Confirmation Hearing and other hearings to decide whether or not any complaints to set aside the automatic stay and any motions regarding exceptions or objections to the debtor's discharge should be granted

I. WHEN THE PLAN HAS BEEN FULLY PERFORMED

A complete Chapter 13 discharge (one granted when the Plan has been fully performed) is granted under Section 1328 (a) and is broader than a Chapter 7 discharge. A discharge under section 1328(a) discharges the debtor from all but:

1. Any debt not covered in the plan.
2. Debts for alimony or spousal support.
3. Student loans unless grounds for discharge are met.
4. Debts resulting from injuries caused while driving intoxicated.
5. Restitution for criminal offenses.

6. Debts for which the last payment is due after the date of the final payment of the Plan.
7. Postpetition debts that were not allowed under Section 1305 and allowed postpetition consumer debts, the prior trustee approval of which was practicable but not obtained.
8. Priority claims, (including tax claims, refund claims, wage claims, salaries, commissions and employee benefits), are dischargeable. Section 1322(a)(2) priority claims must be paid in full under the plan unless the creditor agrees otherwise. Thus, priority claims usually must be paid in full under the plan.

If the plan has been fully performed and no objections to discharge have been filed, most courts will not hold a discharge hearing. This is a practical attempt to accelerate the case and streamline the court's work load. Once the Plan has been fully performed and no objections to the discharge are filed, the granting of the discharge is just a ministerial act that does not really need a hearing or attendance by the debtor. The courts that do require attendance at the hearing (consult local rules) do so more to instill the solemnity of the event in the debtor than for any practical or legal purpose. When no hearing is required because the Plan has been fully performed, the debtor is simply mailed an order stating that the final discharge is granted. The case is over

for all intents and purposes.

II. FAILURE TO COMPLETE THE PLAN

In many cases, a debtor is simply unable to complete the Plan as it was originally approved. The debtor is not permitted to receive a complete discharge because the Plan has not been fully performed. The questions that the debtor must answer are: "What do I do next?" "What are my options?" In fact, when the debtor is unable to complete the Plan, he has three options available. The debtor may (1) dismiss the case, (2) convert the Chapter 13 proceeding into a Chapter 7 proceeding or (3) seek a partial Chapter 13 discharge.

A. DISMISSAL OF THE CASE

When the debtor fails to complete the Chapter 13 Plan, the Bankruptcy Code permits the debtor to dismiss the case voluntarily. In addition, the Bankruptcy Code also permits the creditors, to seek an involuntary dismissal. The debtor can dismiss the case and be treated by the creditors as though the debtor had never filed a bankruptcy petition. The debtor will owe the creditors the entire amount that would have been owed had the Chapter 13 petition never been filed (after taking into account any payments that were made through the Plan). This alternative is seldom pursued in a Chapter 13 proceeding. Usually when this alternative is executed, it is because the debtor never really intended to complete the Plan and was only looking for a breathing space under the Automatic Stay.

Such a debtor always intended to pay his debts but merely needed time to reorganize without creditor interruption. This has often occurred where a home or other real property was being foreclosed at the same time that the debtor was attempting to sell it. The debtor would dismiss the petition, complete the sale and then pay the creditors when a buyer was found.

Dismissal of the Petition is covered under Section 1307. Court approval must be obtained to have a dismissal of the Petition. A debtor under Section 1307(b) has an absolute right to dismiss a case at any time that has not been converted to a Chapter 7. Section 1307(b) reads as follows:

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

Under Section 1307(b) the debtor has an absolute right to dismiss the Chapter 13 case at any time provided the case has not been converted into a Chapter 7 proceeding. The debtor files a motion to dismiss under Section 1307(b) with notice to the trustee to obtain the dismissal. Since the debtor has an absolute right to dismiss, local rules should be consulted to determine if a hearing will be held on the motion or if it will be granted automatically.

Under Section 1307(c) any party in interest, which means any creditor or the trustee, can file a motion with the court seeking an order involuntarily dismissing the Petition or converting it

into a Chapter 7 proceeding. Once the motion is filed, the clerk will set a hearing and notice will be given to all creditors, the debtor and the trustee. Upon a hearing on the motion, the court will render its decision on whether to grant or deny the motion. Under Section 1307(c) the grounds for involuntarily dismissing a petition or converting into a Chapter 7 petition are limited to:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of conformation under section 1330 of this title and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States Trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (2) of section 521; or
- (10) only on request of the United States Trustee, failure to timely file the information required by paragraph (2) of section 521.

Unless one of the above grounds are satisfied, neither a creditor not the trustee can obtain an order involuntarily dismissing the debtor's Chapter 13 case or converting it into a Chapter 7 petition.

Following this chapter is a sample motion for a debtor to dismiss a Chapter 13 Petition under section 1307(b).

B. CONVERSION OF A CHAPTER 13 CASE INTO A CHAPTER 7 CASE

The second alternative for the debtor when he cannot complete the Plan is to convert the Plan into a Chapter 7 case. **A warning however is that in order to convert to a Chapter 7 first and foremost the debtor must meet the new means test imposed under the Bankruptcy Reform Act of 2005.** In which case, the debtor could have filed for Chapter 7 relief from the very beginning. Under the 2005 Act only if a debtor meets the means test will the debtor be able to convert a Chapter 13 case into a Chapter 7 case.

When a Chapter 13 case is converted to a Chapter 7 case, the debtor's estate will be liquidated and the creditors paid in accordance with the bankruptcy law pertaining to Chapter 7 cases. The assets in the estate, to the extent that they are not exempt, will be liquidated by the trustee and paid to the secured and unsecured creditors. The debtor will lose all of the nonexempt assets in the estate and receive a Chapter 7 discharge.

The conversion of a Chapter 13 case into a Chapter 7 case will automatically terminate the services of a Chapter 13 trustee. A new trustee will be appointed by the court to handle the Chapter 7 case. In most instances, the Chapter 13 trustee is reappointed as the new Chapter 7 trustee but the appointment is not automatic. The former Chapter 13 trustee must turn over all records of the case to

the newly appointed Chapter 7 trustee and file a final report with the court within 30 days of the case's conversion.

Under Bankruptcy Rule 1019(5), when a debtor converts a Chapter 13 into a Chapter 7 case after the confirmation of the Chapter 13 Plan, the debtor is required to file certain amended schedules with the court. Besides others, a schedule of assets acquired since the original filing of the Chapter 13 Petition, postpetition debts not previously reported and any executory contracts and unexpired leases entered after filing the original petition must be filed.

All creditor claims previously filed in the Chapter 13 case will be deemed filed in the Chapter 7 case as well. This conversion establishes new time periods for filing of claims, filing of complaints for the dischargeability of debts and filing of objections to discharges. All schedules and inventories previously filed by the debtor in the Chapter 13 case are deemed filed in the new Chapter 7 case. In a conversion to a Chapter 7 case, the debtor must file a Statement of Intention within 30 days of the conversion or the first meeting of creditors whichever is earlier. The Statement of Intention will state on what exempt property, if any, the debtor intends to avoid a judicial lien or redeem by paying fair market value. Also debts which the debtor intends to reaffirm will be listed in the Statement of Intention.

More information on the effects of a Chapter 7 bankruptcy can

be obtained by reading the companion book Chapter 7 Bankruptcy by these authors.

Following this chapter is a sample motion for the conversion of a Chapter 13 case into a Chapter 7 case. The motion must be served on the trustee (see Chapter 9 for the form of the Proof of Service to be used). Usually no hearing is held on a motion to convert a Chapter 13 case into a Chapter 7 because the right of the debtor to do so is absolute. Local rules should be consulted on this issue.

C. RECEIVING A PARTIAL DISCHARGE UNDER SECTION 1328(B)

The third and most popular alternative is for the debtor to seek a partial discharge of the case under Section 1328(b). A partial discharge relieves the debtor of all debts except for:

1. Secured debts (debts secured by collateral or liens).
2. Debts paid outside of the plan and not a part of the plan.
3. Instalment debts whose last payment is due after the completion of the plan.
4. Debts incurred while the plan was in effect.
5. Debts not dischargeable under Chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts.

Section 1328(b) reads as follows:

(b) At any time after the confirmation of the Plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the Plan only if;

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the Plan, of property actually distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the Plan under section 1329 of this title is not practicable.

A partial discharge under Section 1328(b) will only be granted when the debtor, through no fault of the debtor, was unable to complete the Plan, modification of the Plan (as discussed in chapter 11) is not feasible and the unsecured creditors have received at least as much as they would have received had the debtor originally filed a Chapter 7 petition. If the debtor had paid the unsecured creditors more than they would have gotten had the debtor filed a Chapter 7 petition, the discharge can be granted even though more payments are still due under the Chapter 13 Plan. The unsecured creditors must always receive at least as much as they would have received had the debtor filed a Chapter 7 petition before the debtor can receive any Chapter 13 discharge regardless of whether it is a full discharge or a partial discharge.

To obtain a Section 1328(b) discharge, the debtor must file a motion requesting a partial discharge. At least 30 days notice

must be given to the creditors for their filing any objections to the partial discharge. A hearing is then held on the granting of the discharge. If no complaint is filed against the discharge, the debtor usually does not have to appear. If a complaint is filed, the debtor must appear. To receive a Section 1328(b) discharge, the debtor must have paid each unsecured creditor at least as much as the creditor would have received had the debtor filed a Chapter 7 Petition instead of the Chapter 13 Petition.

A partial discharge under Chapter 13 is not as broad as a Chapter 7 discharge. Some debts that could be discharged under a Chapter 7 bankruptcy and would be discharged under a full Chapter 13 discharge will not be discharged under a partial Chapter 7 bankruptcy. If the debtor has debts dischargeable under a Chapter 7 discharge but not under a partial Chapter 13 discharge, the debtor should consider converting the case into a Chapter 7 case. In deciding whether to convert the case, the debtor must determine whether he has any nonexempt property that would be lost in a liquidation under a Chapter 7 case. Following this chapter is a sample motion for seeking a partial discharge under Section 1328(b).

1
2
3 UNITED STATES BANKRUPTCY COURT4 _____ DISTRICT OF _____
56 IN RE:) CASE NUMBER:
7 JOHN LESTER SMITH and)
8 JANE ALICE SMITH) CHAPTER 13

9 MOTION TO DISMISS THE CHAPTER 13 PETITION

10 UNDER SECTION 1307(B)
1112 The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
13 declare as follows:14 1. A voluntary petition for relief under Chapter 13 of Title 11
15 of the United States Code has been properly filed in the above entitled
16 case.17 2. This Court approved and confirmed the Debtors Plan under
18 Chapter 13 on December 15, 1992.19 3. This motion is brought under the provisions of 11 U.S.C.
20 Section 1307(b) of the Bankruptcy Code.21 4. Since the confirmation of the Plan, the debtors have become
22 unable to complete the requirements of their Chapter 13 Plan as
23 confirmed by this Court.

24 5. The debtors do not wish to modify the Plan.

25 6. This case is not a Chapter 7 case which was converted into a
26 Chapter 13 case.27 7. Under Section 1307(b) of the Bankruptcy Code, the debtors are
28 permitted to dismiss their case at any time. The debtor therefore moves

1 for an order of this Court that an order be issued dismissing their
2 Chapter 13 case.

3 WHEREFORE, the Debtors respectfully request, pursuant to Rule
4 1017(d) of the Rules of Bankruptcy Procedure, that an order be entered
5 dismissing the Debtors' Chapter 13 case and closing the estate
6 forthwith.

7
8 DATED: January 15, 1993

JOHN LESTER SMITH
DEBTOR

10
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12 _____
JANE ALICE SMITH
DEBTOR
504 C LOW GAP ROAD
UKIAH, CA. 95482
14 (717) 468-0268
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH)
) CHAPTER 13
)

MOTION TO CONVERT CHAPTER 13 CASE TO A CHAPTER 7 CASE
UNDER SECTION 1307(a)

The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
declare as follows:

1. A voluntary petition for relief under Chapter 13 of Title 11
of the United States Code has been properly filed in the above-entitled
case.

2. This Court approved and confirmed the Debtors Plan under
Chapter 13 on December 15, 1992.

3. This motion is brought under the provisions of 11 U.S.C.
Section 1307(a) of the Bankruptcy Code.

4. Since the confirmation of the Plan, the debtors have become
unable to complete the requirements of their Chapter 13 Plan as
confirmed by this Court.

5. The debtors do not wish to modify the Plan.

6. Under Section 1307(a) of the Bankruptcy Code, the debtors are
permitted to convert their Chapter 13 case to a Chapter 7 case at any
time. The debtor therefore moves for an order of this Court that an
order be issued converting their Chapter 13 case into a Chapter 7 case.

1 WHEREFORE, the Debtors respectfully request, pursuant to Rule
2 1017(d) of the Rules of Bankruptcy Procedure, that an order be entered
3 converting the Debtors' Chapter 13 case into a Chapter 7 case forthwith.
4

5 DATED: January 15, 1993

JOHN LESTER SMITH
DEBTOR

8

9 JANE ALICE SMITH
DEBTOR
10 504 C LOW GAP ROAD
11 UKIAH, CA. 95482
12 (717) 468-0268
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH)
) CHAPTER 13

MOTION FOR A PARTIAL DISCHARGE UNDER SECTION 1328(b)

The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
declare as follows:

1. A voluntary petition for relief under Chapter 13 of Title 11
of the United States Code has been properly filed in the above-entitled
case.

2. This Court approved and confirmed the Debtors Plan under
Chapter 13 on December 15, 1992.

3. This motion is brought under the provisions of 11 U.S.C.
Section 1328(b) of the Bankruptcy Code.

4. Since the confirmation of the Plan, the debtors have become
unable to complete the requirements of their Chapter 13 Plan as
confirmed by this Court.

5. The Debtors' failure to complete such payments is due to
circumstances for which the debtor should not justly be held
accountable, to wit: the debtor John Lester Smith has suffered a back
injury which makes it impossible for him to continue working as before

1 and making the payments mandated under the Plan.

2 6. The unsecured creditors of the debtors have received no less
3 than the amount that would have been paid on their claims if the estate
4 of the debtors had been liquidated under Chapter 7 of the Bankruptcy
5 Code.

6 7. The modification of the Chapter 13 Plan is not practicable
7 given the Debtors' present condition.

8
9 WHEREFORE, the Debtors respectfully request, pursuant to Rule
10 1017(d) of the Rules of Bankruptcy Procedure, that an order be issued
11 granting a partial discharge under section 1328(b).

12
13 DATED: January 15, 1993

14 JOHN LESTER SMITH
DEBTOR

15
16 _____
JANE ALICE SMITH
DEBTOR
504 C LOW GAP ROAD
17 UKIAH, CA. 95482
18 (717) 468-0268
19
20
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CHAPTER 12

DISCHARGE

Congratulations! When a person has reached this point, the hard parts are over. When the Judge swings his gavel the case is over. It is the rare bankruptcy case that will have anything else occur after the bankruptcy. The debtor has had to go through the meeting of creditors, prepare a Plan, go through a Confirmation Hearing and other hearings to decide whether or not any complaints to set aside the automatic stay and any motions regarding exceptions or objections to the debtor's discharge should be granted

I. WHEN THE PLAN HAS BEEN FULLY PERFORMED

A complete Chapter 13 discharge (one granted when the Plan has been fully performed) is granted under Section 1328 (a) and is broader than a Chapter 7 discharge. A discharge under section 1328(a) discharges the debtor from all but:

1. Any debt not covered in the plan.
2. Debts for alimony or spousal support.
3. Student loans unless grounds for discharge are met.
4. Debts resulting from injuries caused while driving intoxicated.
5. Restitution for criminal offenses.
6. Debts for which the last payment is due after the date of the final payment of the Plan.
7. Postpetition debts that were not allowed under Section

1305 and allowed postpetition consumer debts, the prior trustee approval of which was practicable but not obtained.

8. Priority claims, (including tax claims, refund claims, wage claims, salaries, commissions and employee benefits), are dischargeable. Section 1322(a)(2) priority claims must be paid in full under the plan unless the creditor agrees otherwise. Thus, priority claims usually must be paid in full under the plan.

If the plan has been fully performed and no objections to discharge have been filed, most courts will not hold a discharge hearing. This is a practical attempt to accelerate the case and streamline the court's work load. Once the Plan has been fully performed and no objections to the discharge are filed, the granting of the discharge is just a ministerial act that does not really need a hearing or attendance by the debtor. The courts that do require attendance at the hearing (consult local rules) do so more to instill the solemnity of the event in the debtor than for any practical or legal purpose. When no hearing is required because the Plan has been fully performed, the debtor is simply mailed an order stating that the final discharge is granted. The case is over for all intents and purposes.

II. FAILURE TO COMPLETE THE PLAN

In many cases, a debtor is simply unable to complete the Plan as it was originally approved. The debtor is not permitted to

receive a complete discharge because the Plan has not been fully performed. The questions that the debtor must answer are: "What do I do next?" "What are my options?" In fact, when the debtor is unable to complete the Plan, he has three options available. The debtor may (1) dismiss the case, (2) convert the Chapter 13 proceeding into a Chapter 7 proceeding or (3) seek a partial Chapter 13 discharge.

A. DISMISSAL OF THE CASE

When the debtor fails to complete the Chapter 13 Plan, the Bankruptcy Code permits the debtor to dismiss the case voluntarily. In addition, the Bankruptcy Code also permits the creditors, to seek an involuntary dismissal. The debtor can dismiss the case and be treated by the creditors as though the debtor had never filed a bankruptcy petition. The debtor will owe the creditors the entire amount that would have been owed had the Chapter 13 petition never been filed (after taking into account any payments that were made through the Plan). This alternative is seldom pursued in a Chapter 13 proceeding. Usually when this alternative is executed, it is because the debtor never really intended to complete the Plan and was only looking for a breathing space under the Automatic Stay. Such a debtor always intended to pay his debts but merely needed time to reorganize without creditor interruption. This has often occurred where a home or other real property was being foreclosed at the same time that the debtor was attempting to sell it. The debtor would dismiss the petition, complete the sale and then pay

the creditors when a buyer was found.

Dismissal of the Petition is covered under Section 1307. Court approval must be obtained to have a dismissal of the Petition. A debtor under Section 1307(b) has an absolute right to dismiss a case at any time that has not been converted to a Chapter 7. Section 1307(b) reads as follows:

(b) On request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter. Any waiver of the right to dismiss under this subsection is unenforceable.

Under Section 1307(b) the debtor has an absolute right to dismiss the Chapter 13 case at any time provided the case has not been converted into a Chapter 7 proceeding. The debtor files a motion to dismiss under Section 1307(b) with notice to the trustee to obtain the dismissal. Since the debtor has an absolute right to dismiss, local rules should be consulted to determine if a hearing will be held on the motion or if it will be granted automatically.

Under Section 1307(c) any party in interest, which means any creditor or the trustee, can file a motion with the court seeking an order involuntarily dismissing the Petition or converting it into a Chapter 7 proceeding. Once the motion is filed, the clerk will set a hearing and notice will be given to all creditors, the debtor and the trustee. Upon a hearing on the motion, the court will render its decision on whether to grant or deny the motion. Under Section 1307(c) the grounds for involuntarily dismissing a petition or converting into a Chapter 7 petition are limited to:

- (1) unreasonable delay by the debtor that is prejudicial to creditors;
- (2) nonpayment of any fees and charges required under chapter 123 of title 28;
- (3) failure to file a plan timely under section 1321 of this title;
- (4) failure to commence making timely payments under section 1326 of this title;
- (5) denial of confirmation of a plan under section 1325 of this title and denial of a request made for additional time for filing another plan or modification of a plan;
- (6) material default by the debtor with respect to a term of a confirmed plan;
- (7) revocation of the order of conformation under section 1330 of this title and denial of confirmation of a modified plan under section 1329 of this title;
- (8) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan other than completion of payments under the plan;
- (9) only on request of the United States Trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by paragraph (2) of section 521; or
- (10) only on request of the United States Trustee, failure to timely file the information required by paragraph (2) of section 521.

Unless one of the above grounds are satisfied, neither a creditor not the trustee can obtain an order involuntarily dismissing the debtor's Chapter 13 case or converting it into a Chapter 7 petition.

Following this chapter is a sample motion for a debtor to dismiss a Chapter 13 Petition under section 1307(b).

B. CONVERSION OF A CHAPTER 13 CASE INTO A CHAPTER 7 CASE

The second alternative for the debtor when he cannot complete the Plan is to convert the Plan into a Chapter 7 case. A debtor has the right to convert a Chapter 13 case into a Chapter 7 case at any

time. Section 1307(a) reads as follows:

(a) The debtor may convert a case under this chapter to a case under Chapter 7 of this title at any time. Any waiver of the right to convert under subsection is unenforceable.

When a Chapter 13 case is converted to a Chapter 7 case, the debtor's estate will be liquidated and the creditors paid in accordance with the bankruptcy law pertaining to Chapter 7 cases. The assets in the estate, to the extent that they are not exempt, will be liquidated by the trustee and paid to the secured and unsecured creditors. The debtor will lose all of the nonexempt assets in the estate and receive a Chapter 7 discharge.

The conversion of a Chapter 13 case into a Chapter 7 case will automatically terminate the services of a Chapter 13 trustee. A new trustee will be appointed by the court to handle the Chapter 7 case. In most instances, the Chapter 13 trustee is reappointed as the new Chapter 7 trustee but the appointment is not automatic. The former Chapter 13 trustee must turn over all records of the case to the newly appointed Chapter 7 trustee and file a final report with the court within 30 days of the case's conversion.

Under Bankruptcy Rule 1019(5), when a debtor converts a Chapter 13 into a Chapter 7 case after the confirmation of the Chapter 13 Plan, the debtor is required to file certain amended schedules with the court. Besides others, a schedule of assets acquired since the original filing of the Chapter 13 Petition, postpetition debts not previously reported and any executory contracts and unexpired leases entered after filing the original

petition must be filed.

All creditor claims previously filed in the Chapter 13 case will be deemed filed in the Chapter 7 case as well. This conversion establishes new time periods for filing of claims, filing of complaints for the dischargeability of debts and filing of objections to discharges. All schedules and inventories previously filed by the debtor in the Chapter 13 case are deemed filed in the new Chapter 7 case. In a conversion to a Chapter 7 case, the debtor must file a Statement of Intention within 30 days of the conversion or the first meeting of creditors whichever is earlier. The Statement of Intention will state on what exempt property, if any, the debtor intends to avoid a judicial lien or redeem by paying fair market value. Also debts which the debtor intends to reaffirm will be listed in the Statement of Intention.

More information on the effects of a Chapter 7 bankruptcy can be obtained by reading the companion book Chapter 7 Bankruptcy by these authors.

Following this chapter is a sample motion for the conversion of a Chapter 13 case into a Chapter 7 case. The motion must be served on the trustee (see Chapter 9 for the form of the Proof of Service to be used). Usually no hearing is held on a motion to convert a Chapter 13 case into a Chapter 7 because the right of the debtor to do so is absolute. Local rules should be consulted on this issue.

C. RECEIVING A PARTIAL DISCHARGE UNDER SECTION 1328(B)

The third and most popular alternative is for the debtor to seek a partial discharge of the case under Section 1328(b). A partial discharge relieves the debtor of all debts except for:

1. Secured debts (debts secured by collateral or liens).
2. Debts paid outside of the plan and not a part of the plan.
3. Instalment debts whose last payment is due after the completion of the plan.
4. Debts incurred while the plan was in effect.
5. Debts not dischargeable under Chapter 7.

In a partial discharge, the debtor is released from the obligation to pay the discharged debts.

Section 1328(b) reads as follows:

(b) At any time after the confirmation of the Plan and after notice and a hearing, the court may grant a discharge to a debtor that has not completed payments under the Plan only if;

(1) the debtor's failure to complete such payments is due to circumstances for which the debtor should not justly be held accountable;

(2) the value, as of the effective date of the Plan, of property actually distributed under the Plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

(3) modification of the Plan under section 1329 of this title is not practicable.

A partial discharge under Section 1328(b) will only be granted when the debtor, through no fault of the debtor, was unable to complete

the Plan, modification of the Plan (as discussed in chapter 11) is not feasible and the unsecured creditors have received at least as much as they would have received had the debtor originally filed a Chapter 7 petition. If the debtor had paid the unsecured creditors more than they would have gotten had the debtor filed a Chapter 7 petition, the discharge can be granted even though more payments are still due under the Chapter 13 Plan. The unsecured creditors must always receive at least as much as they would have received had the debtor filed a Chapter 7 petition before the debtor can receive any Chapter 13 discharge regardless of whether it is a full discharge or a partial discharge.

To obtain a Section 1328(b) discharge, the debtor must file a motion requesting a partial discharge. At least 30 days notice must be given to the creditors for their filing any objections to the partial discharge. A hearing is then held on the granting of the discharge. If no complaint is filed against the discharge, the debtor usually does not have to appear. If a complaint is filed, the debtor must appear. To receive a Section 1328(b) discharge, the debtor must have paid each unsecured creditor at least as much as the creditor would have received had the debtor filed a Chapter 7 Petition instead of the Chapter 13 Petition.

A partial discharge under Chapter 13 is not as broad as a Chapter 7 discharge. Some debts that could be discharged under a Chapter 7 bankruptcy and would be discharged under a full Chapter 13 discharge will not be discharged under a partial Chapter 7

bankruptcy. If the debtor has debts dischargeable under a Chapter 7 discharge but not under a partial Chapter 13 discharge, the debtor should consider converting the case into a Chapter 7 case. In deciding whether to convert the case, the debtor must determine whether he has any nonexempt property that would be lost in a liquidation under a Chapter 7 case. Following this chapter is a sample motion for seeking a partial discharge under Section 1328(b).

1
2
3 UNITED STATES BANKRUPTCY COURT4 _____ DISTRICT OF _____
56 IN RE:) CASE NUMBER:
7 JOHN LESTER SMITH and)
8 JANE ALICE SMITH)
9) CHAPTER 13

10 MOTION TO DISMISS THE CHAPTER 13 PETITION

11 UNDER SECTION 1307(B)
1213 The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
14 declare as follows:15 1. A voluntary petition for relief under Chapter 13 of Title 11
16 of the United States Code has been properly filed in the above entitled
17 case.18 2. This Court approved and confirmed the Debtors Plan under
19 Chapter 13 on December 15, 1992.20 3. This motion is brought under the provisions of 11 U.S.C.
21 Section 1307(b) of the Bankruptcy Code.22 4. Since the confirmation of the Plan, the debtors have become
23 unable to complete the requirements of their Chapter 13 Plan as
24 confirmed by this Court.

25 5. The debtors do not wish to modify the Plan.

26 6. This case is not a Chapter 7 case which was converted into a
27 Chapter 13 case.28 7. Under Section 1307(b) of the Bankruptcy Code, the debtors are
permitted to dismiss their case at any time. The debtor therefore moves

1 for an order of this Court that an order be issued dismissing their
2 Chapter 13 case..

3 WHEREFORE, the Debtors respectfully request, pursuant to Rule
4 1017(d) of the Rules of Bankruptcy Procedure, that an order be entered
5 dismissing the Debtors' Chapter 13 case and closing the estate
6 forthwith.

7
8 DATED: January 15, 1993

JOHN LESTER SMITH
DEBTOR

10
11 _____
12 JANE ALICE SMITH
13 DEBTOR
14 504 C LOW GAP ROAD
15 UKIAH, CA. 95482
16 (717) 468-0268
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UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH)
) CHAPTER 13
)

MOTION TO CONVERT CHAPTER 13 CASE TO A CHAPTER 7 CASE
UNDER SECTION 1307(a)

The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
declare as follows:

1. A voluntary petition for relief under Chapter 13 of Title 11
of the United States Code has been properly filed in the above-entitled
case.

2. This Court approved and confirmed the Debtors Plan under
Chapter 13 on December 15, 1992.

3. This motion is brought under the provisions of 11 U.S.C.
Section 1307(a) of the Bankruptcy Code.

4. Since the confirmation of the Plan, the debtors have become
unable to complete the requirements of their Chapter 13 Plan as
confirmed by this Court.

5. The debtors do not wish to modify the Plan.

6. Under Section 1307(a) of the Bankruptcy Code, the debtors are
permitted to convert their Chapter 13 case to a Chapter 7 case at any
time. The debtor therefore moves for an order of this Court that an
order be issued converting their Chapter 13 case into a Chapter 7 case.

1 WHEREFORE, the Debtors respectfully request, pursuant to Rule
2 1017(d) of the Rules of Bankruptcy Procedure, that an order be entered
3 converting the Debtors' Chapter 13 case into a Chapter 7 case forthwith.
4

5 DATED: January 15, 1993

JOHN LESTER SMITH
DEBTOR

8

JANE ALICE SMITH
DEBTOR
504 C LOW GAP ROAD
UKIAH, CA. 95482
(717) 468-0268

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

IN RE:) CASE NUMBER:
JOHN LESTER SMITH and)
JANE ALICE SMITH)
CHAPTER 13

MOTION FOR A PARTIAL DISCHARGE UNDER SECTION 1328(b)

The debtors, JOHN LESTER SMITH and JANE ALICE SMITH, respectfully
declare as follows:

1. A voluntary petition for relief under Chapter 13 of Title 11
of the United States Code has been properly filed in the above-entitled
case.

2. This Court approved and confirmed the Debtors Plan under
Chapter 13 on December 15, 1992.

3. This motion is brought under the provisions of 11 U.S.C.
Section 1328(b) of the Bankruptcy Code.

4. Since the confirmation of the Plan, the debtors have become
unable to complete the requirements of their Chapter 13 Plan as
confirmed by this Court.

5. The Debtors' failure to complete such payments is due to
circumstances for which the debtor should not justly be held
accountable, to wit: the debtor John Lester Smith has suffered a back
injury which makes it impossible for him to continue working as before

1 and making the payments mandated under the Plan.

2 6. The unsecured creditors of the debtors have received no less
3 than the amount that would have been paid on their claims if the estate
4 of the debtors had been liquidated under Chapter 7 of the Bankruptcy
5 Code.

6 7. The modification of the Chapter 13 Plan is not practicable
7 given the Debtors' present condition.

8
9 WHEREFORE, the Debtors respectfully request, pursuant to Rule
10 1017(d) of the Rules of Bankruptcy Procedure, that an order be issued
11 granting a partial discharge under section 1328(b).

12
13 DATED: January 15, 1993

14 JOHN LESTER SMITH
DEBTOR

15
16 _____
JANE ALICE SMITH
DEBTOR
504 C LOW GAP ROAD
UKIAH, CA. 95482
18 (717) 468-0268
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Voluntary Petition <i>(This page must be completed and filed in every case)</i>		Name of Debtor(s):	
Prior Bankruptcy Case Filed Within Last 8 Years (If more than one, attach additional sheet)			
Location Where Filed:		Case Number:	Date Filed:
Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)			
Name of Debtor:		Case Number:	Date Filed:
District:		Relationship:	Judge:
<div style="text-align: center;">Exhibit A</div> <p>(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11.)</p> <p><input type="checkbox"/> Exhibit A is attached and made a part of this petition.</p>		<div style="text-align: center;">Exhibit B</div> <p>(To be completed if debtor is an individual whose debts are primarily consumer debts.)</p> <p>I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter. I further certify that I delivered to the debtor the notice required by § 342(b) of the Bankruptcy Code.</p> <p style="text-align: center;">X _____</p> <p style="text-align: center;">Signature of Attorney for Debtor(s) Date</p>	
<div style="text-align: center;">Exhibit C</div> <p>Does the debtor own or have possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health or safety?</p> <p><input type="checkbox"/> Yes, and Exhibit C is attached and made a part of this petition.</p> <p><input type="checkbox"/> No</p>		<div style="text-align: center;">Certification Concerning Debt Counseling by Individual/Joint Debtor(s)</div> <p><input type="checkbox"/> I/we have received approved budget and credit counseling during the 180-day period preceding the filing of this petition.</p> <p><input type="checkbox"/> I/we request a waiver of the requirement to obtain budget and credit counseling prior to filing based on exigent circumstances. (Must attach certification describing.)</p>	
Information Regarding the Debtor (Check the Applicable Boxes)			
Venue (Check any applicable box)			
<input type="checkbox"/> Debtor has been domiciled or has had a residence, principal place of business, or principal assets in this District for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other District.			
<input type="checkbox"/> There is a bankruptcy case concerning debtor's affiliate, general partner, or partnership pending in this District.			
<input type="checkbox"/> Debtor is a debtor in a foreign proceeding and has its principal place of business or principal assets in the United States in this District, or has no principal place of business or assets in the United States but is a defendant in an action or proceeding [in a federal or state court] in this District, or the interests of the parties will be served in regard to the relief sought in this District.			
Statement by a Debtor Who Resides as a Tenant of Residential Property <i>Check all applicable boxes.</i>			
<input type="checkbox"/> Landlord has a judgment against the debtor for possession of debtor's residence. (If box checked, complete the following.)			
_____ (Name of landlord that obtained judgment)			
_____ (Address of landlord)			
<input type="checkbox"/> Debtor claims that under applicable nonbankruptcy law, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after the judgment for possession was entered, and			
<input type="checkbox"/> Debtor has included in this petition the deposit with the court of any rent that would become due during the 30-day period after the filing of the petition.			

Voluntary Petition*(This page must be completed and filed in every case)*

Name of Debtor(s):

Signatures**Signature(s) of Debtor(s) (Individual/Joint)**

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

[If no attorney represents me and no bankruptcy petition preparer signs the petition] I have obtained and read the notice required by § 342(b) of the Bankruptcy Code.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Debtor

X _____
Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of a Foreign Representative

I declare under penalty of perjury that the information provided in this petition is true and correct, that I am the foreign representative of a debtor in a foreign proceeding, and that I am authorized to file this petition.

(Check only one box.)

☐ I request relief in accordance with chapter 15 of title 11, United States Code. Certified copies of the documents required by § 1515 of title 11 are attached.

☐ Pursuant to § 1511 of title 11, United States Code, I request relief in accordance with the chapter of title 11 specified in this petition. A certified copy of the order granting recognition of the foreign main proceeding is attached.

X _____
(Signature of Foreign Representative)

(Printed Name of Foreign Representative)

Date

Signature of Attorney

X _____
Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Non-Attorney Bankruptcy Petition Preparer

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section. Official Form 19B is attached.

Printed Name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address

X _____

Date

Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose social security number is provided above.

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X _____
Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit "A"

[If debtor is required to file periodic reports (*e.g.*, forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

[Caption as in Form 16B]

Exhibit "A" to Voluntary Petition

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is _____.

2. The following financial data is the latest available information and refers to the debtor's condition on _____.

a. Total assets \$ _____

b. Total debts (including debts listed in 2.c., below) \$ _____

Approximate
number of
holders

c. Debt securities held by more than 500 holders.

secured / /	unsecured / /	subordinated / /	\$ _____	_____
-------------	---------------	------------------	----------	-------

secured / /	unsecured / /	subordinated / /	\$ _____	_____
-------------	---------------	------------------	----------	-------

secured / /	unsecured / /	subordinated / /	\$ _____	_____
-------------	---------------	------------------	----------	-------

secured / /	unsecured / /	subordinated / /	\$ _____	_____
-------------	---------------	------------------	----------	-------

secured / /	unsecured / /	subordinated / /	\$ _____	_____
-------------	---------------	------------------	----------	-------

d. Number of shares of preferred stock _____

e. Number of shares common stock _____

Comments, if any: _____

3. Brief description of debtor's business: _____

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:

Exhibit "C"

[If, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety, attach this Exhibit "C" to the petition.]

[Caption as in Form 16B]

Exhibit "C" to Voluntary Petition

1. Identify and briefly describe all real or personal property owned by or in possession of the debtor that, to the best of the debtor's knowledge, poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

2. With respect to each parcel of real property or item of personal property identified in question 1, describe the nature and location of the dangerous condition, whether environmental or otherwise, that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety (attach additional sheets if necessary):

.....
.....
.....
.....

United States Bankruptcy Court

District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

APPLICATION TO PAY FILING FEE IN INSTALLMENTS

1. In accordance with Fed. R. Bankr. P. 1006, I apply for permission to pay the filing fee amounting to \$_____ in installments.
2. I am unable to pay the filing fee except in installments.
3. Until the filing fee is paid in full, I will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.
4. I propose the following terms for the payment of the Filing Fee.*

\$_____ Check one ☐ With the filing of the petition, or
☐ On or before _____

\$_____ on or before _____

\$_____ on or before _____

\$_____ on or before _____

* The number of installments proposed shall not exceed four (4), and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition. Fed. R. Bankr. P. 1006(b)(2).

5. I understand that if I fail to pay any installment when due, my bankruptcy case may be dismissed and I may not receive a discharge of my debts.

Signature of Attorney Date

Signature of Debtor Date
(In a joint case, both spouses must sign.)

Name of Attorney

Signature of Joint Debtor (if any) Date

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section; and (4) I will not accept any additional money or other property from the debtor before the filing fee is paid in full.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social Security No. (Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.

Address

x _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person. A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court
_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

ORDER APPROVING PAYMENT OF FILING FEE IN INSTALLMENTS

☐ IT IS ORDERED that the debtor(s) may pay the filing fee in installments on the terms proposed in the foregoing application.

☐ IT IS ORDERED that the debtor(s) shall pay the filing fee according to the following terms:

\$ _____ Check one ☐ With the filing of the petition, or
☐ On or before _____

\$ _____ on or before _____

\$ _____ on or before _____

\$ _____ on or before _____

☐ IT IS FURTHER ORDERED that until the filing fee is paid in full the debtor(s) shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

BY THE COURT

Date: _____

United States Bankruptcy Judge

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE
IN FULL OR IN INSTALLMENTS**

The court fee for filing a case under chapter 7 of the Bankruptcy Code is \$274.

If you cannot afford to pay the full fee at the time of filing, you may apply to pay the fee in installments. A form, which is available from the bankruptcy clerk's office, must be completed to make that application. If your application to pay in installments is approved, you will be permitted to file your petition, completing payment of the fee over the course of four to six months.

If you cannot afford to pay the fee either in full at the time of filing or in installments, then you may request a waiver of the filing fee by completing this application and filing it with the Clerk of Court. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is less than 150 percent of the official poverty line applicable to your family size and you are unable to pay the fee in installments. You may obtain information about the poverty guidelines at www.uscourts.gov or in the bankruptcy clerk's office.

Required information. Complete all items in the application, and attach requested schedules. Then sign the application on the last page. If you and your spouse are filing a joint bankruptcy petition, you both must provide information as requested and sign the application.

In re: _____
Debtor(s)

Case No. _____
(if known)

**APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE
FOR INDIVIDUALS WHO CANNOT PAY THE FILING FEE IN FULL OR IN INSTALLMENTS**

Part A. Family Size and Income

1. Including yourself, your spouse, and dependents you have listed or will list on Schedule I (Current Income of Individual Debtors(s)), how many people are in your family? (Do not include your spouse if you are separated AND are not filing a joint petition.) _____
2. Restate the following information that you provided, or will provide, on Line 16 of Schedule I. Attach a completed copy of Schedule I, if it is available.

Total Combined Monthly Income (Line 16 of Schedule I): \$ _____

3. State the monthly net income, if any, of dependents included in Question 1 above. Do not include any income already reported in Item 2. If none, enter \$0.

\$ _____

4. Add the "Total Combined Monthly Income" reported in Question 2 to your dependents' monthly net income from Question 3.

\$ _____

5. Do you expect the amount in Question 4 to increase or decrease by more than 10% during the next 6 months? Yes ___ No ___

If yes, explain.

Part B: Monthly Expenses

6. EITHER (a) attach a completed copy of Schedule J (Schedule of Monthly Expenses), and state your total monthly expenses reported on Line 18 of that Schedule, OR (b) if you have not yet completed Schedule J, provide an estimate of your total monthly expenses.

\$ _____

7. Do you expect the amount in Question 6 to increase or decrease by more than 10% during the next 6 months? Yes ___ No ___

If yes, explain.

Part C. Real and Personal Property

EITHER (1) attach completed copies of Schedules A (Real Property) and Schedule B (Personal Property), OR (2) if you have not yet completed those schedules, answer the following questions.

8. State the amount of cash you have on hand: \$ _____

9. State below any money you have in savings, checking, or other accounts in a bank or other financial institution.

Bank or Other Financial Institution:	Type of Account such as savings, checking, CD:	Amount:
_____	_____	\$ _____
_____	_____	\$ _____

10. State below the assets owned by you. **Do not list ordinary household furnishings and clothing.**

Home	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Other real estate	Address: _____ _____	Value: \$ _____ Amount owed on mortgages and liens: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Motor vehicle	Model/Year: _____ _____	Value: \$ _____ Amount owed: \$ _____
Other	Description _____ _____	Value: \$ _____ Amount owed: \$ _____

11. State below any person, business, organization, or governmental unit that owes you money and the amount that is owed.

Name of Person, Business, or Organization that Owes You Money	Amount Owed
_____	\$ _____
_____	\$ _____

Part D. Additional Information.

12. Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes ___ No ___
If yes, how much have you paid? \$ _____
13. Have you promised to pay or do you anticipate paying an **attorney** in connection with your bankruptcy case? Yes ___ No ___
If yes, how much have you promised to pay or do you anticipate paying? \$ _____
14. Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes ___ No ___
If yes, how much have you paid? \$ _____
15. Have you promised to pay or do you anticipate paying **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules? Yes ___ No ___
If yes, how much have you promised to pay or do you anticipate paying? \$ _____
16. Has anyone paid an attorney or other person or service in connection with this case, on your behalf? Yes ___ No ___
If yes, explain.

17. Have you previously filed for bankruptcy relief during the past eight years? Yes ____ No ____

Case Number (if known)	Year filed	Location of filing	Did you obtain a discharge? (if known)		
_____	_____	_____	Yes ____	No ____	Don't know ____
_____	_____	_____	Yes ____	No ____	Don't know ____

18. Please provide any other information that helps to explain why you are unable to pay the filing fee in installments.

19. I (we) declare under penalty of perjury that I (we) cannot currently afford to pay the filing fee in full or in installments and that the foregoing information is true and correct.

Executed on: _____	_____
Date	Signature of Debtor
_____	_____
Date	Signature of Co-debtor

DECLARATION AND SIGNATURE OF BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required under that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer _____	Social Security No. (Required by 11 U.S.C. § 110.) _____
--	--

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs the document.

Address

x. _____	_____
Signature of Bankruptcy Petition Preparer	Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United State Bankruptcy Court
_____ District of _____

In re: _____
Debtor(s)

Case No. _____

ORDER ON DEBTOR'S APPLICATION FOR WAIVER OF THE CHAPTER 7 FILING FEE

Upon consideration of the debtor's "Application for Waiver of the Chapter 7 Filing Fee," the court orders that the application be:

☐ GRANTED.

This order is subject to being vacated at a later time if developments in the administration of the bankruptcy case demonstrate that the waiver was unwarranted.

☐ DENIED.

The debtor shall pay the chapter 7 filing fee according to the following terms:

\$ _____ on or before _____

\$ _____ on or before _____

\$ _____ on or before _____

\$ _____ on or before _____

Until the filing fee is paid in full, the debtor shall not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with this case.

IF THE DEBTOR FAILS TO TIMELY PAY THE FILING FEE IN FULL OR TO TIMELY MAKE INSTALLMENT PAYMENTS, THE COURT MAY DISMISS THE DEBTOR'S CHAPTER 7 CASE.

☐ SCHEDULED FOR HEARING.

A hearing to consider the debtor's "Application for Waiver of the Chapter 7 Filing Fee" shall be held on _____ at _____ am/pm at _____.
(address of courthouse)

IF THE DEBTOR FAILS TO APPEAR AT THE SCHEDULED HEARING, THE COURT MAY DEEM SUCH FAILURE TO BE THE DEBTOR'S CONSENT TO THE ENTRY OF AN ORDER DENYING THE FEE WAIVER APPLICATION BY DEFAULT.

BY THE COURT:

DATE: _____

United States Bankruptcy Judge

United States Bankruptcy Court

District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

LIST OF CREDITORS HOLDING 20 LARGEST UNSECURED CLAIMS

Following is the list of the debtor's creditors holding the 20 largest unsecured claims. The list is prepared in accordance with Fed. R. Bankr. P. 1007(d) for filing in this chapter 11 [*or* chapter 9] case. The list does not include (1) persons who come within the definition of "insider" set forth in 11 U.S.C. § 101, or (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims. If a minor child is one of the creditors holding the 20 largest unsecured claims, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

(1)	(2)	(3)	(4)	(5)
<i>Name of creditor and complete mailing address including zip code</i>	<i>Name, telephone number and complete mailing address, including zip code, of employee, agent, or department of creditor familiar with claim who may be contacted</i>	<i>Nature of claim (trade debt, bank loan, government contract, etc.)</i>	<i>Indicate if claim is contingent, unliquidated, disputed or subject to setoff</i>	<i>Amount of claim [if secured also state value of security]</i>

Date: _____

Debtor

[Declaration as in Form 2]

Form B6
(10/05)

FORM 6. SCHEDULES

Summary of Schedules
Statistical Summary of Certain Liabilities

Schedule A - Real Property
Schedule B - Personal Property
Schedule C - Property Claimed as Exempt
Schedule D - Creditors Holding Secured Claims
Schedule E - Creditors Holding Unsecured Priority Claims
Schedule F - Creditors Holding Unsecured Nonpriority Claims
Schedule G - Executory Contracts and Unexpired Leases
Schedule H - Codebtors
Schedule I - Current Income of Individual Debtor(s)
Schedule J - Current Expenditures of Individual Debtor(s)

Unsworn Declaration under Penalty of Perjury

GENERAL INSTRUCTIONS: The first page of the debtor's schedules and the first page of any amendments thereto must contain a caption as in Form 16B. Subsequent pages should be identified with the debtor's name and case number. If the schedules are filed with the petition, the case number should be left blank

Schedules D, E, and F have been designed for the listing of each claim only once. Even when a claim is secured only in part or entitled to priority only in part, it still should be listed only once. A claim which is secured in whole or in part should be listed on Schedule D only, and a claim which is entitled to priority in whole or in part should be listed on Schedule E only. Do not list the same claim twice. If a creditor has more than one claim, such as claims arising from separate transactions, each claim should be scheduled separately.

Review the specific instructions for each schedule before completing the schedule.

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a co-tenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor’s own benefit. If the debtor is married, state whether husband, wife, or both own the property by placing an “H,” “W,” “J,” or “C” in the column labeled “Husband, Wife, Joint, or Community.” If the debtor holds no interest in real property, write “None” under “Description and Location of Property.”

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write “None” in the column labeled “Amount of Secured Claim.”

If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

DESCRIPTION AND LOCATION OF PROPERTY	NATURE OF DEBTOR'S INTEREST IN PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION	AMOUNT OF SECURED CLAIM
Total ➤				
(Report also on Summary of Schedules.)				

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE B - PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "x" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether husband, wife, or both own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." In providing the information requested in this schedule, do not include the name or address of a minor child. Simply state "a minor child."

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
1. Cash on hand. 2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and home-stead associations, or credit unions, brokerage houses, or cooperatives. 3. Security deposits with public utilities, telephone companies, landlords, and others. 4. Household goods and furnishings, including audio, video, and computer equipment. 5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles. 6. Wearing apparel. 7. Furs and jewelry. 8. Firearms and sports, photographic, and other hobby equipment. 9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each. 10. Annuities. Itemize and name each issuer. 11. Interests in an education IRA as defined in 26 U.S.C. § 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. § 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. § 521(c); Rule 1007(b)).				

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE B - PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.</p> <p>13. Stock and interests in incorporated and unincorporated businesses. Itemize.</p> <p>14. Interests in partnerships or joint ventures. Itemize.</p> <p>15. Government and corporate bonds and other negotiable and non-negotiable instruments.</p> <p>16. Accounts receivable.</p> <p>17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.</p> <p>18. Other liquidated debts owed to debtor including tax refunds. Give particulars.</p> <p>19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule A – Real Property.</p> <p>20. Contingent and noncontingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.</p> <p>21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.</p>				

In re _____,

Debtor

Case No. _____

(If known)

SCHEDULE B -PERSONAL PROPERTY

(Continuation Sheet)

TYPE OF PROPERTY	N O N E	DESCRIPTION AND LOCATION OF PROPERTY	HUSBAND, WIFE, JOINT, OR COMMUNITY	CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITH- OUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION
<p>22. Patents, copyrights, and other intellectual property. Give particulars.</p> <p>23. Licenses, franchises, and other general intangibles. Give particulars.</p> <p>24. Customer lists or other compilations containing personally identifiable information (as defined in 11 U.S.C. § 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.</p> <p>25. Automobiles, trucks, trailers, and other vehicles and accessories.</p> <p>26. Boats, motors, and accessories.</p> <p>27. Aircraft and accessories.</p> <p>28. Office equipment, furnishings, and supplies.</p> <p>29. Machinery, fixtures, equipment, and supplies used in business.</p> <p>30. Inventory.</p> <p>31. Animals.</p> <p>32. Crops - growing or harvested. Give particulars.</p> <p>33. Farming equipment and implements.</p> <p>34. Farm supplies, chemicals, and feed.</p> <p>35. Other personal property of any kind not already listed. Itemize.</p>				
_____ continuation sheets attached Total ▶				\$

(Include amounts from any continuation
sheets attached. Report total also on
Summary of Schedules.)

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE C - PROPERTY CLAIMED AS EXEMPT

Debtor claims the exemptions to which debtor is entitled under:
(Check one box)

- ☐ 11 U.S.C. § 522(b)(2)
☐ 11 U.S.C. § 522(b)(3)

☐ Check if debtor claims a homestead exemption that exceeds \$125,000.

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION

(10/05)

In re _____,

Debtor

Case No. _____

(If known)

SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number of all entities holding claims secured by property of the debtor as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. List creditors holding all types of secured interests such as judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests.

List creditors in alphabetical order to the extent practicable. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m). If all secured creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H – Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐

Check this box if debtor has no creditors holding secured claims to report on this Schedule D.

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER (See Instructions Above)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN, AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
Subtotal ► (Total of this page)							\$	
Total ► (Use only on last page)							\$	

____ continuation sheets
attached

Form B6D – Cont.
(10/05)

In re _____, Case No. _____
Debtor (If known)

SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS

(Continuation Sheet)

CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER <i>(See Instructions Above)</i>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED, NATURE OF LIEN , AND DESCRIPTION AND VALUE OF PROPERTY SUBJECT TO LIEN	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM WITHOUT DEDUCTING VALUE OF COLLATERAL	UNSECURED PORTION, IF ANY
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					
ACCOUNT NO.								
			VALUE \$					

Sheet no. ___ of ___ continuation
sheets attached to Schedule of
Creditors Holding Secured
Claims

Subtotal ►
(Total of this page)

Total ►
(Use only on last page)

\$
\$

In re _____,
Debtor

Case No. _____
(if known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

A complete list of claims entitled to priority, listed separately by type of priority, is to be set forth on the sheets provided. Only holders of unsecured claims entitled to priority should be listed in this schedule. In the boxes provided on the attached sheets, state the name, mailing address, including zip code, and last four digits of the account number, if any, of all entities holding priority claims against the debtor or the property of the debtor, as of the date of the filing of the petition. Use a separate continuation sheet for each type of priority and label each with the type of priority.

The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m).

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H-Codebtors. If a joint petition is filed, state whether husband, wife, both of them or the marital community may be liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of claims listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all claims listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

Report the total of amounts entitled to priority listed on each sheet in the box labeled "Subtotal" on each sheet. Report the total of all amounts entitled to priority listed on this Schedule E in the box labeled "Total" on the last sheet of the completed schedule. If applicable, also report this total on the Means Test form.

☐ Check this box if debtor has no creditors holding unsecured priority claims to report on this Schedule E.

TYPES OF PRIORITY CLAIMS (Check the appropriate box(es) below if claims in that category are listed on the attached sheets)

☐ **Domestic Support Obligations**

Claims for domestic support that are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such a child, or a governmental unit to whom such a domestic support claim has been assigned to the extent provided in 11 U.S.C. § 507(a)(1).

☐ **Extensions of credit in an involuntary case**

Claims arising in the ordinary course of the debtor's business or financial affairs after the commencement of the case but before the earlier of the appointment of a trustee or the order for relief. 11 U.S.C. § 507(a)(3).

☐ **Wages, salaries, and commissions**

Wages, salaries, and commissions, including vacation, severance, and sick leave pay owing to employees and commissions owing to qualifying independent sales representatives up to \$10,000* per person earned within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(4).

☐ **Contributions to employee benefit plans**

Money owed to employee benefit plans for services rendered within 180 days immediately preceding the filing of the original petition, or the cessation of business, whichever occurred first, to the extent provided in 11 U.S.C. § 507(a)(5).

In re _____ ,
Debtor

Case No. _____
(if known)

☐ **Certain farmers and fishermen**

Claims of certain farmers and fishermen, up to \$4,925* per farmer or fisherman, against the debtor, as provided in 11 U.S.C. § 507(a)(6).

☐ **Deposits by individuals**

Claims of individuals up to \$2,225* for deposits for the purchase, lease, or rental of property or services for personal, family, or household use, that were not delivered or provided. 11 U.S.C. § 507(a)(7).

☐ **Taxes and Certain Other Debts Owed to Governmental Units**

Taxes, customs duties, and penalties owing to federal, state, and local governmental units as set forth in 11 U.S.C. § 507(a)(8).

☐ **Commitments to Maintain the Capital of an Insured Depository Institution**

Claims based on commitments to the FDIC, RTC, Director of the Office of Thrift Supervision, Comptroller of the Currency, or Board of Governors of the Federal Reserve System, or their predecessors or successors, to maintain the capital of an insured depository institution. 11 U.S.C. § 507 (a)(9).

☐ **Claims for Death or Personal Injury While Debtor Was Intoxicated**

Claims for death or personal injury resulting from the operation of a motor vehicle or vessel while the debtor was intoxicated from using alcohol, a drug, or another substance. 11 U.S.C. § 507(a)(10).

* Amounts are subject to adjustment on April 1, 2007, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

_____ continuation sheets attached

In re _____,
Debtor

Case No. _____
(If known)

SCHEDULE E - CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

(Continuation Sheet)

TYPE OF PRIORITY

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM	AMOUNT ENTITLED TO PRIORITY
Account No.								
Account No.								
Account No.								
Account No.								
Account No.								
Subtotal▶ (Total of this page)							\$	\$
Total▶ (Use only on last page of the completed Schedule E. (Report total also on Summary of Schedules)							\$	\$

In re _____,Case No. _____

Debtor(If known)

SCHEDULE F- CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS

State the name, mailing address, including zip code, and last four digits of any account number, of all entities holding unsecured claims without priority against the debtor or the property of the debtor, as of the date of filing of the petition. The complete account number of any account the debtor has with the creditor is useful to the trustee and the creditor and may be provided if the debtor chooses to do so. If a minor child is a creditor, indicate that by stating "a minor child" and do not disclose the child's name. See 11 U.S.C. § 112; Fed.R.Bankr.P. 1007(m). Do not include claims listed in Schedules D and E. If all creditors will not fit on this page, use the continuation sheet provided.

If any entity other than a spouse in a joint case may be jointly liable on a claim, place an "X" in the column labeled "Codebtor," include the entity on the appropriate schedule of creditors, and complete Schedule H - Codebtors. If a joint petition is filed, state whether husband, wife, both of them, or the marital community maybe liable on each claim by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

If the claim is contingent, place an "X" in the column labeled "Contingent." If the claim is unliquidated, place an "X" in the column labeled "Unliquidated." If the claim is disputed, place an "X" in the column labeled "Disputed." (You may need to place an "X" in more than one of these three columns.)

Report the total of all claims listed on this schedule in the box labeled "Total" on the last sheet of the completed schedule. Report this total also on the Summary of Schedules.

☐ Check this box if debtor has no creditors holding unsecured claims to report on this Schedule F.

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER <small>(See instructions above.)</small>	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
Subtotal▶							\$
Total▶ <small>(Use only on last page of the completed Schedule F.) (Report also on Summary of Schedules.)</small>							\$

_____continuation sheets attached

Case No. _____
(If known)

SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS
(Continuation Sheet)

CREDITOR'S NAME, MAILING ADDRESS INCLUDING ZIP CODE, AND ACCOUNT NUMBER (See instructions above.)	CODEBTOR	HUSBAND, WIFE, JOINT, OR COMMUNITY	DATE CLAIM WAS INCURRED AND CONSIDERATION FOR CLAIM. IF CLAIM IS SUBJECT TO SETOFF, SO STATE.	CONTINGENT	UNLIQUIDATED	DISPUTED	AMOUNT OF CLAIM
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							
ACCOUNT NO.							

Sheet no. ____ of ____ sheets attached to Schedule of
Creditors Holding Unsecured Nonpriority Claims

Subtotal ▶

Total ▶

\$

\$

(Use only on last page of the completed Schedule F.)

(Report also on Summary of Schedules.)

[illegible]

In re _____ ,
Debtor

Case No. _____
(if known)

SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by debtor in the schedules of creditors. Include all guarantors and co-signers. If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within the eight year period immediately preceding the commencement of the case, identify the name of the debtor’s spouse and of any former spouse who resides or resided with the debtor in the community property state, commonwealth, or territory. Include all names used by the nondebtor spouse during the eight years immediately preceding the commencement of this case. If a minor child is a codebtor or a creditor, indicate that by stating “a minor child” and do not disclose the child’s name. See 11 U.S.C. § 112; Fed. Bankr. P. 1007(m).

☐ Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR

In re _____,
Debtor

Case No. _____
(if known)

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by a married debtor in a chapter 7, 11, 12, or 13 case whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child.

Debtor's Marital Status:	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP:	AGE:
Employment:	DEBTOR	SPOUSE
Occupation		
Name of Employer		
How long employed		
Address of Employer		

INCOME: (Estimate of average monthly income)

DEBTOR

SPOUSE

1. Current monthly gross wages, salary, and commissions
(Prorate if not paid monthly.)
2. Estimate monthly overtime

\$ _____ \$ _____
\$ _____ \$ _____

3. SUBTOTAL

\$ _____ \$ _____

4. LESS PAYROLL DEDUCTIONS

- a. Payroll taxes and social security
- b. Insurance
- c. Union dues
- d. Other (Specify): _____

\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____

5. SUBTOTAL OF PAYROLL DEDUCTIONS

\$ _____ \$ _____

6. TOTAL NET MONTHLY TAKE HOME PAY

\$ _____ \$ _____

7. Regular income from operation of business or profession or farm.
(Attach detailed statement)
8. Income from real property
9. Interest and dividends
10. Alimony, maintenance or support payments payable to the debtor for
the debtor's use or that of dependents listed above.
11. Social security or government assistance
(Specify): _____
12. Pension or retirement income
13. Other monthly income
(Specify): _____

\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____
\$ _____ \$ _____

14. SUBTOTAL OF LINES 7 THROUGH 13

15. TOTAL MONTHLY INCOME (Add amounts shown on lines 6 and 14)

\$ _____ \$ _____
\$ _____ \$ _____

16. TOTAL COMBINED MONTHLY INCOME: \$ _____

(Report also on Summary of Schedules.)

17. Describe any increase or decrease in income reasonably anticipated to occur within the year following the filing of this document:

In re _____,
Debtor

Case No. _____
(if known)

SCHEDULE J - CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)

Complete this schedule by estimating the average monthly expenses of the debtor and the debtor's family. Pro rate any payments made bi-weekly, quarterly, semi-annually, or annually to show monthly rate.

☐ Check this box if a joint petition is filed and debtor's spouse maintains a separate household. Complete a separate schedule of expenditures labeled "Spouse."

1. Rent or home mortgage payment (include lot rented for mobile home) \$ _____
 - a. Are real estate taxes included? Yes _____ No _____
 - b. Is property insurance included? Yes _____ No _____
2. Utilities: a. Electricity and heating fuel \$ _____
 - b. Water and sewer \$ _____
 - c. Telephone \$ _____
 - d. Other _____ \$ _____
3. Home maintenance (repairs and upkeep) \$ _____
4. Food \$ _____
5. Clothing \$ _____
6. Laundry and dry cleaning \$ _____
7. Medical and dental expenses \$ _____
8. Transportation (not including car payments) \$ _____
9. Recreation, clubs and entertainment, newspapers, magazines, etc. \$ _____
10. Charitable contributions \$ _____
11. Insurance (not deducted from wages or included in home mortgage payments)
 - a. Homeowner's or renter's \$ _____
 - b. Life \$ _____
 - c. Health \$ _____
 - d. Auto \$ _____
 - e. Other _____ \$ _____
12. Taxes (not deducted from wages or included in home mortgage payments)
(Specify) _____ \$ _____
13. Installment payments: (In chapter 11, 12, and 13 cases, do not list payments to be included in the plan)
 - a. Auto \$ _____
 - b. Other _____ \$ _____
 - c. Other _____ \$ _____
14. Alimony, maintenance, and support paid to others \$ _____
15. Payments for support of additional dependents not living at your home \$ _____
16. Regular expenses from operation of business, profession, or farm (attach detailed statement) \$ _____
17. Other _____ \$ _____
18. TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)

\$ _____
19. Describe any increase or decrease in expenditures reasonably anticipated to occur within the year following the filing of this document:

20. STATEMENT OF MONTHLY NET INCOME
 - a. Total monthly income from Line 16 of Schedule I \$ _____
 - b. Total monthly expenses from Line 18 above \$ _____
 - c. Monthly net income (a. minus b.) \$ _____

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____
Chapter _____

SUMMARY OF SCHEDULES

Indicate as to each schedule whether that schedule is attached and state the number of pages in each. Report the totals from Schedules A, B, D, E, F, I, and J in the boxes provided. Add the amounts from Schedules A and B to determine the total amount of the debtor’s assets. Add the amounts of all claims from Schedules D, E, and F to determine the total amount of the debtor’s liabilities. Individual debtors must also complete the “Statistical Summary of Certain Liabilities.”

AMOUNTS SCHEDULED					
NAME OF SCHEDULE	ATTACHED (YES/NO)	NO. OF SHEETS	ASSETS	LIABILITIES	OTHER
A - Real Property			\$		
B - Personal Property			\$		
C - Property Claimed as Exempt					
D - Creditors Holding Secured Claims				\$	
E - Creditors Holding Unsecured Priority Claims				\$	
F - Creditors Holding Unsecured Nonpriority Claims				\$	
G - Executory Contracts and Unexpired Leases					
H - Codebtors					
I - Current Income of Individual Debtor(s)					\$
J - Current Expenditures of Individual Debtors(s)					\$
TOTAL			\$	\$	

United States Bankruptcy Court
_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

STATISTICAL SUMMARY OF CERTAIN LIABILITIES (28 U.S.C. § 159)
[Individual Debtors Only]

Summarize the following types of liabilities, as reported in the Schedules, and total them.

Type of Liability	Amount
Domestic Support Obligations (from Schedule E)	\$
Taxes and Certain Other Debts Owed to Governmental Units (from Schedule E)	\$
Claims for Death or Personal Injury While Debtor Was Intoxicated (from Schedule E)	\$
Student Loan Obligations (from Schedule F)	\$
Domestic Support, Separation Agreement, and Divorce Decree Obligations Not Reported on Schedule E	\$
Obligations to Pension or Profit-Sharing, and Other Similar Obligations (from Schedule F)	\$
TOTAL	\$

The foregoing information is for statistical purposes only under 28 U.S.C. § 159.

In re _____ ,

Debtor

Case No. _____

(If known)

DECLARATION CONCERNING DEBTOR'S SCHEDULES

DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____
(Total shown on summary page plus 1.)
sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date _____

Signature: _____
Debtor

Date _____

Signature: _____
(Joint Debtor, if any)

[If joint case, both spouses must sign.]

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h) and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer _____

Social Security No. _____

(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address _____

X _____
Signature of Bankruptcy Petition Preparer

_____ Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the _____ [the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership] of the _____ [corporation or partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of _____ sheets, and that they are true and correct to the best of my knowledge, information, and belief. (Total shown on summary page plus 1.)

Date _____

Signature: _____

[Print or type name of individual signing on behalf of debtor.]

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

-----Penalty for making a false statement or concealing property: Fine of up to \$500,000 or imprisonment for up to 5 years or both. 18 U.S.C. §§ 152 and 3571.

UNITED STATES BANKRUPTCY COURT

DISTRICT OF _____

In re: _____,
Debtor

Case No. _____
(if known)

STATEMENT OF FINANCIAL AFFAIRS

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs. Do not include the name or address of a minor child in this statement. Indicate payments, transfers and the like to minor children by stating "a minor child." See 11 U.S.C. § 112; Fed. R. Bankr. P. 1007(m).

Questions 1 - 18 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 19 - 25. **If the answer to an applicable question is "None," mark the box labeled "None."** If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

DEFINITIONS

"In business." A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within six years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or owner of 5 percent or more of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed full-time or part-time. An individual debtor also may be "in business" for the purpose of this form if the debtor engages in a trade, business, or other activity, other than as an employee, to supplement income from the debtor's primary employment.

"Insider." The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or person in control; officers, directors, and any owner of 5 percent or more of the voting or equity securities of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101.

1. Income from employment or operation of business

None
☐

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business, including part-time activities either as an employee or in independent trade or business, from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the **two years** immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

2. Income other than from employment or operation of business

None
☐

State the amount of income received by the debtor other than from employment, trade, profession, operation of the debtor's business during the **two years** immediately preceding the commencement of this case. Give particulars. If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income for each spouse whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

AMOUNT

SOURCE

3. Payments to creditors

None
☐

Complete a. or b., as appropriate, and c.

a. *Individual or joint debtor(s) with primarily consumer debts:* List all payments on loans, installment purchases of goods or services, and other debts to any creditor made within **90 days** immediately preceding the commencement of this case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$600. Indicate with an asterisk (*) any payments that were made to a creditor on account of a domestic support obligation or as part of an alternative repayment schedule under a plan by an approved nonprofit budgeting and creditor counseling agency. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS

AMOUNT
PAID

AMOUNT
STILL OWING

None
☐

b. *Debtor whose debts are not primarily consumer debts:* List each payment or other transfer to any creditor made within **90 days** immediately preceding the commencement of the case if the aggregate value of all property that constitutes or is affected by such transfer is not less than \$5,000. (Married debtors filing under chapter 12 or chapter 13 must include payments and other transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR

DATES OF
PAYMENTS/
TRANSFERS

AMOUNT
PAID OR
VALUE OF
TRANSFERS

AMOUNT
STILL
OWING

None
☐

c. *All debtors:* List all payments made within **one year** immediately preceding the commencement of this case to or for the benefit of creditors who are or were insiders. (Married debtors filing under chapter 12 or chapter 13 must include payments by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR
AND RELATIONSHIP TO DEBTOR

DATE OF
PAYMENT

AMOUNT
PAID

AMOUNT
STILL OWING

4. Suits and administrative proceedings, executions, garnishments and attachments

None

☐

a. List all suits and administrative proceedings to which the debtor is or was a party within **one year** immediately preceding the filing of this bankruptcy case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

CAPTION OF SUIT
AND CASE NUMBER

NATURE OF PROCEEDING

COURT OR AGENCY
AND LOCATION

STATUS OR
DISPOSITION

None

☐

b. Describe all property that has been attached, garnished or seized under any legal or equitable process within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF PERSON FOR WHOSE
BENEFIT PROPERTY WAS SEIZED

DATE OF
SEIZURE

DESCRIPTION
AND VALUE
OF PROPERTY

5. Repossessions, foreclosures and returns

None

☐

List all property that has been repossessed by a creditor, sold at a foreclosure sale, transferred through a deed in lieu of foreclosure or returned to the seller, within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF CREDITOR OR SELLER

DATE OF REPOSSESSION,
FORECLOSURE SALE,
TRANSFER OR RETURN

DESCRIPTION
AND VALUE
OF PROPERTY

6. Assignments and receiverships

None

☐

a. Describe any assignment of property for the benefit of creditors made within **120 days** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include any assignment by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS
OF ASSIGNEE

DATE OF
ASSIGNMENT

TERMS OF
ASSIGNMENT
OR SETTLEMENT

None

☐

b. List all property which has been in the hands of a custodian, receiver, or court-appointed official within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning property of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CUSTODIAN	NAME AND LOCATION OF COURT CASE TITLE & NUMBER	DATE OF ORDER	DESCRIPTION AND VALUE Of PROPERTY
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7. Gifts

None

☐

List all gifts or charitable contributions made within **one year** immediately preceding the commencement of this case except ordinary and usual gifts to family members aggregating less than \$200 in value per individual family member and charitable contributions aggregating less than \$100 per recipient. (Married debtors filing under chapter 12 or chapter 13 must include gifts or contributions by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF PERSON OR ORGANIZATION	RELATIONSHIP TO DEBTOR, IF ANY	DATE OF GIFT	DESCRIPTION AND VALUE OF GIFT
--	--------------------------------------	-----------------	-------------------------------------

8. Losses

None

☐

List all losses from fire, theft, other casualty or gambling within **one year** immediately preceding the commencement of this case **or since the commencement of this case**. (Married debtors filing under chapter 12 or chapter 13 must include losses by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

DESCRIPTION AND VALUE OF PROPERTY	DESCRIPTION OF CIRCUMSTANCES AND, IF LOSS WAS COVERED IN WHOLE OR IN PART BY INSURANCE, GIVE PARTICULARS	DATE OF LOSS
---	--	-----------------

9. Payments related to debt counseling or bankruptcy

None

☐

List all payments made or property transferred by or on behalf of the debtor to any persons, including attorneys, for consultation concerning debt consolidation, relief under the bankruptcy law or preparation of a petition in bankruptcy within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS OF PAYEE	DATE OF PAYMENT, NAME OF PAYER IF OTHER THAN DEBTOR	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY
------------------------------	---	--

10. Other transfers

None
☐

- a. List all other property, other than property transferred in the ordinary course of the business or financial affairs of the debtor, transferred either absolutely or as security within **two years** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
---	------	--

None
☐

- b. List all property transferred by the debtor within **ten years** immediately preceding the commencement of this case to a self-settled trust or similar device of which the debtor is a beneficiary.

NAME OF TRUST OR OTHER DEVICE	DATE(S) OF TRANSFER(S)	AMOUNT OF MONEY OR DESCRIPTION AND VALUE OF PROPERTY OR DEBTOR'S INTEREST IN PROPERTY
----------------------------------	---------------------------	---

11. Closed financial accounts

None
☐

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within **one year** immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE OF ACCOUNT, LAST FOUR DIGITS OF ACCOUNT NUMBER, AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
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12. Safe deposit boxes

None
☐

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within **one year** immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OF TRANSFER OR SURRENDER, IF ANY
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13. Setoffs

None
☐

List all setoffs made by any creditor, including a bank, against a debt or deposit of the debtor within **90 days** preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include information concerning either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF CREDITOR	DATE OF SETOFF	AMOUNT OF SETOFF
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14. Property held for another person

None
☐

List all property owned by another person that the debtor holds or controls.

NAME AND ADDRESS OF OWNER	DESCRIPTION AND VALUE OF PROPERTY	LOCATION OF PROPERTY
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15. Prior address of debtor

None
☐

If debtor has moved within **three years** immediately preceding the commencement of this case, list all premises which the debtor occupied during that period and vacated prior to the commencement of this case. If a joint petition is filed, report also any separate address of either spouse.

ADDRESS	NAME USED	DATES OF OCCUPANCY
---------	-----------	--------------------

16. Spouses and Former Spouses

None
☐

If the debtor resides or resided in a community property state, commonwealth, or territory (including Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, or Wisconsin) within **eight years** immediately preceding the commencement of the case, identify the name of the debtor's spouse and of any former spouse who resides or resided with the debtor in the community property state.

NAME

17. Environmental Information.

For the purpose of this question, the following definitions apply:

"Environmental Law" means any federal, state, or local statute or regulation regulating pollution, contamination, releases of hazardous or toxic substances, wastes or material into the air, land, soil, surface water, groundwater, or other medium, including, but not limited to, statutes or regulations regulating the cleanup of these substances, wastes, or material.

"Site" means any location, facility, or property as defined under any Environmental Law, whether or not presently or formerly owned or operated by the debtor, including, but not limited to, disposal sites.

"Hazardous Material" means anything defined as a hazardous waste, hazardous substance, toxic substance, hazardous material, pollutant, or contaminant or similar term under an Environmental Law.

None
☐

a. List the name and address of every site for which the debtor has received notice in writing by a governmental unit that it may be liable or potentially liable under or in violation of an Environmental Law. Indicate the governmental unit, the date of the notice, and, if known, the Environmental Law:

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None
☐

b. List the name and address of every site for which the debtor provided notice to a governmental unit of a release of Hazardous Material. Indicate the governmental unit to which the notice was sent and the date of the notice.

SITE NAME AND ADDRESS	NAME AND ADDRESS OF GOVERNMENTAL UNIT	DATE OF NOTICE	ENVIRONMENTAL LAW
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None
☐

c. List all judicial or administrative proceedings, including settlements or orders, under any Environmental Law with respect to which the debtor is or was a party. Indicate the name and address of the governmental unit that is or was a party to the proceeding, and the docket number.

NAME AND ADDRESS OF GOVERNMENTAL UNIT	DOCKET NUMBER	STATUS OR DISPOSITION
--	---------------	--------------------------

18. Nature, location and name of business

None
☐

a. *If the debtor is an individual*, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was an officer, director, partner, or managing executive of a corporation, partner in a partnership, sole proprietor, or was self-employed in a trade, profession, or other activity either full- or part-time within **six years** immediately preceding the commencement of this case, or in which the debtor owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

If the debtor is a partnership, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities, within **six years** immediately preceding the commencement of this case.

If the debtor is a corporation, list the names, addresses, taxpayer identification numbers, nature of the businesses, and beginning and ending dates of all businesses in which the debtor was a partner or owned 5 percent or more of the voting or equity securities within **six years** immediately preceding the commencement of this case.

NAME	LAST FOUR DIGITS OF SOC. SEC. NO./ COMPLETE EIN OR OTHER TAXPAYER I.D. NO.	ADDRESS	NATURE OF BUSINESS	BEGINNING AND ENDING DATES
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None

☐

b. Identify any business listed in response to subdivision a., above, that is "single asset real estate" as defined in 11 U.S.C. § 101.

NAME

ADDRESS

The following questions are to be completed by every debtor that is a corporation or partnership and by any individual debtor who is or has been, within **six years** immediately preceding the commencement of this case, any of the following: an officer, director, managing executive, or owner of more than 5 percent of the voting or equity securities of a corporation; a partner, other than a limited partner, of a partnership, a sole proprietor, or self-employed in a trade, profession, or other activity, either full- or part-time.

*(An individual or joint debtor should complete this portion of the statement **only** if the debtor is or has been in business, as defined above, within six years immediately preceding the commencement of this case. A debtor who has not been in business within those six years should go directly to the signature page.)*

19. Books, records and financial statements

None

☐

a. List all bookkeepers and accountants who within **two years** immediately preceding the filing of this bankruptcy case kept or supervised the keeping of books of account and records of the debtor.

NAME AND ADDRESS

DATES SERVICES RENDERED

None

☐

b. List all firms or individuals who within **two years** immediately preceding the filing of this bankruptcy case have audited the books of account and records, or prepared a financial statement of the debtor.

NAME

ADDRESS

DATES SERVICES RENDERED

None

☐

c. List all firms or individuals who at the time of the commencement of this case were in possession of the books of account and records of the debtor. If any of the books of account and records are not available, explain.

NAME

ADDRESS

None
☐

d. List all financial institutions, creditors and other parties, including mercantile and trade agencies, to whom a financial statement was issued by the debtor within **two years** immediately preceding the commencement of this case.

NAME AND ADDRESS

DATE ISSUED

20. Inventories

None
☐

a. List the dates of the last two inventories taken of your property, the name of the person who supervised the taking of each inventory, and the dollar amount and basis of each inventory.

DATE OF INVENTORY

INVENTORY SUPERVISOR

DOLLAR AMOUNT
OF INVENTORY
(Specify cost, market or other basis)

None
☐

b. List the name and address of the person having possession of the records of each of the inventories reported in a., above.

DATE OF INVENTORY

NAME AND ADDRESSES
OF CUSTODIAN
OF INVENTORY RECORDS

21 . Current Partners, Officers, Directors and Shareholders

None
☐

a. If the debtor is a partnership, list the nature and percentage of partnership interest of each member of the partnership.

NAME AND ADDRESS

NATURE OF INTEREST

PERCENTAGE OF INTEREST

None
☐

b. If the debtor is a corporation, list all officers and directors of the corporation, and each stockholder who directly or indirectly owns, controls, or holds 5 percent or more of the voting or equity securities of the corporation.

NAME AND ADDRESS

TITLE

NATURE AND PERCENTAGE
OF STOCK OWNERSHIP

22 . Former partners, officers, directors and shareholders

None
☐

a. If the debtor is a partnership, list each member who withdrew from the partnership within **one year** immediately preceding the commencement of this case.

NAME

ADDRESS

DATE OF WITHDRAWAL

None
☐

- b. If the debtor is a corporation, list all officers, or directors whose relationship with the corporation terminated within **one year** immediately preceding the commencement of this case.

NAME AND ADDRESS

TITLE

DATE OF TERMINATION

23 . Withdrawals from a partnership or distributions by a corporation

None
☐

If the debtor is a partnership or corporation, list all withdrawals or distributions credited or given to an insider, including compensation in any form, bonuses, loans, stock redemptions, options exercised and any other perquisite during **one year** immediately preceding the commencement of this case.

NAME & ADDRESS
OF RECIPIENT,
RELATIONSHIP TO DEBTOR

DATE AND PURPOSE
OF WITHDRAWAL

AMOUNT OF MONEY
OR DESCRIPTION
AND VALUE OF PROPERTY

24. Tax Consolidation Group.

None
☐

If the debtor is a corporation, list the name and federal taxpayer identification number of the parent corporation of any consolidated group for tax purposes of which the debtor has been a member at any time within **six years** immediately preceding the commencement of the case.

NAME OF PARENT CORPORATION

TAXPAYER IDENTIFICATION NUMBER (EIN)

25. Pension Funds.

None
☐

If the debtor is not an individual, list the name and federal taxpayer identification number of any pension fund to which the debtor, as an employer, has been responsible for contributing at any time within **six years** immediately preceding the commencement of the case.

NAME OF PENSION FUND

TAXPAYER IDENTIFICATION NUMBER (EIN)

* * * * *

[If completed by an individual or individual and spouse]

I declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct.

Date _____

Signature _____
of Debtor

Date _____

Signature _____
of Joint Debtor
(if any)

[If completed on behalf of a partnership or corporation]

I, declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and any attachments thereto and that they are true and correct to the best of my knowledge, information and belief.

Date _____

Signature _____

Print Name and Title

[An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.]

____ continuation sheets attached

Penalty for making a false statement: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name and Title, if any, of Bankruptcy Petition Preparer

Social Security No.(Required by 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person, or partner who signs this document.

Address

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 18 U.S.C. § 156.

United States Bankruptcy Court

District Of _____

In re _____,
Debtor

Case No. _____
Chapter 7

CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION

- ☐ I have filed a schedule of assets and liabilities which includes debts secured by property of the estate.
☐ I have filed a schedule of executory contracts and unexpired leases which includes personal property subject to an unexpired lease.
☐ I intend to do the following with respect to the property of the estate which secures those debts or is subject to a lease:

Description of Secured Property	Creditor's Name	Property will be Surrendered	Property is claimed as exempt	Property will be redeemed pursuant to 11 U.S.C. § 722	Debt will be reaffirmed pursuant to 11 U.S.C. § 524(c)

Description of Leased Property	Lessor's Name	Lease will be assumed pursuant to 11 U.S.C. § 362(h)(1)(A)

Date: _____

Signature of Debtor

DECLARATION OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I declare under penalty of perjury that: (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110; (2) I prepared this document for compensation and have provided the debtor with a copy of this document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342(b); and, (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required in that section.

Printed or Typed Name of Bankruptcy Petition Preparer

Social Security No. (Required under 11 U.S.C. § 110.)

If the bankruptcy petition preparer is not an individual, state the name, title (if any), address, and social security number of the officer, principal, responsible person or partner who signs this document.

Address

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security Numbers of all other individuals who prepared or assisted in preparing this document unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

**FORM 9. NOTICE OF COMMENCEMENT OF CASE UNDER THE
BANKRUPTCY CODE, MEETING OF CREDITORS,
AND DEADLINES**

9A.....Chapter	7, Individual/Joint, No-Asset Case
9B.....Chapter	7, Corporation/Partnership, No-Asset Case
9C.....Chapter	7, Individual/Joint, Asset Case
9D.....Chapter	7, Corporation/Partnership, Asset Case
9E.....Chapter	11, Individual/Joint Case
9E(Alt.)..Chapter	11, Individual/Joint Case
9F.....Chapter	11, Corporation/Partnership Case
9F(Alt.)..Chapter	11, Corporation/Partnership Case
9G.....Chapter	12, Individual/Joint Case
9H.....Chapter	12, Corporation/Partnership Case
9I.....Chapter	13, Individual/Joint Case

UNITED STATES BANKRUPTCY COURT _____ District of _____

Notice of Chapter 7 Bankruptcy Case, Meeting of Creditors, & Deadlines

[A chapter 7 bankruptcy case concerning the debtor(s) listed below was filed on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____ on
_____ (date) and was converted to a case under chapter 7 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below. NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):

Case Number:

Last four digits of Social Security No./Complete EIN or other Taxpayer ID No.

All other names used by the Debtor(s) in the last 8 years
(include married, maiden, and trade names):

Bankruptcy Trustee (name and address):

Attorney for Debtor(s) (name and address):

Telephone number:

Telephone number:

Meeting of Creditors

Date: / / Time: () A. M. Location:

() P. M.

Presumption of Abuse under 11 U.S.C. § 707(b)

See "Presumption of Abuse" on the reverse side.

Depending on the documents filed with the petition, one of the following statements will appear.

The presumption of abuse does not arise.

$$Or$$

The presumption of abuse arises.

$$Or$$

Insufficient information has been filed to date to permit the clerk to make any determination concerning the presumption of abuse. If more complete information, when filed, shows that the presumption has arisen, creditors will be notified.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Please Do Not File A Proof of Claim Unless You Receive a Notice To Do So.

Foreign Creditors

A creditor to whom this notice is sent at a foreign address should read the information under "Do Not File a Proof of Claim at This Time" on the reverse side.

Address of the Bankruptcy Clerk's Office:

For the Court:

Clerk of the Bankruptcy Court:

Telephone number:

Hours Open:

Date:

EXPLANATIONS**Form B9A (10/05)**

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under Chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay.
Presumption of Abuse	If the presumption of abuse arises, creditors may have the right to file a motion to dismiss the case under § 707(b) of the Bankruptcy Code. The debtor may rebut the presumption by showing special circumstances.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim. If this notice is mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727 (a) <i>or</i> that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2), (4), or (6), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objections by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.

Refer To Other Side For Important Deadlines and Notices

UNITED STATES BANKRUPTCY COURT_____District of_____

Notice of Chapter 13 Bankruptcy Case, Meeting of Creditors, & Deadlines

[The debtor(s) listed below filed a chapter 13 bankruptcy case on _____ (date).]
or [A bankruptcy case concerning the debtor(s) listed below was originally filed under chapter _____
on _____ (date) and was converted to a case under chapter 13 on _____.]

You may be a creditor of the debtor. **This notice lists important deadlines.** You may want to consult an attorney to protect your rights. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below.
NOTE: The staff of the bankruptcy clerk's office cannot give legal advice.

See Reverse Side for Important Explanations

Debtor(s) (name(s) and address):	Case Number:
Telephone number:	Last four digits of Social Security No./Complete EIN or other Taxpayer ID No.:
All other names used by the Debtor(s) in the last 8 years (include married, maiden, and trade names):	Bankruptcy Trustee (name and address):
Attorney for Debtor(s) (name and address):	
Telephone number:	Telephone number:

Meeting of Creditors

Date: / / Time: () A. M. Location:

() P. M.

Deadlines:

Papers must be *received* by the bankruptcy clerk's office by the following deadlines:

Deadline to File a Proof of Claim:

For all creditors(except a governmental unit):	For a governmental unit:
<p>1. Current liabilities</p> <p>2. Long-term liabilities</p> <p>3. Contingent liabilities</p> <p>4. Other liabilities</p>	<p>1. Current liabilities</p> <p>2. Long-term liabilities</p> <p>3. Contingent liabilities</p> <p>4. Other liabilities</p>

Foreign Creditors

A creditor to whom this notice is sent at a foreign address should read the information under "Claims" on the reverse side.

Deadline to File a Complaint to Determine Dischargeability of Certain Debts:

Deadline to Object to Exemptions:

Thirty (30) days after the *conclusion* of the meeting of creditors.

Filing of Plan, Hearing on Confirmation of Plan

[The debtor has filed a plan. The plan or a summary of the plan is enclosed. The hearing on confirmation will be held:
Date: _____ Time: _____ Location: _____]

or [The debtor has filed a plan. The plan or a summary of the plan and notice of confirmation hearing will be sent separately.]

or [The debtor has not filed a plan as of this date. You will be sent separate notice of the hearing on confirmation of the plan.]

Creditors May Not Take Certain Actions:

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor, the debtor's property, and certain codebtors. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

Address of the Bankruptcy Clerk's Office:	For the Court:
	Clerk of the Bankruptcy Court:
Telephone number:	
Hours Open:	Date:

EXPLANATIONS

Form B9I (10/05)

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under Chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.
Creditors Generally May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail, or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to exceed or impose a stay.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time, and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. A secured creditor retains rights in its collateral regardless of whether that creditor files a Proof of Claim. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim from other assets in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor. Filing a Proof of Claim submits the creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a Proof of Claim may surrender important nonmonetary rights, including the right to a jury trial. Filing Deadline for a Foreign Creditor: The deadlines for filing claims set forth on the front of this notice apply to all creditors. If this notice has been mailed to a creditor at a foreign address, the creditor may file a motion requesting the court to extend the deadline.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that a debt owed to you is not dischargeable under Bankruptcy Code § 523 (a) (2) or (4), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and any required filing fee by that deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Foreign Creditors	Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.
Refer To Other Side For Important Deadlines and Notices	

UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor	Case Number	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property):	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.	
Name and address where notices should be sent:		THIS SPACE IS FOR COURT USE ONLY
Telephone number:		
Last four digits of account or other number by which creditor identifies debtor:		Check here <input type="checkbox"/> replaces if this claim <input type="checkbox"/> amends a previously filed claim, dated: _____
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Last four digits of your SS #: _____ Unpaid compensation for services performed from _____ to _____ <div style="display: flex; justify-content: space-between; width: 100%;"> (date) (date) </div>		
2. Date debt was incurred:		3. If court judgment, date obtained:
4. Classification of Claim. Check the appropriate box or boxes that best describe your claim and state the amount of the claim at the time case filed. See reverse side for important explanations.		
Unsecured Nonpriority Claim \$ _____ <input type="checkbox"/> Check this box if: a) there is no collateral or lien securing your claim, or b) your claim exceeds the value of the property securing it, or if c) none or only part of your claim is entitled to priority.		Secured Claim <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: \$ _____
Unsecured Priority Claim <input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority. Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B) <input type="checkbox"/> Wages, salaries, or commissions (up to \$10,000)* earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5).		
<input type="checkbox"/> Up to \$2,225* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <i>*Amounts are subject to adjustment on 4/1/07 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</i>		
5. Total Amount of Claim at Time Case Filed: \$ _____ <div style="display: flex; justify-content: space-around; width: 100%;"> (unsecured) (secured) (priority) (Total) </div> <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
6. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 7. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 8. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):	

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

— DEFINITIONS —

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Classification of Claim

Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the

amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

Unsecured Nonpriority Claim:

Check the appropriate place if you have an unsecured nonpriority claim, sometimes referred to as a "general unsecured claim". (See DEFINITIONS, above.) If your claim is partly secured and partly unsecured, state here the amount that is unsecured. If part of your claim is entitled to priority, state here the amount **not** entitled to priority.

5. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

6. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

7. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Form 15. ORDER CONFIRMING PLAN

[Caption as in Form 16A]

ORDER CONFIRMING PLAN

The plan under chapter 11 of the Bankruptcy Code filed by _____, on _____ *[if applicable, as modified by a modification filed on _____]* or a summary thereof, having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that the requirements for confirmation set forth in 11 U.S.C. § 1129(a) *[or, if appropriate, 11 U.S.C. § 1129(b)]* have been satisfied;

IT IS ORDERED that:

The plan filed by _____, on _____, *[If appropriate, include dates and any other pertinent details of modifications to the plan]* is confirmed. *[If the plan provides for an injunction against conduct not otherwise enjoined under the Code, include the information required by Rule 3020.]*

A copy of the confirmed plan is attached.

Dated: _____

BY THE COURT

United States Bankruptcy Judge.

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

DECLARATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (11 U.S.C. § 110)

I declare under penalty of perjury that:

- (1) I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110;
- (2) I prepared the accompanying document for compensation and have provided the debtor with a copy of that document and the notices and information required under 11 U.S.C. §§ 110(b), 110(h), and 342 (b); and
- (3) if rules or guidelines have been promulgated pursuant to 11 U.S.C. § 110(h) setting a maximum fee for services chargeable by bankruptcy petition preparers, I have given the debtor notice of the maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor, as required by that section.

Printed or Typed Name of Bankruptcy Petition Preparer

If the bankruptcy petition preparer is not an individual, state the name, address, and social security number of the officer, principal, responsible person or partner who signs this document.

Social Security No.

Address

X _____
Signature of Bankruptcy Petition Preparer

Date

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document, unless the bankruptcy petition preparer is not an individual:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

United States Bankruptcy Court

_____ District Of _____

In re _____,)
Set forth here all names including married,)
maiden, and trade names used by debtor within)
last 6 years.])
Debtor) Case No. _____)
Address _____)
_____) Chapter _____)
Employer's Tax Identification (EIN) No(s). [if any]: _____)
_____)
Last four digits of Social Security No(s): _____)

NOTICE OF [MOTION TO] [OBJECTION TO]

_____ has filed papers with the court to [relief sought in motion or objection].

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

If you do not want the court to [relief sought in motion or objection], or if you want the court to consider your views on the [motion] [objection], then on or before (date), you or your attorney must:

[File with the court a written request for a hearing {or, if the court requires a written response, an answer, explaining your position} at:

{address of the bankruptcy clerk's office}

If you mail your {request} {response} to the court for filing, you must mail it early enough so the court will **receive** it on or before the date stated above.

You must also mail a copy to:

{movant's attorney's name and address}

{names and addresses of others to be served}]

[Attend the hearing scheduled to be held on (date), (year), at _____ a.m./p.m. in Courtroom _____, United States Bankruptcy Court, {address}.]

[Other steps required to oppose a motion or objection under local rule or court order.]

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion or objection and may enter an order granting that relief.

Date: _____

Signature: _____

Name:

Address:

Form B22A (Chapter 7) (10/05)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

☐ **The presumption arises.**

☐ **The presumption does not arise.**

(Check the box as directed in Parts I, III, and VI of this statement.)

STATEMENT OF CURRENT MONTHLY INCOME AND MEANS TEST CALCULATION
FOR USE IN CHAPTER 7 ONLY

In addition to Schedule I and J, this statement must be completed by every individual Chapter 7 debtor, whether or not filing jointly, whose debts are primarily consumer debts. Joint debtors may complete one statement only.

Part I. EXCLUSION FOR DISABLED VETERANS

1	<p>If you are a disabled veteran described in the Veteran's Declaration in this Part I, (1) check the box at the beginning of the Veteran's Declaration, (2) check the box for "The presumption does not arise" at the top of this statement, and (3) complete the verification in Part VIII. Do not complete any of the remaining parts of this statement.</p> <p><input type="checkbox"/> Veteran's Declaration. By checking this box, I declare under penalty of perjury that I am a disabled veteran (as defined in 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period in which I was on active duty (as defined in 10 U.S.C. § 101(d)(1)) or while I was performing a homeland defense activity (as defined in 32 U.S.C. § 901(1)).</p>
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Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

2	<p>Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>b. <input type="checkbox"/> Married, not filing jointly, with declaration of separate households. By checking this box, debtor declares under penalty of perjury: "My spouse and I are legally separated under applicable non-bankruptcy law or my spouse and I are living apart other than for the purpose of evading the requirements of § 707(b)(2)(A) of the Bankruptcy Code." Complete only Column A ("Debtor's Income") for Lines 3-11.</p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</p> <p>d. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</p> <p>All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.</p>		Column A Debtor's Income	Column B Spouse's Income									
3	Gross wages, salary, tips, bonuses, overtime, commissions.		\$	\$									
4	<p>Income from the operation of a business, profession or farm. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>		a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$											
b.	Ordinary and necessary business expenses	\$											
c.	Business income	Subtract Line b from Line a											
5	<p>Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 5. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rental income</td> <td>Subtract Line b from Line a</td> </tr> </table>		a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$											
b.	Ordinary and necessary operating expenses	\$											
c.	Rental income	Subtract Line b from Line a											
6	Interest, dividends and royalties.		\$	\$									
7	Pension and retirement income.		\$	\$									
8	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.		\$	\$									

9	Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: <table border="1"> <tr> <td>Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td>Debtor \$ _____</td> <td>Spouse \$ _____</td> </tr> </table>		Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$			
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____								
10	Income from all other sources. If necessary, list additional sources on a separate page. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount. <table border="1"> <tr> <td>a.</td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> </table> Total and enter on Line 10		a.		\$	b.		\$	\$	\$
a.		\$								
b.		\$								
11	Subtotal of Current Monthly Income for § 707(b)(7). Add Lines 3 thru 10 in Column A, and, if Column B is completed, add Lines 3 through 10 in Column B. Enter the total(s).		\$	\$						
12	Total Current Monthly Income for § 707(b)(7). If Column B has been completed, add Line 11, Column A to Line 11, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 11, Column A.		\$							

Part III. APPLICATION OF § 707(b)(7) EXCLUSION

13	Annualized Current Monthly Income for § 707(b)(7). Multiply the amount from Line 12 by the number 12 and enter the result.	\$
14	Applicable median family income. Enter the median family income for the applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
15	Application of Section 707(b)(7). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 13 is less than or equal to the amount on Line 14. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete Part VIII; do not complete Parts IV, V, VI or VII. <input type="checkbox"/> The amount on Line 13 is more than the amount on Line 14. Complete the remaining parts of this statement.	

Complete Parts IV, V, VI, and VII of this statement only if required. (See Line 15.)

Part IV. CALCULATION OF CURRENT MONTHLY INCOME FOR § 707(b)(2)

16	Enter the amount from Line 12.	\$
17	Marital adjustment. If you checked the box at Line 2.c, enter the amount of the income listed in Line 11, Column B that was NOT regularly contributed to the household expenses of the debtor or the debtor's dependents. If you did not check box at Line 2.c, enter zero.	\$
18	Current monthly income for § 707(b)(2). Subtract Line 17 from Line 16 and enter the result.	\$

Part V. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)

Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)

19	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
20A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size.	\$

	(This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).											
20B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 42; subtract Line b from Line a and enter the result in Line 20B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rental expense	\$										
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 42	\$										
c.	Net mortgage/rental expense	Subtract Line b from Line a.										
21	<p>Local Standards: housing and utilities; adjustment. if you contend that the process set out in Lines 20A and 20B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <p>_____</p> <p>_____</p> <p>_____</p>		\$									
22	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 8.</p> <p><input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>		\$									
23	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.)</p> <p><input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 42; subtract Line b from Line a and enter the result in Line 23. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$										
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 42	\$										
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.										
24	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 23.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 42; subtract Line b from Line a and enter the result in Line 24. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 65%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width: 30%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42</td> <td>\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td>Subtract Line b from Line a.</td> </tr> </table>		a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$										
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 42	\$										
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.										
25	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>											
26	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>		\$									

27	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
28	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 44.	\$
29	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	\$
30	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
31	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 34.	\$
32	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
33	Total Expenses Allowed under IRS Standards. Enter the total of Lines 19 through 32.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 19-32

34	Health Insurance, Disability Insurance and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
		Total: Add Lines a, b and c		
35	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses.		\$	
36	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.		\$	
37	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
38	Education expenses for dependent children less than 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$	
39	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
40	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$	
41	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 34 through 40		\$	

Subpart C: Deductions for Debt Payment

42	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.			
	Name of Creditor	Property Securing the Debt	60-month Average Payment	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b and c.	\$
43	Past due payments on secured claims. If any of the debts listed in Line 42 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.			
	Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount	
	a.		\$	
	b.		\$	
	c.		\$	
			Total: Add Lines a, b and c	\$
44	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.			\$
45	Chapter 13 administrative expenses. If you are eligible to file a case under Chapter 13, complete the following chart, multiply the amount in line a by the amount in line b, and enter the resulting administrative expense.			
	a.	Projected average monthly Chapter 13 plan payment.	\$	
	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	
	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$
46	Total Deductions for Debt Payment. Enter the total of Lines 42 through 45.			\$
Subpart D: Total Deductions Allowed under § 707(b)(2)				
47	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 33, 41, and 46.			\$

Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION

48	Enter the amount from Line 18 (Current monthly income for § 707(b)(2))	\$
49	Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))	\$
50	Monthly disposable income under § 707(b)(2). Subtract Line 49 from Line 48 and enter the result	\$
51	60-month disposable income under § 707(b)(2). Multiply the amount in Line 50 by the number 60 and enter the result.	\$

52	Initial presumption determination. Check the applicable box and proceed as directed.
	<input type="checkbox"/> The amount on Line 51 is less than \$6,000 Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII. Do not complete the remainder of Part VI.
	<input type="checkbox"/> The amount set forth on Line 51 is more than \$10,000. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII. Do not complete the remainder of Part VI.
	<input type="checkbox"/> The amount on Line 51 is at least \$6,000, but not more than \$10,000. Complete the remainder of Part VI (Lines 53 through 55).
53	Enter the amount of your total non-priority unsecured debt
	\$
54	Threshold debt payment amount. Multiply the amount in Line 53 by the number 0.25 and enter the result.
	\$
55	Secondary presumption determination. Check the applicable box and proceed as directed.
	<input type="checkbox"/> The amount on Line 51 is less than the amount on Line 54. Check the box for "The presumption does not arise" at the top of page 1 of this statement, and complete the verification in Part VIII.
	<input type="checkbox"/> The amount on Line 51 is equal to or greater than the amount on Line 54. Check the box for "The presumption arises" at the top of page 1 of this statement, and complete the verification in Part VIII. You may also complete Part VII.

Part VII: ADDITIONAL EXPENSE CLAIMS

56	Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.	
	Expense Description	Monthly Amount
	a.	\$
	b.	\$
	c.	\$
	Total: Add Lines a, b and c	\$

Part VIII: VERIFICATION

57	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i>	
	Date: _____	Signature: _____ (Debtor)
	Date: _____	Signature: _____ (Joint Debtor, if any)

In re _____
Debtor(s)Case Number: _____
(If known)**STATEMENT OF CURRENT MONTHLY INCOME**
FOR USE IN CHAPTER 11

In addition to Schedules I and J, this statement must be completed by every individual Chapter 11 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. CALCULATION OF CURRENT MONTHLY INCOME

1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married, not filing jointly. Complete only Column A ("Debtor's Income") for Lines 2-10. c. <input type="checkbox"/> Married, filing jointly. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.		Column A Debtor's Income	Column B Spouse's Income
2	Gross wages, salary, tips, bonuses, overtime, commissions.		\$	\$
3	Net income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero.			
	a.	Gross receipts	\$	
	b.	Ordinary and necessary business expenses	\$	
	c.	Business income	Subtract Line b from Line a	\$
4	Net rental and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero.			
	a.	Gross receipts	\$	
	b.	Ordinary and necessary operating expenses	\$	
	c.	Rental income	Subtract Line b from Line a	\$
5	Interest, dividends, and royalties.		\$	\$
6	Pension and retirement income.		\$	\$
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse if Column B is completed.		\$	\$
8	Unemployment compensation. Enter the amount in Column A and, if applicable, Column B. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below: Unemployment compensation claimed to be a benefit under the Social Security Act Debtor \$ _____ Spouse \$ _____		\$	\$
9	Income from all other sources. If necessary, list additional sources on a separate page. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism. Specify source and amount.			
	a.		\$	
	b.		\$	
	Total and enter on Line 9		\$	\$
10	Subtotal of current monthly income. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).		\$	\$
11	Total current monthly income. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the			

	amount from Line 10, Column A.	\$
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Part II: VERIFICATION		
12	I declare under penalty of perjury that the information provided in this statement is true and correct. <i>(If this a joint case, both debtors must sign.)</i>	
	Date: _____	Signature: _____ (Debtor)
	Date: _____	Signature: _____ (Joint Debtor, if any)

In re _____
Debtor(s)

Case Number: _____
(If known)

According to the calculations required by this statement:

☐ The applicable commitment period is 3 years.

☐ The applicable commitment period is 5 years.

☐ Disposable income is determined under § 1325(b)(3).

☐ Disposable income is not determined under § 1325(b)(3).

(Check the boxes as directed in Lines 17 and 23 of this statement.)

STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME

FOR USE IN CHAPTER 13

In addition to Schedules I and J, this statement must be completed by every individual Chapter 13 debtor, whether or not filing jointly. Joint debtors may complete one statement only.

Part I. REPORT OF INCOME														
1	Marital/filing status. Check the box that applies and complete the balance of this part of this statement as directed. a. <input type="checkbox"/> Unmarried. Complete only Column A ("Debtor's Income") for Lines 2-10. b. <input type="checkbox"/> Married. Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10. All figures must reflect average monthly income for the six calendar months prior to filing the bankruptcy case, ending on the last day of the month before the filing. If you received different amounts of income during these six months, you must total the amounts received during the six months, divide this total by six, and enter the result on the appropriate line.			Column A	Column B									
				Debtor's Income	Spouse's Income									
2	Gross wages, salary, tips, bonuses, overtime, commissions.			\$	\$									
3	Income from the operation of a business, profession, or farm. Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. Do not include any part of the business expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 65%;">Gross receipts</td> <td style="width: 30%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary business expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Business income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary business expenses	\$	c.	Business income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary business expenses	\$												
c.	Business income	Subtract Line b from Line a												
4	Rent and other real property income. Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. Do not include any part of the operating expenses entered on Line b as a deduction in Part IV. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 65%;">Gross receipts</td> <td style="width: 30%;">\$</td> </tr> <tr> <td>b.</td> <td>Ordinary and necessary operating expenses</td> <td>\$</td> </tr> <tr> <td>c.</td> <td>Rental income</td> <td>Subtract Line b from Line a</td> </tr> </table>			a.	Gross receipts	\$	b.	Ordinary and necessary operating expenses	\$	c.	Rental income	Subtract Line b from Line a	\$	\$
a.	Gross receipts	\$												
b.	Ordinary and necessary operating expenses	\$												
c.	Rental income	Subtract Line b from Line a												
5	Interest, dividends, and royalties.			\$	\$									
6	Pension and retirement income.			\$	\$									
7	Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support. Do not include contributions from the debtor's spouse.			\$	\$									
8	Unemployment compensation. Enter the amount in the appropriate column(s) of Line 8. However, if you contend that unemployment compensation received by you or your spouse was a benefit under the Social Security Act, do not list the amount of such compensation in Column A or B, but instead state the amount in the space below:			\$	\$									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width: 30%;">Debtor \$ _____</td> <td style="width: 30%;">Spouse \$ _____</td> </tr> </table>			Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____	\$	\$						
Unemployment compensation claimed to be a benefit under the Social Security Act	Debtor \$ _____	Spouse \$ _____												
9	Income from all other sources. Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. Do not include any benefits received under the Social Security Act or payments received as a victim of a war crime, crime against humanity, or as a victim of international or domestic terrorism.			\$	\$									
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%;">a.</td> <td style="width: 65%;"></td> <td style="width: 30%;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td>\$</td> </tr> </table>			a.		\$	b.		\$	\$	\$			
a.		\$												
b.		\$												
10	Subtotal. Add Lines 2 thru 9 in Column A, and, if Column B is completed, add Lines 2 through 9 in Column B. Enter the total(s).			\$	\$									
11	Total. If Column B has been completed, add Line 10, Column A to Line 10, Column B, and enter the total. If Column B has not been completed, enter the amount from Line 10, Column A.			\$										

Part II. CALCULATION OF § 1325(b)(4) COMMITMENT PERIOD

12	Enter the amount from Line 11.	
13	Marital adjustment. If you are married, but are not filing jointly with your spouse, AND if you contend that calculation of the commitment period under § 1325(b)(4) does not require inclusion of the income of your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. Otherwise, enter zero.	
14	Subtract Line 13 from Line 12 and enter the result.	
15	Annualized current monthly income for § 1325(b)(4). Multiply the amount from Line 14 by the number 12 and enter the result.	\$
16	Applicable median family income. Enter the median family income for applicable state and household size. (This information is available by family size at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____	\$
17	Application of § 1325(b)(4). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 15 is less than the amount on Line 16. Check the box for "The applicable commitment period is 3 years" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts III, IV, V or VI. <input type="checkbox"/> The amount on Line 15 is not less than the amount on Line 16. Check the box for "The applicable commitment period is 5 years" at the top of page 1 of this statement and continue with Part III of this statement.	

Part III. APPLICATION OF § 1325(b)(3) FOR DETERMINING DISPOSABLE INCOME

18	Enter the amount from Line 11.	\$
19	Marital adjustment. If you are married, but are not filing jointly with your spouse, enter the amount of the income listed in Line 10, Column B that was NOT regularly contributed to the household expenses of you or your dependents. If you are unmarried or married and filing jointly with your spouse, enter zero.	\$
20	Current monthly income for § 1325(b)(3). Subtract Line 19 from Line 18 and enter the result.	
21	Annualized current monthly income for § 1325(b)(3). Multiply the amount from Line 20 by the number 12 and enter the result.	\$
22	Applicable median family income. Enter the amount from Line 16.	\$
23	Application of § 1325(b)(3). Check the applicable box and proceed as directed. <input type="checkbox"/> The amount on Line 21 is more than the amount on Line 22. Check the box for "Disposable income is determined under § 1325(b)(3)" at the top of page 1 of this statement and complete the remaining parts of this statement. <input type="checkbox"/> The amount on Line 21 is not more than the amount on Line 22. Check the box for "Disposable income is not determined under § 1325(b)(3)" at the top of page 1 of this statement and complete Part VII of this statement. Do not complete Parts IV, V, or VI.	

Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)**Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)**

24	National Standards: food, clothing, household supplies, personal care, and miscellaneous. Enter the "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	\$
25A	Local Standards: housing and utilities; non-mortgage expenses. Enter the amount of the IRS Housing and Utilities Standards; non-mortgage expenses for the applicable county and family size. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court).	\$

25B	<p>Local Standards: housing and utilities; mortgage/rent expense. Enter, in Line a below, the amount of the IRS Housing and Utilities Standards; mortgage/rent expense for your county and family size (this information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter on Line b the total of the Average Monthly Payments for any debts secured by your home, as stated in Line 47; subtract Line b from Line a and enter the result in Line 25B. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Housing and Utilities Standards; mortgage/rent Expense</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net mortgage/rental expense</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Housing and Utilities Standards; mortgage/rent Expense	\$	b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$	c.	Net mortgage/rental expense	Subtract Line b from Line a.	\$
a.	IRS Housing and Utilities Standards; mortgage/rent Expense	\$									
b.	Average Monthly Payment for any debts secured by your home, if any, as stated in Line 47	\$									
c.	Net mortgage/rental expense	Subtract Line b from Line a.									
26	<p>Local Standards: housing and utilities; adjustment. If you contend that the process set out in Lines 25A and 25B does not accurately compute the allowance to which you are entitled under the IRS Housing and Utilities Standards, enter any additional amount to which you contend you are entitled, and state the basis for your contention in the space below:</p> <hr/> <hr/> <hr/>	\$									
27	<p>Local Standards: transportation; vehicle operation/public transportation expense. You are entitled to an expense allowance in this category regardless of whether you pay the expenses of operating a vehicle and regardless of whether you use public transportation.</p> <p>Check the number of vehicles for which you pay the operating expenses or for which the operating expenses are included as a contribution to your household expenses in Line 7. <input type="checkbox"/> 0 <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter the amount from IRS Transportation Standards, Operating Costs & Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</p>	\$									
28	<p>Local Standards: transportation ownership/lease expense; Vehicle 1. Check the number of vehicles for which you claim an ownership/lease expense. (You may not claim an ownership/lease expense for more than two vehicles.) <input type="checkbox"/> 1 <input type="checkbox"/> 2 or more.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, First Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 1, as stated in Line 47; subtract Line b from Line a and enter the result in Line 28. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Transportation Standards, Ownership Costs, First Car</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net ownership/lease expense for Vehicle 1</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs, First Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, First Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 1, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 1	Subtract Line b from Line a.									
29	<p>Local Standards: transportation ownership/lease expense; Vehicle 2. Complete this Line only if you checked the "2 or more" Box in Line 28.</p> <p>Enter, in Line a below, the amount of the IRS Transportation Standards, Ownership Costs, Second Car (available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court); enter in Line b the total of the Average Monthly Payments for any debts secured by Vehicle 2, as stated in Line 47; subtract Line b from Line a and enter the result in Line 29. Do not enter an amount less than zero.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td><td style="width: 60%;">IRS Transportation Standards, Ownership Costs, Second Car</td><td style="width: 35%;">\$</td></tr> <tr> <td style="text-align: center;">b.</td><td>Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47</td><td>\$</td></tr> <tr> <td style="text-align: center;">c.</td><td>Net ownership/lease expense for Vehicle 2</td><td>Subtract Line b from Line a.</td></tr> </table>	a.	IRS Transportation Standards, Ownership Costs, Second Car	\$	b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$	c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.	\$
a.	IRS Transportation Standards, Ownership Costs, Second Car	\$									
b.	Average Monthly Payment for any debts secured by Vehicle 2, as stated in Line 47	\$									
c.	Net ownership/lease expense for Vehicle 2	Subtract Line b from Line a.									
30	<p>Other Necessary Expenses: taxes. Enter the total average monthly expense that you actually incur for all federal, state, and local taxes, other than real estate and sales taxes, such as income taxes, self employment taxes, social security taxes, and Medicare taxes. Do not include real estate or sales taxes.</p>	\$									
31	<p>Other Necessary Expenses: mandatory payroll deductions. Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</p>	\$									

32	Other Necessary Expenses: life insurance. Enter average monthly premiums that you actually pay for term life insurance for yourself. Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.	\$
33	Other Necessary Expenses: court-ordered payments. Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. Do not include payments on past due support obligations included in Line 49.	\$
34	Other Necessary Expenses: education for employment or for a physically or mentally challenged child. Enter the total monthly amount that you actually expend for education that is a condition of employment and for education that is required for a physically or mentally challenged dependent child for whom no public education providing similar services is available.	
35	Other Necessary Expenses: childcare. Enter the average monthly amount that you actually expend on childcare. Do not include payments made for children's education.	\$
36	Other Necessary Expenses: health care. Enter the average monthly amount that you actually expend on health care expenses that are not reimbursed by insurance or paid by a health savings account. Do not include payments for health insurance listed in Line 39.	\$
37	Other Necessary Expenses: telecommunication services. Enter the average monthly expenses that you actually pay for cell phones, pagers, call waiting, caller identification, special long distance, or internet services necessary for the health and welfare of you or your dependents. Do not include any amount previously deducted.	\$
38	Total Expenses Allowed under IRS Standards. Enter the total of Lines 24 through 37.	\$

Subpart B: Additional Expense Deductions under § 707(b)
Note: Do not include any expenses that you have listed in Lines 24-37

39	Health Insurance, Disability Insurance, and Health Savings Account Expenses. List the average monthly amounts that you actually expend in each of the following categories and enter the total.		\$	
	a.	Health Insurance		\$
	b.	Disability Insurance		\$
	c.	Health Savings Account		\$
				Total: Add Lines a, b, and c
40	Continued contributions to the care of household or family members. Enter the actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. Do not include payments listed in Line 34.		\$	
41	Protection against family violence. Enter any average monthly expenses that you actually incurred to maintain the safety of your family under the Family Violence Prevention and Services Act or other applicable federal law.		\$	
42	Home energy costs in excess of the allowance specified by the IRS Local Standards. Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
43	Education expenses for dependent children under 18. Enter the average monthly expenses that you actually incur, not to exceed \$125 per child, in providing elementary and secondary education for your dependent children less than 18 years of age. You must provide your case trustee with documentation demonstrating that the amount claimed is reasonable and necessary and not already accounted for in the IRS Standards.		\$	
44	Additional food and clothing expense. Enter the average monthly amount by which your food and clothing expenses exceed the combined allowances for food and apparel in the IRS National Standards, not to exceed five percent of those combined allowances. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.) You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.		\$	
45	Continued charitable contributions. Enter the amount that you will continue to contribute in the form of cash or financial instruments to a charitable organization as defined in 26 U.S.C. § 170(c)(1)-(2).		\$	
46	Total Additional Expense Deductions under § 707(b). Enter the total of Lines 39 through 45.		\$	

Subpart C: Deductions for Debt Payment

47	Future payments on secured claims. For each of your debts that is secured by an interest in property that you own, list the name of the creditor, identify the property securing the debt, and state the Average Monthly Payment. The Average Monthly Payment is the total of all amounts contractually due to each Secured Creditor in the 60 months following the filing of the bankruptcy case, divided by 60. Mortgage debts should include payments of taxes and insurance required by the mortgage. If necessary, list additional entries on a separate page.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt</th> <th style="width: 30%;">60-month Average Payment</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b, and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt	60-month Average Payment	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b, and c	\$
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a.			\$																			
b.			\$																			
c.			\$																			
			Total: Add Lines a, b, and c																			
48	Past due payments on secured claims. If any of the debts listed in Line 47 are in default, and the property securing the debt is necessary for your support or the support of your dependents, you may include in your deductions 1/60th of the amount that you must pay the creditor as a result of the default (the "cure amount") in order to maintain possession of the property. List any such amounts in the following chart and enter the total. If necessary, list additional entries on a separate page.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 30%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt in Default</th> <th style="width: 30%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td>\$</td> </tr> <tr> <td colspan="3"></td> <td>Total: Add Lines a, b, and c</td> </tr> </tbody> </table>		Name of Creditor	Property Securing the Debt in Default	1/60th of the Cure Amount	a.			\$	b.			\$	c.			\$				Total: Add Lines a, b, and c	\$
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b.			\$																			
c.			\$																			
			Total: Add Lines a, b, and c																			
49	Payments on priority claims. Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.	\$																				
50	Chapter 13 administrative expenses. Multiply the amount in Line a by the amount in Line b, and enter the resulting administrative expense.																					
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;">Projected average monthly Chapter 13 plan payment.</td> <td style="width: 40%;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)</td> <td style="text-align: center;">x</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Average monthly administrative expense of Chapter 13 case</td> <td>Total: Multiply Lines a and b</td> </tr> </tbody> </table>	a.	Projected average monthly Chapter 13 plan payment.	\$	b.	Current multiplier for your district as determined under schedules issued by the Executive Office for United States Trustees. (This information is available at www.usdoj.gov/ust/ or from the clerk of the bankruptcy court.)	x	c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b	\$											
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c.	Average monthly administrative expense of Chapter 13 case	Total: Multiply Lines a and b																				
51	Total Deductions for Debt Payment. Enter the total of Lines 47 through 50.	\$																				
Subpart D: Total Deductions Allowed under § 707(b)(2)																						
52	Total of all deductions allowed under § 707(b)(2). Enter the total of Lines 38, 46, and 51.	\$																				

Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2)

53	Total current monthly income. Enter the amount from Line 20.	\$
54	Support income. Enter the monthly average of any child support payments, foster care payments, or disability payments for a dependent child, included in Line 7, that you received in accordance with applicable nonbankruptcy law, to the extent reasonably necessary to be expended for such child.	\$
55	Qualified retirement deductions. Enter the monthly average of (a) all contributions or wage deductions made to qualified retirement plans, as specified in § 541(b)(7) and (b) all repayments of loans from retirement plans, as specified in § 362(b)(19).	\$
56	Total of all deductions allowed under § 707(b)(2). Enter the amount from Line 52.	\$
57	Total adjustments to determine disposable income. Add the amounts on Lines 54, 55, and 56 and enter the result.	\$
58	Monthly Disposable Income Under § 1325(b)(2). Subtract Line 57 from Line 53 and enter the	\$

result. **Part VI: ADDITIONAL EXPENSE CLAIMS**

Other Expenses. List and describe any monthly expenses, not otherwise stated in this form, that are required for the health and welfare of you and your family and that you contend should be an additional deduction from your current monthly income under § 707(b)(2)(A)(ii)(I). If necessary, list additional sources on a separate page. All figures should reflect your average monthly expense for each item. Total the expenses.

59

	Expense Description	Monthly Amount
a.		\$
b.		\$
c.		\$
	Total: Add Lines a, b, and c	\$

Part VII: VERIFICATION

I declare under penalty of perjury that the information provided in this statement is true and correct. *(If this a joint case, both debtors must sign.)*

60

Date: _____

Signature: _____
(Debtor)

Date: _____

Signature: _____
(Joint Debtor, if any)

United States Bankruptcy Court

_____ District Of _____

In re _____,
Debtor

Case No. _____

Chapter _____

DEBTOR'S CERTIFICATION OF COMPLETION OF INSTRUCTIONAL COURSE CONCERNING PERSONAL FINANCIAL MANAGEMENT

[Complete one of the following statements.]

☐ I/We, _____, the debtor(s) in the above-
(Printed Name(s) of Debtor and Joint Debtor, if any)
styled case hereby certify that on _____ I/we completed an instructional
(Date)
course in personal financial management provided by _____,
(Name of Provider)
an approved personal financial management instruction provider. If the provider furnished a
document attesting to the completion of the personal financial management instructional
course, a copy of that document is attached.

☐ I/We, _____, the debtor(s) in the above-
styled
(Printed Names of Debtor and Joint Debtor, if any)
case, hereby certify that no personal financial management course is required because:

[Check the appropriate box.]

- ☐ I am/We are incapacitated or disabled, as defined in 11 U.S.C. § 109(h);
☐ I am/We are on active military duty in a military combat zone; or
☐ I/We reside in a district in which the United States trustee (or bankruptcy administrator) has
determined that the approved instructional courses are not adequate at this time to serve the
additional individuals who would otherwise be required to complete such courses.

Signature of Debtor: _____

Date: _____

Signature of Joint Debtor: _____

Date: _____