



*CHAPTER 7*  
*BANKRUPTCY*



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**CHAPTER 7 BANKRUPTCY**

**INTRODUCTION**

This volume, one of a compendium, is freestanding, dealing with a specific legal discipline "Chapter 7 Bankruptcy." This volume was written, as were the other works, to help the user better understand this area of the law. The concept behind this series was to develop a set of specialized books designed to serve as a practical guide to specific disciplines in the law.

This volume deals with Chapter 7 bankruptcy. It was written to give an attorney or business person all the information needed to begin the bankruptcy process. The book contains the appropriate filing forms for Chapter 7 bankruptcy 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 consultation with an attorney who specializes in bankruptcy are stated so that the user can verify current law. In many cases this book can be used with no more outside assistance than verification that exemptions have not changed.

This volume explains Chapter 7 bankruptcy procedure and includes sample motions for special relief (such as lien avoidance) redemption, ratification or reopening the estate. After reading this book a few times and following the guidelines contained herein to verify current exemptions under state law, the reader should have no difficulty in applying this book to bankruptcy action.

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The book is user-friendly as possible. In addition, the bankruptcy court has as its stated objective the goal of helping debtors begin anew. There are no honest mistakes that are not correctable before the final discharge in the case.

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### **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 now 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.

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§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.

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### **II. NEW DUTIES IMPOSED OF DEBTORS' ATTORNEYS**

#### **A. REQUIREMENT FOR WRITTEN CONTRACT**

The Bankruptcy Act imposes now 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)

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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

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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

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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

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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 s 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

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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:

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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 30<sup>th</sup> 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 refiling within a year after dismissal, even if a §109(g) 180 day restriction is not in effect. It thus is critical for debtors who

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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

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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

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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

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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

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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

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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

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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.

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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:

| <u>One Person National Standard</u>        |           |           |           |           |         |           |           |         |
|--|-----------|-----------|-----------|-----------|---------|-----------|-----------|---------|
| <u>Based on Gross Monthly Income</u>       |           |           |           |           |         |           |           |         |
| <u>Item</u>                                | less      | \$833     | \$1,250   | \$1,666   | \$2,400 | \$3,333   | \$4,166   | \$5,834 |
|  | than      | to        | to        | to        | to      | to        | to        | and     |
|  | \$833     | \$1,249   | \$1,666   | \$2,400   | \$3,333 | \$4,166   | \$5,833   | over    |
| Food                                       | 197       | 215       | 231       | 258       | 300     | 339       | 369       | 543     |
| Housekeep-<br>ing<br>supplies              | <u>19</u> | <u>20</u> | <u>25</u> | <u>26</u> | 29      | 36        | 37        | 51      |
| Apparel &<br>services                      | 60        | <u>61</u> | <u>70</u> | <u>75</u> | 100     | 124       | 134       | 207     |
| Personal<br>care<br>products &<br>services | 19        | <u>24</u> | <u>26</u> | <u>27</u> | 40      | <u>42</u> | <u>43</u> | 44      |

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|               |              |              |              |              |              |              |              |              |
|---------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Miscellaneous | <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

|                                   |                 |                  |                    |                    |                    |                    |                    |                  |
|-----------------------------------|-----------------|------------------|--------------------|--------------------|--------------------|--------------------|--------------------|------------------|
| 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                              | 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              |
| <u>Total</u>                      | <u>\$620</u>    | <u>\$630</u>     | <u>\$636</u>       | <u>\$744</u>       | <u>\$794</u>       | <u>\$857</u>       | <u>\$1,020</u>     | <u>\$1,280</u>   |

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              |
| <u>Total</u>                      | <u>\$835</u>    | <u>\$851</u>     | <u>\$867</u>       | <u>\$882</u>       | <u>\$908</u>       | <u>\$1,002</u>     | <u>\$1,156</u>     | <u>\$1,430</u>   |

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Four Persons National Standards  
Based on Gross Monthly Income

| Item                                    | less<br>than<br>\$833 | \$833<br>to<br>\$1,249 | \$1,250<br>to<br>\$1,666 | \$1,667<br>to<br>\$2,499 | \$2,500<br>to<br>\$3,333 | \$3,334<br>to<br>\$4,166 | \$4,167<br>to<br>\$5,833 | \$5,834<br>and<br>over |
|---|-----------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------------------|
| Food                                    | 468                   | 525                    | 526                      | 527                      | 528                      | 640                      | 722                      | 868                    |
| Housekeeping<br>supplies                | 42                    | 43                     | 44                       | 50                       | 54                       | 61                       | 109                      | 110                    |
| Apparel &<br>services                   | 146                   | 169                    | 170                      | 171                      | 174                      | 189                      | 217                      | 317                    |
| Personal care<br>products &<br>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<br>than<br>\$833 | \$833<br>to<br>\$1,249 | \$1,250<br>to<br>\$1,666 | \$1,667<br>to<br>\$2,499 | \$2,500<br>to<br>\$3,333 | \$3,334<br>to<br>\$4,166 | \$4,167<br>to<br>\$5,833 | \$5,834<br>and<br>over |
|--|-----------------------|------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|------------------------|
| For each<br>additional<br>person,<br>add to four<br>person total<br>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.

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**New York - Housing and Utilities Allowable Living Expenses**

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

**Maximum Monthly Allowance**

| County             | Family of 2<br>or less | Family of 3  | Family of 4<br>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

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(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)

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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

## **GABRIEL- CHAPTER 7-26**

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

## **GABRIEL- CHAPTER 7-27**

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

## **GABRIEL- CHAPTER 7-28**

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

## **GABRIEL- CHAPTER 7-29**

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

## GABRIEL- CHAPTER 7- 30

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)

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### **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

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(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

## **GABRIEL- CHAPTER 7-33**

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

## **GABRIEL- CHAPTER 7-34**

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

## **GABRIEL- CHAPTER 7-35**

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,

## **GABRIEL- CHAPTER 7-36**

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

## **GABRIEL- CHAPTER 7-37**

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)

## **GABRIEL- CHAPTER 7-38**

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

## **GABRIEL- CHAPTER 7- 39**

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

## **GABRIEL- CHAPTER 7- 40**

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

## **GABRIEL- CHAPTER 7-41**

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

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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

## **GABRIEL- CHAPTER 7-43**

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,

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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

## **GABRIEL- CHAPTER 7-45**

notices to them. § 362(1) § 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**

## **GABRIEL- CHAPTER 7-46**

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**

## **GABRIEL- CHAPTER 7-47**

### **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

## **GABRIEL- CHAPTER 7-48**

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

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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

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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

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- 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**

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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

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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

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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)

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### **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);

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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;

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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 1**

**COMMON BANKRUPTCY QUESTIONS**

Bankruptcy was once considered a disgrace, 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. Bankruptcy filings have increased astronomically with nearly a million bankruptcies per year being filed.

The bankruptcy law was enacted to give debtors hope that they could start over. When the United States Congress enacted the bankruptcy code it saw 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 that they could not 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.

An illustration of how bankruptcy can be a very sad affair. The 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 wiped out 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.

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This book does not deal with the entire bankruptcy code. Instead, it deals only with Chapter 7 Bankruptcy. This is the most common individual bankruptcy filing and is often called "liquidation." After a Chapter 7 bankruptcy becomes final, the debtor is discharged from the obligation of paying any discharged debts.

This chapter demystifies the bankruptcy process. The question-and- answer format presents most of the general information about a Chapter 7 bankruptcy. This chapter answers common questions asked by everyone considering bankruptcy. The 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 the debts are discharged (forgiven).

Chapter 7 bankruptcy takes between 100 and 180 days. The total fees are \$200 (\$155 filing, \$30 administrative and \$15 trustee fee). The creditor has to appear only once: at the meeting of creditors.

Once a discharge is given by the bankruptcy court, the

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debtor's dischargeable debts are forgiven. The debtor will still be obligated to pay debts the bankruptcy court determines should not be discharged for equitable reasons or are not dischargeable under federal law.

### **2. WHAT IS A BANKRUPTCY TRUSTEE?**

The bankruptcy court appoints a person called a "trustee" to handle the normal administration and management affairs of debtor's estate. It is the trustee's responsibility to take possession and control of the bankruptcy estate and to develop a plan whereby creditors are paid from nonexempt property of the debtor to the extent possible. The trustee also has the power to bring and defend lawsuits on behalf of the bankruptcy estate.

The trustee calls and oversees the creditors' meeting where the creditors examine the debtor to discover the location of assets. After the meeting of creditors, the trustee will assemble the assets of the bankruptcy estate and prepare a plan for dividing the assets among the creditors.

Once the trustee's plan for division of the bankruptcy estate is approved by the bankruptcy court, it is implemented and a discharge is granted for the debtor's remaining unpaid dischargeable debts. The Chapter 7 bankruptcy is complete when the discharge is granted.

### **3. WHAT IS CHAPTER 13 BANKRUPTCY?**

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Chapter 13 is another type of bankruptcy proceeding. Unlike Chapter 7 bankruptcy, a Chapter 13 is not a liquidation of the debtor's property; it is a reorganization of his debts.

In a Chapter 13 bankruptcy, the debtor creates a plan to pay most or all of the debts over 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. It can be filed immediately upon the conclusion of a Chapter 7 proceeding if the debtor wishes. A Chapter 13 plan is not final and can be modified by the court whenever the debtor shows good cause (such as a reduction in earnings). The debtor can convert a Chapter 13 petition to a Chapter 7 liquidation at any time as long as the debtor did not file a previous Chapter 7 petition within the last six years. 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.

### **4. WHEN MAY A CHAPTER 7 BANKRUPTCY BE FILED?**

A Chapter 7 bankruptcy petition cannot be filed if the debtor:

1. Obtained a Chapter 7 discharge within the previous six years, or
2. Began a Chapter 13 proceeding within the previous six years.

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The six year period starts to run from the date of filing the earlier bankruptcy petition, not the date that the discharge was granted.

A Chapter 7 petition cannot be filed within 180 days of a dismissal of an earlier Chapter 7 petition that had been dismissed because:

1. The debtor violated a court order;
2. The debtor requested dismissal after a creditor relief from the automatic stay.

There are no such restrictions for filing a Chapter 13 bankruptcy. If a Chapter 7 petition cannot be filed, a debtor can still file a Chapter 13 petition.

### 5. HOW DOES BANKRUPTCY AFFECT CHILD OR SPOUSE 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 automatic stay of the bankruptcy proceeding will temporarily halt proceedings to collect back unpaid child or spouse support. The bankruptcy court will usually permit collection to go forward if the spouse or the guardian of the child requests it.

The Bankruptcy Act of 1994 amended Section 362 to provide that efforts to collect spouse or child support payments from property that is not estate property is not subject to the automatic stay.

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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 spouse support claims now have priority over and are to be paid before general unsecured claims and tax claims. In addition, the Bankruptcy Act of 1994 prohibits both trustee and debtor from recovering any property transferred to spouse or 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 permitted to avoid 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 avoiding a judgment lien on otherwise exempt property for child or support payments. Regardless if the debts are collected during the bankruptcy, the child support obligation survives the bankruptcy and the debtor must still pay it in full.

### **6. WHAT TYPES OF DEBTS ARE NOT DISCHARGEABLE BY LAW?**

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

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1. Recent taxes (within three years). Under section 523(a)(14), debts incurred to pay U.S. taxes are not deductible if the taxes themselves are not deductible.
2. Back child or spousal support.
3. Court-ordered restitution.
4. Recent student loans.
5. Court judgments for damages caused in drunk driving.

The main exceptions to the general dischargeability of debts are discussed in the questions that follow. Some debts which are not dischargeable under Chapter 7 petition (such as court-ordered restitution) are nevertheless dischargeable in a Chapter 13 bankruptcy petition.

### 7. 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 it 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 for which the debt derives.
3. The debt derives from an intentional injury caused to another.

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4. Property was obtained by theft, robbery or embezzlement.
5. The debtor obtained property without having any intention to pay for it.

As a rule of thumb, if 50% or more of the person's debts are dischargeable, filing a Chapter 7 bankruptcy is usually more beneficial than not filing.

### 8. WHAT IS AN UNSECURED DEBT?

In a bankruptcy, debts are divided into 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. Failure to pay the 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 to pay the unsecured debts, they are paid in proportion to their percentage of 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: Unsecured debts are \$200,000, but there are only enough assets to pay \$40,000. Each unsecured creditor will be paid .20¢ on the dollar.

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### 9. WHAT IS EXEMPT PROPERTY?

Under both state and federal law, a person is entitled to exclude certain property from bankruptcy. The individual may elect 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 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 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 ones. Of the above exemptions, the homeowner's exemption for equity is often the most important. The proceeds from the sale of any exempt property is 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. The bankruptcy does not affect the rights of the unpaid

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creditor holding the security interest from repossessing the property after the bankruptcy discharge.

### 10. WHAT IS NONEXEMPT PROPERTY?

Nonexempt property is property that is not exempt from attachment to pay the debtor's obligations under federal or state law. Examples of nonexempt 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 and others.
6. Expensive equipment for use in a trade or business.

If most of a debtor's estate consists of nonexempt property. Filing bankruptcy may not be wise: most of the debtor's estate will be taken by the trustee.

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

A debtor must to place into the bankruptcy estate any property that the debtor has a right to receive, even property not yet received. Examples of such property are:

1. Unpaid wages.

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2. Debts owed to the debtor.
3. A tax refund due to the debtor.
4. Property that the debtor inherited but has not yet received.
5. Benefits from a trust established for the debtor.
6. Benefits from an insurance policy.

The trustee succeeds and replaces the debtor as the person entitled to receive the above property. The trustee places such property into the bankrupt estate.

### 12. IS PROPERTY ACQUIRED AFTER BANKRUPTCY INCLUDED IN THE ESTATE?

The general rule is that property acquired after filing 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. After acquired property subject to inclusion in the bankruptcy estate is:

1. Property inherited within 180 days of the filing regardless of whether or not 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.

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These properties have to be reported to the trustee even if the bankruptcy itself is over. The trustee may reopen the bankruptcy to distribute the new property.

### 13. SHOULD A MARRIED COUPLE FILE BANKRUPTCY TOGETHER?

Married couples are not required to file a joint bankruptcy petition. Each spouse may file separately. In addition, one spouse alone may file bankruptcy, and the other spouse may elect not to do so.

If a married couple intends to file bankruptcy, it is more advantageous for them to file a joint petition. The decision of the spouses as to how to file may be governed by the state 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.

### 14. HOW IS COMMUNITY PROPERTY TREATED IN A BANKRUPTCY?

In a community property state, all community property is included in a debtor's estate; whether or not 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.

For example, assume that a husband and wife own a piece of

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real property as community property. Under state law both spouses have equal management and control over the property as joint owners. 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. In a community property state, when one spouse files the other spouse usually files to protect their joint interest in the community property.

### 15. HOW IS SEPARATE PROPERTY TREATED IN A BANKRUPTCY?

The separate property of the nonfiling 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; but not property acquired 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. The drawback to community property: the community property interest of the married, non-filing spouse can be attached, in the other spouse's bankruptcy.

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. The separate property of the nonfiling spouse is not included in the filing spouse's bankruptcy estate.

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### 16. 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 debtor may use in the following states and 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, debtors can only use their state's exemptions. Federal exemptions are not available.

### 17. WHAT IS THE GENERAL EXEMPTION?

Most states provide a general exemption that a debtor can apply toward any type of property or split among properties. In the following states the general exemption is: California \$400, Georgia \$400, Kentucky \$1,000, Maine \$400, Maryland \$2,500, Missouri \$1,250, Ohio \$400, Pennsylvania \$300, Vermont \$400, West Virginia \$400.

Other states also have general exemptions but restrict their application to personal property, not real property. A federal general exemption also exists for \$400.

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### 18. HOW IS TENANCY-BY-THE-ENTIRETIES HANDLED IN BANKRUPTCY?

Tenancy-by-the-entireties is a special form of ownership of property between married persons where the surviving spouse receives all of the property under a right of survivorship.

Sixteen states treat tenancy-by-the-entireties property in a different fashion from either separate property or joint property. These states will exempt all tenancy-by-the-entireties property from inclusion in a debtor's bankruptcy estate if:

1. Only one spouse files bankruptcy, and
2. The debts discharged were those owed solely by the filing spouse.

If a debtor tries to discharge joint debts in the bankruptcy, the tenancy-by-the-entireties exemption is lost.

### 19. 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 a 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.

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

### 20. CAN NONEXEMPT PROPERTY BE CHANGED INTO EXEMPT

#### PROPERTY PRIOR TO FILING BANKRUPTCY?

It is possible for a debtor to sell nonexempt property prior to filing bankruptcy and purchase property with the proceeds that will be exempt upon the filing.

Whether or not the bankruptcy court will exempt the newly purchased property 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: Debtor sells a boat to buy equipment to earn a living. On the other hand, sale of nonexempt property for extravagant or needless purchases might be set aside even though the purchased property might be exempt under the law. Example: Debtor sells a 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, leaving the unsecured creditors largely unpaid, the court might

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refuse to exempt the newly acquired property.

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, exemption of the converted property will be set aside.

### **21. WHERE IS THE BANKRUPTCY PETITION FILED?**

Every state has at least one bankruptcy court to handle bankruptcy filings for the state. Larger states are divided into judicial districts with each district having its own bankruptcy court. In California, for example, there are 4 district bankruptcy courts: 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 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.

### **22. WHAT IS A NO-ASSET BANKRUPTCY?**

Most people do not have enough nonexempt property that can be sold to raise cash to pay creditors. A bankruptcy estate in this condition is said to be a "no-asset case." A bankruptcy that has

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enough nonexempt assets that can be sold to produce cash for payment of creditors is called an "asset case."

The trustee notifies the debtor's creditors whether the case is an asset or no-asset case, and whether or not they should file claims. In no-asset cases, the creditors do not have to file claims because there are no assets to distribute to the creditors. If assets are later discovered, the trustee will notify the creditors to file their claims at that time. After determining if the case is an asset or no-asset case, the trustee sets the date for the first meeting of creditors.

### 23. 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.

Harassment of a debtor by a creditor regarding collection of a debt 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.

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

The automatic stay lasts throughout the term of the bankruptcy

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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 proceeding (lawsuit) 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, and a hearing on the merits is held by the court. If the automatic stay is lifted, state court actions once stayed will continue from the point where they had been stopped. Once the stay is lifted, state actions are treated as though the bankruptcy had not been filed.

### **25. 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. The bankruptcy court views very carefully all motions to lift the automatic stay. The main reasons a court will lift the automatic stay are:

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. The most common stay involves the foreclosure on real property. If there is no way that the debt against the

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property can ever be repaid, the court is likely to lift the stay. This allows the creditor to acquire the property and reduce his related losses.

3. The creditor has a security interest in property that is being harmed by the stay. For example, in the real estate rental situation, payments are not being made on rental equipment.
4. The debtor really does not 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 the property. Once the court lifts the stay, the creditor can pursue state remedies against the debtor. The creditor must be aware, however, that any monetary judgment will be treated as an asset of the estate; and the creditor's claim becomes an unsecured debt against the estate.

### 26. 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 to the end of the bankruptcy, the court will usually refuse to lift it.

The most common arguments against lifting an automatic stay on property for a secured creditor are:

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1. The fair market value of the property is greater than the amount owed. Thus the creditor is ultimately assured of being paid, whether or not the stay is lifted.
2. The debtor is willing to post a bond or cash security to offset any diminution of value in the property.

The creditor has the burden to prove to the bankruptcy court that lifting the stay will not impede or hinder the goal of the bankruptcy code of permitting the debtor to start over again.

### 27. CAN A BANKRUPTCY FILING STOP AN EVICTION?

A bankruptcy filing will temporarily stop the debtor's eviction from real property. The operative word is "temporarily." Filing bankruptcy petitions to thwart evictions have become commonplace, and 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 very favorable rent control. The debtor can argue that the obligation to pay back rent is discharged and the future term of the lease is a valuable asset the debtor wishes to affirm. If the court agrees, it will not lift the stay and will keep the lease in effect as long as the debtor pays the new rent as it becomes due.

### 28. CAN A CREDITOR OBJECT TO A DISCHARGE?

A creditor may object to a discharge of some or all of the

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debts of the debtor. The creditor must file the objections to the discharge of particular debts within 60 days of the meeting of creditors. The creditor's objections are 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 court a discharge of any of the following debts:

1. Debts occurring as a result of a willful or malicious act (civil tort) that caused personal or property damage.
2. Debts that were 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 "an answer" to the allegations in the complaint. A hearing is held, and the court rules on the appropriateness of granting a discharge.

### **29. CAN A CREDITOR BE FORCED TO RETURN EXEMPT PROPERTY?**

If, before a bankruptcy petition is filed, a creditor has seized or foreclosed on property that would be considered exempt if in the possession of the debtor, the creditor may be forced to return that property if:

1. The property was seized within one year of the debtor's

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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.

A complaint has to be filed in the bankruptcy court against the creditor. After service of the complaint on the creditor and the trustee, the court will hold a hearing to determine if the property should be returned to the debtor. Unless the property is valuable, the process for getting it returned may be too time consuming and bothersome to be worth it.

### 30. WHAT WILL HAPPEN TO NEWLY DISCOVERED OR ACQUIRED

#### PROPERTY AFTER THE BANKRUPTCY PETITION IS FILED?

The estate in bankruptcy is required by law to include all of the debtor's ownership interest in property at the time of the filing. In addition certain property acquired within 180 days following the bankruptcy filing is also required to be included.

As soon as the omitted property is discovered or the new property acquired, the debtor is required to notify the trustee. Upon notification, the trustee decides if the value of the additional property justifies the expense of reopening the estate. Failure to notify the trustee can result in having the debtor's discharge revoked later.

If the trustee concludes that the net value of the property to

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the estate (after deducting the can of administration) is slight, the trustee may decide not to reopen the case. Otherwise, the trustee will take the property, sell it and distribute the proceeds to the creditors.

### 31. WHAT IS NEWLY ACQUIRED PROPERTY?

Newly acquired property includes any of the following property acquired by a debtor within 180 days of filing for bankruptcy protection:

1. An inheritance from any source.
2. Property from any type of marital, divorce or separation agreement.
3. Proceeds from any death benefit.
4. Proceeds from any life insurance policies.

The trustee has the discretion of reopening a bankruptcy after property is "newly acquired." The trustee will file a complaint to reopen the case. The court will not reopen the case if it feels that the amount of new property does not justify reopening it or too much time has passed since the discharge was granted. A hearing is held for the court to decide the issue.

### 32. CAN A DEBTOR AMEND THE PETITION AFTER DISCHARGE TO ADD A FORGOTTEN DEBT?

A debtor who simply forgot to list a particular debt that

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would have been dischargeable may be able to amend the petition to discharge the debt even though the discharge has been granted and the case is closed.

Several bankruptcy courts will permit the post-amending of a bankruptcy petition if the creditor will not be harmed by doing so. The test is whether the creditor would have received anything from the trustee had the debt been originally listed. If the creditor would not have received anything from the estate had the creditor been originally listed, in all fairness the creditor should not now receive an unintended benefit as a result of the debtor's mistaken omission.

To amend the petition, the debtor may have to file a motion with the court to have the bankruptcy petition reopened before the court will discharge the omitted creditor's debt. If the bankruptcy is reopened, the new creditor will have a chance to participate in the action and due process will have been afforded the creditor.

### **33. CAN A CREDITOR COLLECT A DISCHARGED DEBT?**

Once a 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 attempting to collect discharged debts by harassing and by threatening to file criminal complaints. Although deliberately breaking the law, these

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agencies hope to intimidate the debtor into paying the discharged debt.

Rather than be intimidated by this conduct, a debtor should inform the agency that the debt is discharged and 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.

### 34. CAN A DISCHARGE BE REVOKED?

A discharge can be revoked through a complaint being filed by either the trustee or a creditor but only on the following grounds:

1. The debtor obtained the discharge as a result of fraud that was only discovered by either the trustee or the creditor 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

## **GABRIEL- CHAPTER 7- 84**

the discharge.

If the revocation is granted, the debtor will again be liable for all of the debts as though the bankruptcy petition had never been filed.

### 35. CAN THE GOVERNMENT DISCRIMINATE AGAINST A PERSON

#### WHO FILED BANKRUPTCY?

The government, both state and federal, is precluded under the bankruptcy code from discriminating against anyone who filed for bankruptcy protection. 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 in any way for having filed bankruptcy.

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### 36. IS PRIVATE DISCRIMINATION BASED UPON FILING BANKRUPTCY LEGAL?

The Bankruptcy Code protects a person who filed 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 other areas of the private sector. Individual state law may prohibit discrimination in private matters. California has the Unruh Act that prohibits arbitrary discrimination in business. Discrimination in business based solely upon an individual's personal bankruptcy is arbitrary, unreasonable and prohibited.

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

### 37. CAN CHAPTER 7 AND CHAPTER 13 PETITIONS BE USED TOGETHER?

Prior to the 2005 Bankruptcy Act, a debtor could file a Chapter 13 petition following a Chapter 7 discharge and then

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discharge debts that were not dischargeable in the Chapter 13 proceeding. Under the 2005 Reform Act, that can no longer be done. If a debt is not dischargeable in Chapter 7 proceeding then it can not be discharged under a Chapter 13 proceeding.

### 38. WHAT IS THE HOMESTEAD EXEMPTION?

The most important exemption that a debtor may have is the homestead exemption. The homestead exemption permits the debtor receive a fixed amount of money free from the claims of creditors after 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 therein: Arkansas, Florida, Iowa, Kansas, Minnesota, Oklahoma, South Dakota and Texas. In addition, Alabama, Hawaii, Louisiana, Michigan, Mississippi, Nebraska and Oregon base their exemptions on both lot size and debtor's equity. In these states if the lot is below a fixed size, a certain amount of equity is permitted to be shielded from creditors. 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 property to take to avail himself of that state's higher homestead exemption. However

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to do so the debtgor must establish residency in the new state which was increaed nfrom 180 days to 730 days (2 years).

### 39. 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 there is de facto approval. A married couple should always double check to see if a double homestead exemption is available.

### 40. 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 several advantages:

1. It permits the debtor to spread missed payments, taxes

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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 (called "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. The debtor has a great deal of discretion in fashioning the form of the bankruptcy relief that will be granted by the court.

### 41. CAN A PENSION BE LOST IN A BANKRUPTCY?

A pension, including an IRA is an asset like any other in a bankruptcy and may not necessarily be exempt. If the debtor is retired and receiving pension benefits at the time of the bankruptcy filing, most states will exempt a portion of the pension benefits as they will with normal wages.

A debtor is most likely to lose the pension fund when the debtor has not worked long enough for the plan to vest or mature. This means that the debtor had not yet become entitled or reached the age to receive the benefits.

There are horrendous tax consequences in losing a pension. When the trustee takes the pension to pay creditors the debtor will immediately owe income taxes as a retirement distribution. In

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addition, there will probably be penalties for early withdrawal. All taxes and penalties incurred as a result of a trustee taking a pension are paid by the debtor not the trustee. This could mean that the debtor must pay an outrageous amount of money as taxes on the pension benefits that the debtor never receives.

Because of the tax consequences of losing a pension in a bankruptcy, an experienced bankruptcy attorney should be consulted prior to filing the petition.

### **42. WHEN IS A PENSION EXEMPT UNDER THE FEDERAL SYSTEM?**

Debtors who live in states that permit the use of federal exemptions may have their pensions exempt in a bankruptcy if:

1. It is covered by the Employee Retirement Income Security Act (ERISA).
2. Benefits are paid on account of illness, disability, death, age, or length of service.
3. The pension is necessary for the debtor's support.
4. The plan meets all of three requirements.
  - (a) It is not an insider plan (a plan just for the benefit of a select few), and
  - (b) If it is an insider plan, it must not depend on age or length of service, and
  - (c) The plan complies with all tax laws.

Because of the effects of the federal exemption on pensions, it is important that a person carefully consider the overall result of electing whether to use state or federal exemptions.

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**IMPORTANT NOTE:** The United States Supreme Court held in 1992 that pensions are exempt under the Bankruptcy Code if they are qualified ERISA plans and have a clause forbidding their payment to creditors. This is new treatment and legislation is being advanced to overturn this decision and return to the old law above.

### 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.

A judicial lien is a court order that certain property of the debtor could 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 exemptions: Alaska, Connecticut, Florida, Kentucky, Louisiana, Maryland, Mississippi, Ohio, Tennessee, Texas, Utah and Washington. 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.

Because of the difference between lien avoidance under federal and state exemptions, a debtor should consult an attorney specializing in bankruptcy before making the election if lien

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avoidance is a factor in the bankruptcy.

### 44. WHAT IS REAFFIRMATION OF DEBT?

A debtor's election to continue paying on a secured debt for property that is otherwise discharged is called a "reaffirmation".

A debtor may elect to reaffirm a debt on secured property when:

1. The property is otherwise exempt, and the debtor owes less on it than it is worth.
2. The debtor wants the property and believes that it can be paid.
3. The lien cannot otherwise be avoided.

Since the property secures payment of a debt, reaffirmation may be the only way that a debtor can keep the property. If the debt is reaffirmed and the debtor later fails to make the payments, the creditor may repossess it and even obtain a deficiency judgment for the outstanding balance. If the debt is not reaffirmed and a payment is missed, the most that can happen is the debtor loses the property.

A reaffirmation should only be used when redemption is not available and repossession is a real possibility after the discharge. A debt usually should not be reaffirmed for more than the property is currently worth.

### 45. WHAT IS REDEMPTION OF EXEMPT PROPERTY?

Under the Bankruptcy Code a debtor is permitted to discharge a secured debt on certain exempt property by paying the creditor

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the current market value of the property instead of the balance of the debt. This is called "redemption" of exempt property.

Redemption is permitted only if all of the following requirements are met:

1. The debt must be a consumer debt. This means it cannot be a business debt but rather was incurred for personal purposes.
2. The property securing the consumer debt must be tangible personal property, not stocks, bonds or real property.
3. Either the debtor claims the property as exempt or the trustee has abandoned it because there is not enough equity in the property to justify taking and selling it.

Redemption is a worthwhile consideration when more is owed on the property than it is worth. Simply paying what it's worth then buys the property. It makes no sense to redeem property which the debtor owes less than it is worth: the debtor should simply continue to pay as originally agreed.

### **46. WHEN CAN STUDENT LOANS BE DISCHARGED?**

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)

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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. Prior to January 1999, student loans were dischargeable if they were over seven years old but that exception has been eliminated and student loans are no longer dischargeable simply because of the fact that they may be over seven years of age.

Under section 523(a)(8) student loans made or guaranteed by a governmental agency (just about all of them are) are not discharged unless not discharging the student loan debt would impose an undue hardship on the debtor. In determining whether or not 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. Bankruptcy courts rarely grant a full discharge of student loans but rather the payments as they become due.

### **47. CAN INCOME TAXES BE DISCHARGED?**

Under the bankruptcy law, federal, state and local income taxes can be discharged if:

1. The income taxes are over three years old, and
2. Proper tax returns were filed for the tax years.

Taxes can be dismissed even if the debtor is negotiating with the IRS or is in trail in the U.S. Tax Court provided the debtor waited 240 days after the tax was assessed (claimed owed by the I.R.S. or

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state taxing agency) before filing bankruptcy.

Tax penalties for failing to pay state or federal taxes are also dischargeable if they relate to taxes that are dischargeable. For example, assume that a debtor owes taxes and penalties on back taxes that are two and five years old respectively and proper returns had been filed. The debtor can discharge the taxes and penalties for the taxes five years old but not for those that are two years old.

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

### **48. 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 nonissue 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.

### **49. WHAT IS THE STATEMENT OF INTENTION?**

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A debtor is required under the Bankruptcy Code to file a written Statement of Intention regarding the disposition of secured property. The debtor's statement informs the trustee and the creditors of the secured property of the decision to either keep the property or to release it to the creditor holding the security interest. It is at this time that the debtor decides to reaffirm property, avoid a lien or reaffirm a debt.

The debtor must execute his stated intentions in the Statement of Intentions within 45 days of its filing. If the debtor does not perform the secured creditor can file a motion with the court to repossess the secured property. The bankruptcy court will grant the motion when a debtor fails to execute his Statement of Intentions unless he can show good cause for his failure.

### **50. 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 foreseeably cause injury or damage to another.

For noncriminal injuries caused by a debtor the determination of whether or not the injury was caused by the willful and malicious act of the debtor is made on a case-by-case basis. When the damages occur from the following intentional torts (civil wrongs), the debtor has committed a willful and malicious act:

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1. Destruction of another's property, including 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.

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.

### 51. CAN THE AVERAGE PERSON FILE HIS OWN BANKRUPTCY?

The filing of a Chapter 7 bankruptcy petition is well within the ability of the average person. This book was designed and written to give the average person all of the information and instruction to handle a bankruptcy competently. The debtor or his attorney files the petition and appears at the First Meeting of Creditors. If there are no surprises, the final discharge is granted within 100 days and the bankruptcy is over. A Chapter 7 bankruptcy can really be just that simple. Nearly all public libraries and county law libraries contain books on bankruptcy.

### 52. WHAT DOES A BANKRUPTCY ATTORNEY USUALLY CHARGE?

As with all other legal services, the consumer (i.e. the client) should shop around for a bankruptcy attorney with whom the

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client is comfortable both on a professional and financial level.

Attorney fees for a routine Chapter 7 petition tend to vary between \$500 and \$1,500. Fees may be higher or lower depending on the expertise of the individual attorney. 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. For this reason, an attorney cannot excessively overcharge.

A person can hire a "typing service" or a "paralegal service" for bankruptcy advice and preparation of the bankruptcy forms. In most states this is the practice of law and is technically illegal but it goes on nevertheless. Use of these services is usually not a good idea because they are not regulated or tested for the quality of their legal advice. Moreover, what they charge usually is not that much less than an attorney if the client shopped around.

**CHAPTER 2****WHAT A CHAPTER 7 BANKRUPTCY AND THIS BOOK****CAN AND CANNOT DO****I. INTRODUCTION**

Before anyone seeks bankruptcy protection, he must first be satisfied that the bankruptcy will accomplish the desired results of discharging debts and keeping exempt property. Chapter 7 bankruptcy is commonly considered a "liquidation" which is a misnomer. A Chapter 7 proceeding is a partial liquidation of the debtor's estate. In a Chapter 7 proceeding, the debtor's estate (discussed in Chapter 7) will be sold (liquidated) to the extent of its nonexempt property and the proceeds paid the debtor's creditors. To the extent that the debtor's creditors remain unpaid, their nondischargeable debts are discharged and forgiven the debtor will not have to pay them. There are certain debts that Congress has made nondischargeable in bankruptcy as a matter of public policy. There are other debts that are non-dischargeable only in the event that the creditor objects. A person who is considering filing for bankruptcy protection should determine what debts are dischargeable and what debts are nondischargeable. A Chapter 7 petition may be of little assistance if most of a debtor's debts are nondischargeable. This chapter identifies and explains debts that are nondischargeable under the Bankruptcy Code.

## THE PURPOSE OF THIS BOOK AND WHO SHOULD USE IT

This book was written to fill a void in legal books about Chapter 7 bankruptcy. It was written to be used by an attorney and by individuals engaged in a small service or retail business with few assets or inventory. This book can be used by married couples and in the vast majority of cases a joint filing by married couples provides the following advantages:

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

There can be situations where filing jointly may not be best. Before filing a joint petition, the couple should consult a bankruptcy attorney for recent changes in the exemption law when:

1. The couple own property in tenancy by the entireties. Such 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 entireties. In a few states (see Chapter 5 for a fuller discussion) 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 important if the couple has such property. A consultation on this issue may cost

\$250, but it could save tens of thousands of dollars in exempt property.

2. The couple have ERISA qualified pensions. The United States Supreme Court has made several rulings in recent years that seriously affect the exemption for ERISA pensions. These exemptions are discussed in Chapter 6. In some circumstances it might be beneficial for a couple to move to another state to the federal pension exemption and the federal homestead exemption.

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. This type of bankruptcy uses an entirely different set of procedures. 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 while the payments schedules of others are altered. A farmer considering bankruptcy should consult a bankruptcy attorney to determine if a Chapter 7 or Chapter 12 petition is best.
3. CHAPTER 13 REORGANIZATION. A Chapter 13 petition is a reorganization of debts for individuals. The debtor

creates a plan that must be approved by the court. Some of the debts are discharged in whole or in part and the remaining debts are paid over a period of time (usually three to five years). This book does not discuss Chapter 13 petitions except in the area of foreclosure on a home (see Chapter 5). Generally, the only reason for choosing a Chapter 13 Reorganization is to keep appreciating property that would be lost in the Chapter 7 proceeding.

4. CREDITOR ENGAGED IN BUSINESS. Where the debtor is engaged in business and more than 35% of the total debts are attributable to the business, he should consult a bankruptcy attorney. This book is not geared to addressing the problems and accounting procedures necessary for a debtor with substantial business debts. It should not be used if the debtor's business is a partnership or is engaged in manufacturing or large inventory sales. This type of debtor needs a bankruptcy attorney.

## II. NONDISCHARGEABLE DEBTS

Congress made 10 categories of debts nondischargeable. Of the 10 categories, seven of them represent debts that cannot be discharged unless they fall into narrow exceptions. The remaining three categories of debts are dischargeable unless a creditor files objections to their discharge in a timely manner. This chapter will discuss both the types of nondischargeable debts.

## A. DEBTS NOT DISCHARGEABLE UNLESS AN EXCEPTION EXISTS

## 1. TAXES

Under section 523(a), 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

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 eight 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 attempt willfully to avoid paying the taxes.

Under the Bankruptcy Code, tax assessments made against a debtor within eight months of filing a bankruptcy petition are nondischargeable 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 not dischargeable. Property taxes are 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). Property taxes are not dischargeable; they must be paid if the debtor wishes to keep the taxed property.

#### 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. If a creditor is not properly listed that creditor 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 offer to them an opportunity to participate in the proceeding. 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 remains liable for repayment of the debt even though the debtor's other debts 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; the procedure is covered in Chapter 15. Absent reopening of 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.

#### c. SPOUSE AND CHILD SUPPORT

Under section 523(a)(5), court-ordered payments for the support of a child or former spouse are nondischargeable. There are variations on this subject that a debtor must investigate.

If back child support is at issue, the debtor should consult a bankruptcy attorney. To not have paid it might be a criminal act

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 Horol 33 B.R. 989, 1983). The obligation to make court-ordered child support payments is not discharged even if, 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 payments made by the state for the support of 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). Case law which holds that if a parent deserts or neglects the children, the debts for the property or services provided by third parties are not dischargeable (In re Meyers 12 F.2d 938).

There must be a court order requiring support payments to be made if a debt for child support is to be nondischargeable. All states have laws that impose on a parent the duty to support a child. The parent can be sued for the value of child support provided by third parties. These debts are dischargeable unless reduced to a judgment prior to the debtor-parent filing for bankruptcy protection. For example, assume that a mother deserted

her children, and the father raised 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 obtained a court order requiring the mother to reimburse the father for the back support, the debt for back support is not dischargeable.

Spouse support (alimony) requires a court order or an agreement obligating the debtor to make support payments to the spouse. This order or agreement ensures the obligation to make the payments will not be dischargeable. The debtor may agree to make spousal support payments through a marital agreement or a property settlement agreement; such support payments are nondischargeable. Without a court judgment ordering a debtor to make spouse support payments (or an agreement requiring them to be made) the debtor's obligation to make support payments can be terminated in a bankruptcy. If parties are not married the debtor may be discharged from any obligation to make support payments unless the relationship qualifies as a common law marriage.

The Bankruptcy Act of 1994 amended the automatic stay of section 362. The Act now provides that collection of spouse 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. Property acquired during the life of a Chapter 13 Plan is considered property of the estate. Under the Bankruptcy Act of 1994, child and spouse support claims now have priority over and are to be paid before general unsecured claims and tax claims. The Bankruptcy Act of 1994 prohibits the trustee and the debtor from the recovery of any property transferred to spouse or child in connection with a divorce or separation occurring within 1 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 avoiding child support payments required by a judgment lien on otherwise exempt property.

Whether or not the debts are collected or are incurred during the bankruptcy, the obligation survives the bankruptcy, and the debtor must pay in full.

#### 4. FINES, PENALTIES AND FORFEITURES

Section 523(a)(7) exempts from discharge those debts incurred as fines or penalties from the debtor's violation of the law. This exception from discharge is firmly based on the belief that approving the discharge of the above would be an implicit approval of criminal or civil misbehavior. All governmental sanctions, whether by a court or an 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: those involving a transaction giving rise to a tax occurring three or more years prior to the filing of the bankruptcy petition.

#### 5. STUDENT LOANS

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. Prior to January 1999, student loans were dischargeable if they were over seven years old but that exception has been eliminated and student loans are no longer dischargeable simply because of the fact that they may be over seven years of age.

Under section 523(a)(8) student loans made or guaranteed by a governmental agency (just about all of them are) are not discharged

unless not discharging the student loan debt would impose an undue hardship on the debtor.

If a debtor is considering discharging student loans, the debtor should consult a bankruptcy attorney to determine how they are handled in that state. If the bankruptcy court of that state will only discharge the payments over seven years old, it might be advantageous for the debtor to move to another state that has a bankruptcy court that will discharge the entire amount.

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 in Brunner vs. New York State Higher Educational Service Corp. 831 F.2d 385, 1987 stated that the debtor can prove undue hardship prevents repayment of student loans by showing:

1. The debtor cannot maintain, based on current income and expenses, a minimal standard of living for himself and his dependents if forced to repay the loans.
2. Additional circumstances exist indicating this state of affairs is likely to persist for a significant portion of the repayment, 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 those obtaining a medical education. This type of student loan is held not to be dischargeable unless the debtor can show a greater burden than an undue hardship will occur if he must repay the loan (In re Hines 15 C.B.C.2d 959 and Columbus College vs. Shore 707 F2d. 1337, 1983). Such loans should be considered and treated by a debtor as nondischargeable except in the most extreme cases.

#### 6. DEBTS INCURRED FROM DRIVING WHILE INTOXICATED

Section 523 (a)(9) states that debts incurred as a result of an episode of intoxicated driving are not dischargeable. This means that a debtor driving while intoxicated and causing an accident can no longer avoid the liability of paying the damages by filing a bankruptcy petition. Prior to the enactment of this section, 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 willful and thus nondischargeable under section 523(a)(6).

Now the damages caused by a person's intoxicated driving will not be discharged if:

1. The debt arose from a court decree or judgment against the debtor for damages from 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.

A court for the state where the accident or damages 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 under the influence of alcohol or drugs to such an extent as to be unable to operate it safely. 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. California law prohibits a person with a blood alcohol level above .08% from operating a motor vehicle. A person involved in an accident while having a blood alcohol level over the legal level is guilty of driving while intoxicated, and the damages resulting are not dischargeable.

If a debtor files for bankruptcy relief prior to a state court issuing its judgment, the debtor's debts are discharged, but some courts will not discharge drunk driving debts (In re Thomas 51 B.R. 187, 1985). The Ninth Circuit Court of Appeals in its decision 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 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 intoxication debts by filing for bankruptcy relief prior to a state court judgment being rendered. This might mean moving to a state whose federal bankruptcy court 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. If the debtor waived discharge of a debt in an earlier case, he cannot seek a discharge of that debt in a subsequent case.

Exceptions to discharge under this section do not include technical dismissal of the earlier case. Dismissals based on failure to pay a filing fee or the fact that a previous discharge had been obtained within 6 years are not exceptions to discharge.

## B. DEBTS THAT WILL BE DISCHARGED UNLESS A CREDITOR OBJECTS

There are three other types of debts that may be nondischargeable under Section 523 of the Bankruptcy Code:

1. Section 523(a)(2): those debts deriving from fraudulent acts by the debtor.
2. Section 523(a)(6): those debts deriving from debtor's willful or malicious acts that injure another person or cause damage to another's property.
3. Section 523(a)(4): those debts deriving from debtor's breach of a fiduciary relationship, embezzlement or larceny.

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

Bankruptcy Rule 4007(c) governs the procedure by which a creditor may object to the discharge of any of the above debts. Under Rule 4007(c), in order to have any of the above debts declared nondischargeable, the creditor who holds the debt must file a complaint seeking to have the debt declared nondischargeable within 60 days of the First Meeting of Creditors. 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 upon which another party reasonably relies to his detriment. If a debtor tricks another person out 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 can exist whether or not the debtor obtained property by false pretenses such as agreeing to hold property for another but instead taking the property for one's own personal use or ownership.

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 and the debtor will "max out" the card (charge to the maximum of the line of credit) prior to filing for bankruptcy relief. The court will not discharge out of the ordinary charges. Example: Mary normally charges \$500 per month and has a \$5,000 line of credit. One week before Mary files her bankruptcy petition she charges \$5,000 on the card. 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 of having 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: debt incurred for failure to perform the contract is dischargeable. If the debtor entered into a contract with no intent of ever performing it, the debtor is not discharged from paying debts derived from breach of the contract or misrepresentation.

## 2. DEBTS FOR WILLFUL AND MALICIOUS ACTS

A debt derived from a willful and 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 the Bankruptcy Code and the debts therefrom are not dischargeable. Example: A debtor attacks an innocent person and the victim is injured. The debtor's liability to pay the medical bills is not discharged by a bankruptcy. Debts incurred from damages caused by the debtor's intoxicated driving have been held by some courts to be nondischargeable because they were incurred by willful and malicious acts, whether or not they can be discharged under section 523(a)(9).

Debts that do not derive from criminal act may 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. An example of a malicious might be the reckless operation of a power saw that cuts another person. There was no intent to cause the injury but a reasonable person would know that playing with a power saw could cause that injury. The damages caused by the reckless operation of

the saw would not be 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 property from people at large, it is "larceny." Debts derived from thefts (involving an obligation to pay for the property or to return it) are not discharged by the bankruptcy if the creditor objects. Otherwise, a person who steals 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 whom he is required to protect, the debts deriving from the breach of duty are not discharged. An example of a fiduciary responsibility exists when a person is the guardian of another. Assume, for example, that the guardian invests that person's assets in risky investments when a reasonable person would not have made the investment. The guardian would, as such, be liable to replace any losses incurred as a result of the improper investments. The debts for any breach of a fiduciary duty will not be discharged, in a bankruptcy, provided the creditor (the person injured or the representative) properly objects to the granting of a discharge.

**CHAPTER 3**  
**STEPS IN A BANKRUPTCY ACTION**

A Chapter 7 bankruptcy proceeding is methodical, procedural and entirely predictable. The steps begin with finding the correct court and proceed to receipt of the final discharge. Throughout, the case is a logical progression. Once these progressive steps are reviewed, the reader will appreciate the orderly nature of the bankruptcy procedure and be more at ease.

1. SELECTING THE PROPER BANKRUPTCY COURT

Every state has at least one bankruptcy court. Some states are divided into judicial districts, each with its own bankruptcy court. The debtor is required to file the bankruptcy petition with the bankruptcy court in the debtor's home jurisdiction. If there is more than one bankruptcy, the debtor must file with the court in where he has lived the most in the last six months.

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

The easiest way to locate the proper bankruptcy court is for the debtor through the phone book. Virtually all phone books list the bankruptcy court which covers the same geographical area of the phone book. A debtor will merely open the phone book for his home

town and find the address and phone number of the nearest federal bankruptcy court, which is usually under a title of "FEDERAL GOVERNMENT". Then a quick call to the court to be sure that the court does, in fact, cover the debtor's home town is all that is necessary to be absolutely certain.

## 2. GETTING THE RULES AND FORMS

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

1. Ask the clerk if upon receiving a check and a large self-addressed envelope he would send the following:
  - a. Local rules of court,
  - b. Fee schedule for all court filings, and
  - c. Copies of all local forms required by the court.
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) an inch longer than the petition. On the inch that overlaps the court requires that 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 the court's creditor matrix in his letter to the clerk.

The forms contained in this book are based on 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. Although current through 1999, 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," you will have to purchase the new official form from the court or a stationary or office supply store for about \$20.

The Bankruptcy Code requires that the bankruptcy forms have two pre-punched holes in them before they can be filed. The forms in this book are not pre-punched but virtually all libraries have two hole punches that can be borrowed for this task.

Calculate the amount of money this will require and send a check in that amount to the clerk in a self-addressed envelope. All courts are overworked. Do not be surprised if the clerk will not answer your questions (they don't have to do it). The only alternative is to drive to the courthouse and get this information in person. A good idea is to send a check with no amount filled in but instead with a notation "Good for up to \$250.00". Thereby the clerk can fill in the correct amount and there is no fear that the

petition will be returned for because the check is not enough.

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

## 2. EMERGENCY FILINGS

Occasionally there are circumstances when the debtor does not have the time to complete the full petition before some type of foreclosure by a creditor occurs. Under Bankruptcy Rule 1007 (c), it is possible to file just the petition along with the list of creditors to get the Automatic Stay.

The debtor then has 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. If the petition is dismissed, the debtor can refile again but will lose the filing fee already paid.

The emergency filing requires the debtor to file at least:

1. The Voluntary Chapter 7 Petition, and
2. The list of all creditors as known by the debtor (the

creditor whose collection is forcing the emergency filing must certainly be listed).

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

### 3. THE PREPARATION AND FILING OF THE PETITION

Once all the appropriate forms are obtained, the debtor then determines the size, manner and type of the debts in the estate. To help organize the estate, there is a worksheet following this chapter for the debtor to list the assets and liabilities of the estate.

After completing the worksheet, the debtor will use it to determine which debts are nondischargeable and which debts are dischargeable.

Once the debts have been divided into the various categories, the debtor will then decide which secured debts will be ratified, redeemed or have the lien avoided (see Chapters 9, 10, and 11). Once these decisions are made the debtor is now ready to complete the schedules, the statement of intention and the summary of debts and property.

The remaining acts required prior to filing are completions of the creditor matrix, statements of the debtor engaged or not

engaged in business and cover sheets of the petition. When everything is complete, the debtor is ready to file the petition (see Chapter 4).

The total filing fee is \$200 dollars, which includes a \$45 for both administrative and trustee fees, payable in full at filing. It may seem strange that a bankrupt debtor must find \$200 to seek bankruptcy relief. Bankruptcy Rule 1006(b)(1) permits a debtor to pay the \$155 filing fee (but not the \$30 administrative fee) in installments over four months if the court approved form 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.

#### 4. 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. Once the debtor files the bankruptcy petition there is an Automatic Stay on debt collection and

foreclosure proceedings against the debtor. Unless a creditor knows of the bankruptcy, collection proceedings may go forward, and, although they will be subsequently set aside, there's no reason to go through the bother when a quick letter from the debtor early in the case will prevent all this.

Shortly after the petition is filed, the court appoints the trustee to handle the case. The trustee will review the petition and determine what property is available for payment to the creditors. If the case is a no-asset case, the trustee will notify the creditors that they do not have to appear at the creditor meeting because no assets exist to pay them. He will also tell them that another creditor's meeting will be scheduled if assets are subsequently discovered.

If assets are present the trustee will hold the creditor meeting. The trustee will preside over the creditor meeting. The judge will not be there. The trustee and the creditors will question the debtor about the location of the property in the estate and the debtor's intent to ratify, redeem or set aside the lien on secured property.

#### 5. TRUSTEE'S MANAGEMENT OF THE ESTATE

After the creditor's meeting the trustee takes possession of the nonexempt property that will yield proceeds after the property is sold and costs of sale and any liens on the property are deducted. For example, assume that a debtor owned a nonexempt truck

that was sold for \$2,000. Only \$500 was owed on it, and the cost of sale was \$200. The trustee has \$1,300 left to distribute.

Remaining proceeds are used to pay any cash exemptions permitted to the debtor under the law. The remaining amount is spread among the unsecured creditors of the debtor. The debtor has the right to purchase nonexempt property from the trustee for cash or trade exempt property for it.

#### 6. MOTION TO REDEEM SECURED PROPERTY

Following the meeting of creditors, the debtor may move to purchase at fair market value from a secured creditor exempt property that is collateral for a secured debt. If the creditor agrees to the sale, there is no reason to have a motion for approval filed with the court. A written agreement between the debtor and creditor is sufficient to bind each.

When creditor and debtor have agreed on a fair market price and installment payments, the debtor must move for a court order requiring the creditor to take the purchase price in installments (See chapter 10). If the entire purchase price cannot be paid within 45 days of the order permitting the redemption the creditor can repossess the property and return the payments made up to that point. Many bankruptcy courts will not force a creditor to take the payments in installments.

#### 7. MOTION TO SET ASIDE A LIEN

The Bankruptcy Code gives the debtor the right to set aside

judicial (judgment) liens against exempt property. The procedure for setting aside a judicial lien calls for the debtor to file a motion with the court with notice being given to the creditor possessing the lien.

A judicial lien is a lien placed against exempt property for 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 be avoided by the trustee if it does not benefit the debtor. The procedure for avoiding a judicial lien is discussed in chapter 9.

#### 8. 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 on request by individual creditors under certain circumstances.

To get the automatic stay lifted, the creditor must file a complaint to lift the automatic stay and serve it on the trustee and the debtor. The debtor is not required to file a response to the complaint unless local rules require it. The creditor is compelled to convince the court the automatic stay should be lifted

as to that particular creditor. The debtor, whether a response is filed or not, must appear and explain to the court why the stay should not be lifted or else it will be granted.

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

#### 9. RATIFICATION AGREEMENT AND DISCHARGE HEARING

The debtor has the right to reaffirm debts on nonexempt property to prevent the property being repossessed by the creditors. If the debtor is seeking to reaffirm a debt, the court is required to hold a discharge hearing. The purpose of requiring court approval is to make sure the debtor does not by mistake or fraud reaffirm a debt against his best interest.

No ratification agreement will be valid unless it meets the following requirements:

1. The agreement must have been made prior to the granting of the discharge.
2. The agreement must clearly state that the debtor can rescind it at any time prior to the discharge and for 60 days thereafter.
3. The agreement must have been approved by the court.

The court will approve a ratification agreement if it finds that the ratification will not impose an undue hardship on the debtor or the debtor's dependents and is in the debtor's best interest. The

judge will ask sufficient questions to be assured about these requirements.

Once the court is satisfied that the reaffirmation of the debt should occur, it will approve the ratification agreement and issue the final discharge. At this point, unless something happens that requires the case to be reopened (such as newly discovered property, an omitted creditor or a complaint to set aside the discharge for fraud), the case is closed and the debtor is free to continue his life without fear of the discharged creditors.

If the debtor does not seek to reaffirm a debt, most courts will not hold a discharge hearing. The debtor is mailed an order stating that the final discharge is granted. The case is over.

#### 10. 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. 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 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. If the reopening of the case is to enter the discharge of an earlier unnamed creditor or to change an exemption, no purpose is gained by appointing a trustee. The judge simply enters the appropriate order and closes the estate again.

Usually, a debtor will seek to reopen a case for one of two reasons. The first is that a creditor has been mistakenly omitted, and it is necessary to have that creditor's debt discharged. The second reason is that the debtor wishes to amend the exemptions in the original petition (usually because of after-acquired property).

Once the court determines that the equities of the case justify reopening, the newly added creditors whose interests are affected are given an opportunity to present their opposition. After presentation of the motion, the court decides whether or not the debtor's requested relief is proper.

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 the first time.

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: \_\_\_\_\_

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14. Length of Residency in the State: \_\_\_\_\_

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15. Previous marriages for each spouse: \_\_\_\_\_

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16. Children: \_\_\_\_\_

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17. Children of spouse (step-children): \_\_\_\_\_

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18. Deceased Children: \_\_\_\_\_

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19. Grandchildren: \_\_\_\_\_

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20. Grandchildren of spouse: \_\_\_\_\_

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21. Parents and addresses: \_\_\_\_\_

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22. Parents of spouse and addresses: \_\_\_\_\_

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**B. PROPERTY**

1. Real Property (for each piece of real property state):

a. (1) Type of property: \_\_\_\_\_

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a. (2) Location of property: \_\_\_\_\_

---

a. (3) Holder and amount of liens on the property: \_\_\_\_\_

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a. (4) Fair market value of the property not deducting for the liens:

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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?):

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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?\_\_\_\_\_

---

## CHAPTER 4

### PREPARATION OF THE PETITION

#### I. INTRODUCTION

A bankruptcy case starts with the filing of the petition seeking bankruptcy relief. The entire petition consists of many schedules, statements and forms that must be filed. Even though some of the forms may not be applicable for a particular petition they must be completed, even if it means writing "N/A," "not applicable" or "none" where appropriate.

An emergency filing can be done 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 can refile again, but that will mean paying a new filing fee. An emergency filing is only necessary where a creditor is about to sell debtor's property that is security for a debt or has been attached for payment of a court judgment.

Before the forms are prepared the debtor should complete the worksheet contained in this book and read the book, paying particular detail to the discussions on exemptions, nondischargeable debts, lien avoidance, redemption and ratification, pensions and homestead. He can then 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.
4. What debts on exempt property will be redeemed.
5. What debts on exempt property will be avoided.
6. What debts on nonexempt property will be ratified.

Once the determinations have been made, the debtor can complete the forms. A bankruptcy proceeding is technical, but there are instances where a judge has discretion. If the proper forms are filed, no one objects and debts are not nondischargeable by law, the court must grant the final discharge. The function of the bankruptcy court is to hold the debtor, not the creditor. By remembering that the purpose of the court is to help a person begin a new life, a debtor should not be apprehensive about the process.

There are no mistakes before the final discharge that cannot be corrected. Nor will the debtor be punished for an innocent mistake. The biggest fear that a person has in a bankruptcy hearing 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 of 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.

### 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.

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"/> <b>Veteran's Declaration.</b> 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> |
|---|---|

### Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION

|    |   |                             |                |    |    |   |    |    |                 |                             |    |    |  |  |
|----|---|-----------------------------|----------------|----|----|---|----|----|-----------------|-----------------------------|----|----|--|--|
| 2  | <p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></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." <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. <b>Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</b></p> <p>d. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</b></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> |                             |                |    |    |   |    |    |                 |                             |    |    |  |  |
| 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. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: center;">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. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width: 100%; border-collapse: collapse; margin-bottom: 5px;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td style="text-align: center;">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:<br><table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:40%;">Unemployment compensation claimed to be a benefit under the Social Security Act</td> <td style="width:20%;">Debtor \$ _____</td> <td style="width:20%;">Spouse \$ _____</td> <td style="width:20%;"></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. <b>Do not include</b> 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.<br><table border="1" style="width:100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width:10%;">a.</td> <td style="width:60%;"></td> <td style="width:10%; text-align:right;">\$</td> <td style="width:10%;"></td> </tr> <tr> <td>b.</td> <td></td> <td style="text-align:right;">\$</td> <td></td> </tr> </table> Total and enter on Line 10 | a.  |                 | \$              |  | b. |    | \$ |  | \$ | \$ |
| a.  |   | \$  |                 |                 |  |    |    |    |  |    |    |
| b.  |   | \$  |                 |                 |  |    |    |    |  |    |    |
| 11  | <b>Subtotal of Current Monthly Income for § 707(b)(7).</b> 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  | <b>Total Current Monthly Income for § 707(b)(7).</b> 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 | <b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.   | \$ |  |
| 14 | <b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)<br>a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____  | \$ |  |
| 15 | <b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> 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.<br><input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> 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 | <b>Enter the amount from Line 12.</b>  | \$ |  |
| 17 | <b>Marital adjustment.</b> 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 | <b>Current monthly income for § 707(b)(2).</b> Subtract Line 17 from Line 16 and enter the result.   | \$ |  |

**Part V. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)**

|  |   |    |  |
|--|---|----|--|
| <b>Subpart A: Deductions under Standards of the Internal Revenue Service (IRS)</b> |   |    |  |
| 19   | <b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) | \$ |  |
| 20A  | <b>Local Standards: housing and utilities; non-mortgage expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court).  |                              |    |  |    |    |  |    |    |   |                              |    |
| 20B | <p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:20%;">\$</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><b>Local Standards: housing and utilities; adjustment.</b> 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><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>   |                              | \$ |  |    |    |  |    |    |   |                              |    |
| 23  | <p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:20%;">\$</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><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:20%;">\$</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><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>  |                              |    |  |    |    |  |    |    |   |                              |    |
| 26  | <p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>   |                              | \$ |  |    |    |  |    |    |   |                              |    |

|    |  |    |
|----|--|----|
| 27 | <b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>  | \$ |
| 28 | <b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 44.</b>   | \$ |
| 29 | <b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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 | <b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>  | \$ |
| 31 | <b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 34.</b>   | \$ |
| 32 | <b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>                                 | \$ |
| 33 | <b>Total Expenses Allowed under IRS Standards.</b> 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 | <b>Health Insurance, Disability Insurance and Health Savings Account Expenses.</b> 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 | <b>Continued contributions to the care of household or family members.</b> 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 | <b>Protection against family violence.</b> 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 | <b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>   | \$                     |    |                             |
| 38 | <b>Education expenses for dependent children less than 18.</b> 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. <b>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.</b>  | \$                     |    |                             |
| 39 | <b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b> | \$                     |    |                             |
| 40 | <b>Continued charitable contributions.</b> 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 | <b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40  | \$                     |    |                             |

| Subpart C: Deductions for Debt Payment                |  |  |                               |
|---|--|--|-------------------------------|
| 42  | <b>Future payments on secured claims.</b> 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  | <b>Past due payments on secured claims.</b> 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  | <b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.  |  | \$                            |
| 45  | <b>Chapter 13 administrative expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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  | <b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.  |  | \$                            |
| Subpart D: Total Deductions Allowed under § 707(b)(2) |  |  |                               |
| 47  | <b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.   |  | \$                            |

| Part VI. DETERMINATION OF § 707(b)(2) PRESUMPTION |  |    |
|---|--|----|
| 48  | <b>Enter the amount from Line 18 (Current monthly income for § 707(b)(2))</b>  | \$ |
| 49  | <b>Enter the amount from Line 47 (Total of all deductions allowed under § 707(b)(2))</b>                                   | \$ |
| 50  | <b>Monthly disposable income under § 707(b)(2).</b> Subtract Line 49 from Line 48 and enter the result                     | \$ |
| 51  | <b>60-month disposable income under § 707(b)(2).</b> Multiply the amount in Line 50 by the number 60 and enter the result. | \$ |

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  |   |                             |                                |   |                 |                 |    |   |    |    |                 |                             |    |    |
|---|---|-----------------------------|--------------------------------|---|-----------------|-----------------|----|---|----|----|-----------------|-----------------------------|----|----|
|   |   |                             | Column A<br>Debtor's<br>Income | Column B<br>Spouse's<br>Income  |                 |                 |    |   |    |    |                 |                             |    |    |
| 1   | <p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>b. <input type="checkbox"/> Married. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b></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>                              |                             |                                |   |                 |                 |    |   |    |    |                 |                             |    |    |
| 2   | <b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>   |                             |                                | \$  | \$              |                 |    |   |    |    |                 |                             |    |    |
| 3   | <p><b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: right;">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   | <p><b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 45%;">Gross receipts</td> <td style="width: 50%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td style="text-align: right;">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   | <b>Interest, dividends, and royalties.</b>  |                             |                                | \$  | \$              |                 |    |   |    |    |                 |                             |    |    |
| 6   | <b>Pension and retirement income.</b>   |                             |                                | \$  | \$              |                 |    |   |    |    |                 |                             |    |    |
| 7   | <b>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse.   |                             |                                | \$  | \$              |                 |    |   |    |    |                 |                             |    |    |
| 8   | <p><b>Unemployment compensation.</b> 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:</p> <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   | <p><b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include</b> 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.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 55%;"></td> <td style="width: 40%; text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: right;">\$</td> </tr> </table>   |                             |                                | a.  |                 | \$              | b. |   | \$ | \$ | \$              |                             |    |    |
| a.  |   | \$                          |                                |   |                 |                 |    |   |    |    |                 |                             |    |    |
| b.  |   | \$                          |                                |   |                 |                 |    |   |    |    |                 |                             |    |    |
| 10  | <b>Subtotal.</b> 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  | <b>Total.</b> 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   | <b>Marital adjustment.</b> 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   | <b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.  | \$ |
| 16   | <b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)<br>a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____  | \$ |
| 17   | <b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 15 is less than the amount on Line 16.</b> 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. <b>Do not complete Parts III, IV, V or VI.</b><br><input type="checkbox"/> <b>The amount on Line 15 is not less than the amount on Line 16.</b> 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  | <b>Marital adjustment.</b> 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  | <b>Current monthly income for § 1325(b)(3).</b> Subtract Line 19 from Line 18 and enter the result.   |    |
| 21  | <b>Annualized current monthly income for § 1325(b)(3).</b> Multiply the amount from Line 20 by the number 12 and enter the result.  | \$ |
| 22  | <b>Applicable median family income.</b> Enter the amount from Line 16.  | \$ |
| 23  | <b>Application of § 1325(b)(3).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 21 is more than the amount on Line 22.</b> 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.<br><input type="checkbox"/> <b>The amount on Line 21 is not more than the amount on Line 22.</b> 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. <b>Do not complete Parts IV, V, or VI.</b> |    |

| Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)                |   |    |
|---|---|----|
| Subpart A: Deductions under Standards of the Internal Revenue Service (IRS) |   |    |
| 24  | <b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) | \$ |
| 25A   | <b>Local Standards: housing and utilities; non-mortgage expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)                                  | \$ |

|     |  |                              |  |    |    |  |    |    |   |                              |    |
|-----|--|------------------------------|--|----|----|--|----|----|---|------------------------------|----|
| 25B | <p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align: right;">\$</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 style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align: right;">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><b>Local Standards: housing and utilities; adjustment.</b> 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> <p>_____</p> <p>_____</p> <p>_____</p>  | \$                           |  |    |    |  |    |    |   |                              |    |
| 27  | <p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>   | \$                           |  |    |    |  |    |    |   |                              |    |
| 28  | <p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align: right;">\$</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 style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align: right;">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><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align: right;">\$</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 style="text-align: right;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td style="text-align: right;">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><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>  | \$                           |  |    |    |  |    |    |   |                              |    |
| 31  | <p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>  | \$                           |  |    |    |  |    |    |   |                              |    |

|    |  |    |
|----|--|----|
| 32 | <b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>  | \$ |
| 33 | <b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 49.</b>   | \$ |
| 34 | <b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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 | <b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>  | \$ |
| 36 | <b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 39.</b>   | \$ |
| 37 | <b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>                                | \$ |
| 38 | <b>Total Expenses Allowed under IRS Standards.</b> 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 | <b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> 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 | <b>Continued contributions to the care of household or family members.</b> 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. <b>Do not include payments listed in Line 34.</b>   | \$                     |    |                              |
| 41 | <b>Protection against family violence.</b> 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 | <b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>   | \$                     |    |                              |
| 43 | <b>Education expenses for dependent children under 18.</b> 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. <b>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.</b>  | \$                     |    |                              |
| 44 | <b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b> | \$                     |    |                              |
| 45 | <b>Continued charitable contributions.</b> 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 | <b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 39 through 45.   | \$                     |    |                              |

| Subpart C: Deductions for Debt Payment                |  |  |                               |
|---|--|--|-------------------------------|
| 47  | <b>Future payments on secured claims.</b> 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  |
|   |  |  | \$                            |
| 48  | <b>Past due payments on secured claims.</b> 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.   |  |                               |
|   | 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  | <b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.  |  | \$                            |
| 50  | <b>Chapter 13 administrative expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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  | <b>Total Deductions for Debt Payment.</b> Enter the total of Lines 47 through 50.  |  | \$                            |
| Subpart D: Total Deductions Allowed under § 707(b)(2) |  |  |                               |
| 52  | <b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 38, 46, and 51.   |  | \$                            |

| Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2) |  |    |
|---|--|----|
| 53  | <b>Total current monthly income.</b> Enter the amount from Line 20.  | \$ |
| 54  | <b>Support income.</b> 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  | <b>Qualified retirement deductions.</b> 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  | <b>Total of all deductions allowed under § 707(b)(2).</b> Enter the amount from Line 52.   | \$ |
| 57  | <b>Total adjustments to determine disposable income.</b> Add the amounts on Lines 54, 55, and 56 and enter the result.   | \$ |
| 58  | <b>Monthly Disposable Income Under § 1325(b)(2).</b> Subtract Line 57 from Line 53 and enter the   | \$ |

result.

**Part VI: ADDITIONAL EXPENSE CLAIMS**

|    |  |                |    |
|----|--|----------------|----|
| 59 | <p><b>Other Expenses.</b> 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.</p> |                |    |
|    | Expense Description  | Monthly Amount |    |
|    | a.   | \$             |    |
|    | b.   | \$             |    |
|    | c.   | \$             |    |
|    | Total: Add Lines a, b, and c   |                | \$ |

**Part VII: VERIFICATION**

|    |   |  |
|----|---|--|
| 60 | <p>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></p> |  |
|    | Date: _____   | Signature: _____<br>(Debtor)               |
|    | Date: _____   | Signature: _____<br>(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<br>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.



**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****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.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

X **JOHN LESTER SMITH**

Signature of Debtor

X **JANE ALICE SMITH**

Signature of Joint Debtor

**(650) 367-8739**

Telephone Number (If not represented by attorney)

**MARCH 19, 2002**

Date

**Exhibit C**

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?

[ ] YES, and Exhibit C is attached and made a part of this petition

[ **XX** ] NO**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

**Signature of Attorney**

X Signature of Attorney For Debtor(s)

Printed Name of Attorney for Debtors(s)

Firm Name

Address

Telephone Number

Date

**Signature of Non-Attorney Petition Preparer**

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 Name of Bankruptcy Petition Preparer

Social Security Number

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 sheets conforming to the appropriate official form for each person.

X

Signature of Bankruptcy Petition Preparer

Date

**Exhibit A**

(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.)

 Exhibit A is attached and made a part of this petition.**Exhibit B**

(To be completed if debtor is an individual whose debts are primarily consumer debts.)

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.

X

Signature of Attorney for Debtor(s)

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 fines or imprisonment or both. 11 U.S.C. § 110; 18 U.S.C. § 156.

## 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<br>UKIAH, CA 95482 | JANUARY 1, 1999   | \$547.14    |                    |

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;<br>RELATIONSHIP TO DEBTOR | DATES OF PAYMENTS | AMOUNT PAID | AMOUNT STILL OWING |
|---|-------------------|-------------|--------------------|
|---|-------------------|-------------|--------------------|

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<br>100 MAIN STREET<br>UKIAH, CA 95482 | ORDERED TO PAY<br>\$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<br>OF PERSON FOR WHOSE<br>BENEFIT PROPERTY WAS SEIZED | DATE OF<br>SEIZURE | DESCRIPTION<br>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<br>OF CREDITOR OR SELLER                | DATE OF REPOSSESSION,<br>FORECLOSURE SALE,<br>TRANSFER OR RETURN | DESCRIPTION<br>AND VALUE OF<br>PROPERTY |
|--|--|---|
| JACOB APPLIANCE<br>1499 EDISON AVENUE<br>UKIAH, CA 95482 | JUNE 15, 1998  | REFRIGERATOR AND<br>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<br>OF ASSIGNEE | DATE OF<br>ASSIGNMENT | TERMS OF ASSIGNMENT<br>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:<br>CASE TITLE & NUMBER | DATE OF ORDER | DESCRIPTION AND VALUE OF PROPERTY |
|-------------------------------|--|---------------|-----------------------------------|
|-------------------------------|--|---------------|-----------------------------------|

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 |
|--|--------------------------------|--------------|-------------------------------|
|--|--------------------------------|--------------|-------------------------------|

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<br>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;<br>NAME OF PAYOR IF<br>OTHER THAN DEBTOR | AMOUNT OF MONEY OR<br>DESCRIPTION AND VALUE<br>OF PROPERTY |
|---------------------------|---|--|
|---------------------------|---|--|

**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,<br>RELATIONSHIP TO DEBTOR | DATE | DESCRIBE PROPERTY<br>TRANSFERRED<br>AND VALUE RECEIVED |
|---|------|--|
|---|------|--|

**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 |
|---------------------------------|--|------------------------------------|
|---------------------------------|--|------------------------------------|

**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<br>700 S.STATE STREET<br>UKIAH, CA. 95482 | JOHN LESTER SMITH<br>JANE ALICE SMITH                        | WILLS, MARRIAGE<br>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 |
|------------------------------|----------------|------------------|
|------------------------------|----------------|------------------|

**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 |
|---------------------------|-----------------------------------|----------------------|
|---------------------------|-----------------------------------|----------------------|

**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 |
|---------|-----------|--------------------|
|---------|-----------|--------------------|

**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

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**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 |
|-----------------------|---------------------------------------|----------------|-------------------|
|-----------------------|---------------------------------------|----------------|-------------------|

---

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 |
|-----------------------|---------------------------------------|----------------|-------------------|
|-----------------------|---------------------------------------|----------------|-------------------|

---

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<br>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 |
|------|---------|
|      |         |

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<br>643 B. SOUTH MAIN<br>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

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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

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**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

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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;<br>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 |
|----------------------|--------------------------------|
|----------------------|--------------------------------|

(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 MARCH 16, 2001

Signature of Debtor JOHN LESTER SMITH

Date MARCH 16, 2001

Signature of Joint Debtor (if any) JANE ALICE SMITH

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.*

(If completed by or 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 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<br>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.

## 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<br>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<br>700 S. MAIN<br>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<br>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<br>UKIAH, CA 95482   | C                                  | \$250.00  |
| 6. Wearing apparel.   |      | 504 C LOW GAP ROAD<br>UKIAH, CA 95482   | C                                  | \$500.00  |
| 7. Furs and jewelry.  |      | 504 C LOW GAP ROAD<br>UKIAH, CA 95482   | C                                  | \$100.00  |
| 8. Firearms and sports, photographic, and other hobby equipment.  |      | 504 C LOW GAP ROAD<br>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.   |      | IRA - AMERICAN SAVINGS BANK<br>700 S. MAIN STREET<br>UKIAH, CA 95482<br><br>ERISA - CALLON PUBLISHING<br>1600 S. STATE, UKIAH, CA | C                                  | \$16,000.00   |
| 12. Stock and interests in incorporated and unincorporated businesses. Itemize.   | XX   |   | C                                  | \$14,000.00   |
| 13. Interests in partnerships or joint ventures. Itemize.   | XX   |   |                                    |   |

**SCHEDULE B — PERSONAL PROPERTY**  
(Continuation Sheet)

| TYPE OF PROPERTY   | NONE | DESCRIPTION AND LOCATION OF PROPERTY          | HUSBAND, WIFE, JOINT,<br>OR COMMUNITY | CURRENT MARKET VALUE OF<br>DEBTOR'S INTEREST IN<br>PROPERTY, WITHOUT<br>DEDUCTING ANY SECURED<br>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<br>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   |

**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 accessories.                       |      | 1980 TOYOTA PICKUP<br>1992 CHEVROLET GEO-PRIZM<br>504 C LOW GAP ROAD<br>UKIAH, CA 95482 | C<br>C                             | \$1,100.00<br>\$16,000.00   |
| 24. Boats, motors, and accessories.  | XX   |   |                                    |   |
| 25. Aircraft and accessories.  |      | 1957 CESSNA 150   | C                                  | \$5,800.00  |
| 26. Office equipment, furnishings, and supplies.   | XX   |   |                                    |   |
| 27. Machinery, fixtures, equipment, and supplies used in business.                           |      | PLUMBING TOOLS AND SUPPLIES<br>504 C LOW GAP ROAD<br>UKIAH, CA 95482                    | C                                  | \$1,500.00  |
| 28. Inventory.   | XX   |   |                                    |   |
| 29. Animals.   |      | ONE FRENCH POODLE - ONE CAT<br>504 C LOW GAP ROAD<br>UKIAH, CA 95482                    | C                                  | \$50.00   |
| 30. Crops--growing or harvested. Give particulars.   | XX   |   |                                    |   |
| 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   |   |                                    |   |
| <b>Total</b>   |      |   | ➔                                  | <b>\$61,700.00</b>  |

\_\_\_\_\_ 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.

## 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.

| DESCRIPTION OF PROPERTY                            | SPECIFY LAW PROVIDING EACH EXEMPTION                                | VALUE OF CLAIMED EXEMPTION | CURRENT MARKET VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTIONS |
|--|---|----------------------------|---|
| HOMESTEAD<br>504 C LOW GAP ROAD<br>UKIAH, CA 95482 | C.C.P. 704.730  | \$7,000                    | \$75,000  |
| IRA AND ERISA<br>PENSIONS                          | C.C.P. 704.115<br>and 11 U.S.C.(c) (2)<br>see Patterson vs. Shumate | \$30,000                   | \$30,000  |
| GROUP LIFE POLICY                                  | C.C.P. 704.1000<br>C.C.P. 704.020                                   | \$2,500                    | \$2,500   |
| CLOTHING   | C.C.P. 704.010  | \$500                      | \$500   |
| 1980 TOYOTA PICKUP                                 | C.C.P. 704.060  | \$1,100                    | \$1,100   |
| TOOLS OF TRADE                                     | C.C.P. 704.020  | \$1,500                    | \$1,500   |
| APPLIANCES   |   | \$200                      | \$200   |

## 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  |          |                                    | HOME PURCHASE ON JAN 14, 1983<br>504 C LOW GAP ROAD<br>UKIAH, CA 95482                                |                 |              |          | \$68,000  |                           |
| PETER HOLLINGS<br>1079 HOPEWELL<br>UKIAH, CA 95482                  | X        | C                                  |   | VALUE \$ 75,000 |              |          |   |                           |
| ACCOUNT NO. DW67903   |          |                                    | COURT JUDGMENT FOR MEDICAL BILLS<br>LIEN PLACED ON HOME   |                 |              |          | \$39,000  | \$32,000                  |
| GREATER UKIAH MEDICAL CENTER<br>1256 PINE STREET<br>UKIAH, CA 95482 |          | C                                  |   | VALUE \$ 75,000 |              |          |   |                           |
| ACCOUNT NO. 25630-65-78   |          |                                    | FEBRUARY 13, 1992<br>PURCHASE OF<br>GEO-PRIZM   |                 |              |          | \$17,295  | \$1,295                   |
| MACO CHEVROLET<br>3309 BLIGHT<br>HOPELAND, CA 95481                 |          | C                                  |   | VALUE \$ 16,000 |              |          |   |                           |
| ACCOUNT NO. 324-789-56  |          |                                    | MARCH 21, 1991<br>PURCHASE OF HOME<br>FURNITURE   |                 |              |          | \$2,345   | \$1,145                   |
| ACME FURNITURE<br>567 TOWER WAY<br>UKIAH, CA 95482                  |          | C                                  |   | VALUE \$ 1,200  |              |          |   |                           |
| Subtotal →<br>(Total of this page)                                  |          |                                    |   |                 |              |          | \$126,640   |                           |
| Total →<br>(Use only on last page)                                  |          |                                    |   |                 |              |          |   |                           |

\_\_\_\_\_ continuation sheets attached

(Report total also on Summary of Schedules)

## 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<br>PURCHASE OF 1958<br>CESSNA  |            |              |          | \$5,800   |                           |
| UKIAH CESSNA<br>1290 STATE<br>UKIAH, CA 95482          |          | C                                  | VALUE \$ 7,500  |            |              |          |   |                           |
| ACCOUNT NO.  |          |                                    |   |            |              |          |   |                           |
|  |          |                                    | VALUE \$  |            |              |          |   |                           |
| ACCOUNT NO.  |          |                                    |   |            |              |          |   |                           |
|  |          |                                    | VALUE \$  |            |              |          |   |                           |
| ACCOUNT NO.  |          |                                    |   |            |              |          |   |                           |
|  |          |                                    | VALUE \$  |            |              |          |   |                           |
| ACCOUNT NO.  |          |                                    |   |            |              |          |   |                           |
|  |          |                                    | VALUE \$  |            |              |          |   |                           |

Subtotal → \$5,800  
(Total of this page)

Total → \$132,440  
(Use only on last page)

(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.**

**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 | TYPE OF PRIORITY |              |          | TOTAL AMOUNT OF CLAIM | AMOUNT ENTITLED TO PRIORITY |
|--|----------|------------------------------------|--|------------------|--------------|----------|-----------------------|-----------------------------|
|  |          |                                    |  | CONTINGENT       | UNLIQUIDATED | DISPUTED |                       |                             |
| ACCOUNT NO.  |          |                                    |  |                  |              |          |                       |                             |
|  |          |                                    |  |                  |              |          |                       |                             |
| ACCOUNT NO.  |          |                                    |  |                  |              |          |                       |                             |
|  |          |                                    |  |                  |              |          |                       |                             |
| ACCOUNT NO.  |          |                                    |  |                  |              |          |                       |                             |
|  |          |                                    |  |                  |              |          |                       |                             |
| ACCOUNT NO.  |          |                                    |  |                  |              |          |                       |                             |
|  |          |                                    |  |                  |              |          |                       |                             |

Sheet no. \_\_\_\_\_ of \_\_\_\_\_ sheets attached to Schedule of Creditors Holding Unsecured Priority Claims

|                                    |    |
|------------------------------------|----|
| Subtotal →<br>(Total of this page) | \$ |
| Total →<br>(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<br>HUSBAND, WIFE, JOINT,<br>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<br><br>BANK OF ALABAMA<br>1230 TRUXTUN<br>KEELING, AL 34567          | C   | CREDIT CARD FROM AUGUST 1987 TO PRESENT   |            |              |          | \$4,700         |
| ACCOUNT NO. 87-657-8979<br><br>CALIFORNIA SAVINGS AND LOAN<br>1256 PERKINS<br>UKIAH, CA 95482 | C   | CREDIT CARD FROM OCTOBER 1987 TO PRESENT  |            |              |          | \$8,870         |
| ACCOUNT NO. 45-689-0<br><br>DR. PAUL RODDY<br>235 KEENE<br>SAN FRANCISCO, CA 94102            |   | MEDICAL BILLS FOR SURGERY JAN 1, 1992   |            |              |          | \$13,000        |
| ACCOUNT NO.<br><br>JOHN KREBS<br>1345 DORA<br>UKIAH, CA 95482                                 |   |   |            |              |          |                 |
| Subtotal →<br>(Total of this page)  |   |   |            |              |          | \$28,070        |
| Total →<br>(Use only on last page)  |   |   |            |              |          |                 |

\_\_\_\_\_ continuation sheets attached

(Report total also on Summary of Schedules)

**SCHEDULE F — CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

(Continuation Sheet)

| CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE                                | DEBTOR | 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<br><br>HOME LENDING BANK<br>1236 YOLLO<br>FRESNO, CA 93102     |        | W                                  | JUNE 1982 STUDENT LOAN WHICH BECAME PAYABLE ON JULY 14, 1987                                  |            |              |          | \$5,675         |
| ACCOUNT NO. 456-347-88<br><br>METRO HOSPITAL<br>758 GEROGI<br>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.   |        |                                    |   |            |              |          |                 |

Sheet no. \_\_\_\_\_ of \_\_\_\_\_ continuation sheets attached to Schedule of Creditors Holding Unsecured Non-Priority Claims

Subtotal →  
(Total of this page)

\$28,675

Total →  
(Use only on last page)

\$56,745

(Report total also on Summary of Schedules)

## 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 entireties.

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<br/>3467 FRONT<br/>UKIAH, CA 95482<br/>(CO-SIGNER FOR HOME LOAN)</p> <p>AGNES TEMPLE MARTIN<br/>1289 HOWARD<br/>UKIAH, CA 95482<br/>(CO-SIGNER FOR CAR LOAN)</p> | <p>PETER HOLLINGS<br/>1879 HOPEWELL<br/>UKIAH, CA 95482</p> <p>MACO CHEVROLET<br/>3309 BLIGHT<br/>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.

**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<br>MARY LOUISE SMITH | 8<br>6                               | son<br>daughter |
| <b>Employment:</b>       | <b>DEBTOR</b>                          | <b>SPOUSE</b>                        |                 |
| 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<br>UKIAH, CA        | 1666 STATE STREET<br>UKIAH, CA 95482 |                 |

|   | DEBTOR          | SPOUSE          |
|---|-----------------|-----------------|
| INCOME (Estimate of average monthly income)   |                 |                 |
| Current monthly gross wages, salary, and commissions<br>(pro rate if not paid monthly)                                    | \$ 0            | \$ 1,500        |
| Estimated monthly overtime  | \$ _____        | \$ _____        |
| <b>SUBTOTAL</b>   | <b>\$ 0</b>     | <b>\$ 1,500</b> |
| <b>LESS PAYROLL DEDUCTIONS</b>  |                 |                 |
| a. Payroll taxes and Social Security  | \$ 0            | \$ 260          |
| b. Insurance  | \$ 0            | \$ 40           |
| c. Union Dues   | \$ 0            | \$ 0            |
| d. Other (Specify: _____ )  | \$ _____        | \$ _____        |
| <b>SUBTOTAL OF PAYROLL DEDUCTIONS</b>   | <b>\$ 0</b>     | <b>\$ 300</b>   |
| <b>TOTAL NET MONTHLY TAKE HOME PAY</b>  | <b>\$ 0</b>     | <b>\$ 1,200</b> |
| Regular income from operation of business or profession or farm<br>(attach detailed statement)                            | \$ 1,470        | \$ 0            |
| Income from real property   | \$ 0            | \$ 0            |
| Interest and dividends  | \$ 0            | \$ 0            |
| Alimony, maintenance or support payments payable to the debtor for the debtor's use or<br>that of dependents listed above | \$ 0            | \$ 0            |
| Social Security or other government assistance<br>(Specify: _____ )   | \$ 0            | \$ 0            |
| Pension or retirement income  | \$ 0            | \$ 0            |
| Other monthly income<br>(Specify: _____ )   | \$ 0            | \$ 0            |
|   | \$ _____        | \$ _____        |
| <b>TOTAL MONTHLY INCOME</b>   | <b>\$ 1,470</b> | <b>\$ 1,200</b> |
| <b>TOTAL COMBINED MONTHLY INCOME</b>  | <b>\$ 2,670</b> |                 |

(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<br>SOCIAL SECURITY, SELF-EMPLOYMENT TAX,<br>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>      |
| <b>TOTAL MONTHLY EXPENSES (Report also on Summary of Schedules)</b>                                 |                        | <b>\$</b> | <b><u>2,019.22</u></b> |

(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

Case No. \_\_\_\_\_

Debtor

(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 |
| <b>Total Number of Sheets of All Schedules →</b> |  |                   | 16               |                       |                            |            |
|  |  |                   |                  | <b>Total Assets →</b> | \$136,700                  |            |
|  |  |                   |                  |                       | <b>Total Liabilities →</b> | \$189,185  |

In re JOHN 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

Date MARCH 1, 1999

Signature JANE ALICE SMITH  
Debtor

Signature \_\_\_\_\_  
(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.*

## XV. STATEMENT OF INTENTION

The Statement of Intention is important. Before completing this schedule, the debtor should read Chapters 9, 10 and 11.

The bankruptcy law requires that all property secured for payment of a debt that the debtor does not wish to keep must be surrendered. When property is surrendered, it is given to the creditor having creditor's interest for disposition. All secured property to be surrendered is listed on the statement of intention along with the creditor's name.

Under the bankruptcy laws, the only secured properties that a debtor can keep are:

1. Exempt property on which the lien has been avoided under 11 U.S.C. Section 522(f).
2. Exempt property that is redeemed by the payment of its fair market value under 11 U.S.C. section 722.
3. Nonexempt property on which the debtor ratifies the debt under 11 U.S.C. Section 524(c).

Under 11 U.S.C. Section 521(B), the debtor is required to complete the stated intentions within 45 days. This does not apply to debt ratifications that must be approved by the court at the final discharge hearing. If a creditor objects to lien avoidance or redemptions on the property, the debtor must file a motion with the court to compel creditor acceptance within that period of time.

In a joint case this form can be used if all of the debts are jointly held. Where the spouses have separate debts in a joint case, each spouse must file a separate schedule.

These schedules must be served on the trustee and all of the creditors under Rule 1007 (b)(2). The debtor should mail a copy of the schedule to each creditor listed in the schedule plus a copy of a completed proof of service (see Chapter 9 for form of proof of service). The original copy of the proof of service should be kept to prove that it was sent to the creditors in the event that they claim they did not receive it.

A sample Statement of Intention is completed for reference.

**Form 8. CHAPTER 7 INDIVIDUAL DEBTOR'S STATEMENT OF INTENTION**

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

In re JOHN LESTER SMITH  
(Name)  
Debtor

Case No. \_\_\_\_\_  
(If known)  
Chapter SEVEN

1. I have filed a schedule of assets and liabilities which includes consumer debts secured by property of the estate.
2. I intend to do the following with respect to the property of the estate which secures those consumer debts:
  - a. *Property to be surrendered.*

| Description of Property  | Creditor's Name       |
|--------------------------|-----------------------|
| 1. <u>1992 GEO-PRIZM</u> | <u>MACO CHEVROLET</u> |
| 2. _____                 | _____                 |
| 3. _____                 | _____                 |

b. *Property to be retained.*

[Check any applicable statement]

| Description of property | Creditor's name       | Property is claimed as exempt | Property will be redeemed pursuant to 11U.S.C. § 722 | Debt will be reaffirmed pursuant to 11USC§524(c) |
|-------------------------|-----------------------|-------------------------------|--|--|
| 1. <u>FURNITURE</u>     | <u>ACME FURNITURE</u> | _____                         | <u>XXX</u>   | _____  |
| 2. <u>1957 CESSNA</u>   | <u>UKIAH CESSNA</u>   | _____                         | _____  | <u>XXX</u>                                       |
| 3. _____                | _____                 | _____                         | _____  | _____  |
| 4. _____                | _____                 | _____                         | _____  | _____  |
| 5. _____                | _____                 | _____                         | _____  | _____  |

Date: MARCH 16, 1999

JOHN LESTER SMITH  
Signature of Debtor

**CERTIFICATION 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. § 100; 18 U.S.C. § 156.*

## SUBCHAPTER 11

### Debtor's Duties and Benefits

#### SECTION 521

Debtor's duties. The Debtor shall -

- (1) file a list of creditors, and unless the court orders otherwise, a schedule of assets and liabilities, a schedule of current income and current expenditures, and a statement of the debtor's financial affairs;
- (2) if an individual debtor's schedule of assets and liabilities includes consumer debts which are secured by property of the estate -
  - (A) within thirty days after the date of the filing of a petition under chapter 7 of this title or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, the debtor shall file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property;
  - (B) within forty-five days after the filing of a notice of intent under this section, or within such additional time as the court, for cause, within such forty-five days fixes, the debtor shall perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; and
  - (C) nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property under this title.
- (3) if a trustee is serving in the case, cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title;
- (4) if a trustee is serving in the case, surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title; and
- (5) appear at the hearing required under section 524(d) of this title.

#### SECTION 522(f)

(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 such lien is --

- (1) a judicial lien; or
- (2) a nonpossessory, nonpurchase-money security interest in any --
  - (A) household furnishing, 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.

#### SECTION 524(c)

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to an extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if --

- (1) such agreement was made before the granting of the discharge under section 727, 1141, 1228, or 1328 of this title;
  - (2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;
  - (3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement
    - (A) represents a fully informed and voluntary agreement by the debtor; and
    - (B) does not impose an undue hardship on the debtor or a dependent of the debtor;
  - (4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;
  - (5) the provisions of subsection (d) of this section have been complied with; and
  - (6) (A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as --
    - (i) not imposing an undue hardship on the debtor or a dependent of the debtor; and
    - (ii) in the best interest of the debtor.
- (B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

#### SECTION 722

Redemption. An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt, if such property is exempted under section 522 of this title or has been abandoned under section 554 of this title, by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

## 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<br>567 Tower Way<br>Ukiah, CA 95482                  | Ukiah Cessna<br>1290 State<br>Ukiah, CA 95482 |  |
| Bank of Alabama<br>1239 Truxtun<br>Keeling, AL 34567                |   |  |
| California Savings and Loan<br>1256 Perkins<br>Ukiah, CA 95482      |   |  |
| Dr. Paul Roddy<br>239 Keene<br>San Francisco, CA 94102              |   |  |
| Greater Ukiah Medical Center<br>1256 Pine Street<br>Ukiah, CA 95482 |   |  |
| Home Lending Bank<br>1235 Yollo<br>Fresno, CA 93102                 |   |  |
| John Krebs<br>1345 Forte<br>Ukiah, CA 95482                         |   |  |
| Peter Hollings<br>1759 Hopewell<br>Ukiah, CA 95482                  |   |  |
| Maco Chevrolet<br>3309 Blight<br>Hopland, CA 95481                  |   |  |
|   |   |  |



Name JOHN LESTER SMITH and JANE ALICE SMITH

Address 504 C LOW GAP ROAD

UKIAH, CA 95482

Telephone (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

227

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

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re ) Case no:  
 )  
 )  
 )  
 Debtor(s) )  
\_\_\_\_\_ )

CREDITOR MATRIX COVER SHEET

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.

Dated:

\_\_\_\_\_  
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.

Stephen R. Miller III  
Coal Building  
1092 17TH Street, NW.  
Carlsbad, CA. 92001

### **TOO CLOSE TO EDGE**

You must keep all typing at least 1.5" from any edge, bottom or side.

### **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.

MULTI-TRONICS ANIMATIONS  
3837 STRONG WAY NORTH  
SUITE 10  
BALTIMORE, MD. 20938  
OR  
107-D CASTLE BUILDING  
NORTH PARKWAY BLVD.  
HOUSTON, TX 10938

### **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

### **BOLD TYPE**

Do not use boldface setting on your typewriter or word processor

**ARCTIC EXPEDITIONS, INC.**  
**836 East 48th Avenue**  
**Anchorage, AK 99505**

### **WRONG FONT**

You may use Courier 10 Prestige Elite or

*Gow Fire Protection, Inc.*  
*459 North 87th Street*  
*Hoquiam, WA 98550*  
*Attn: Steve Jamison*

### **ATTENTION LINE**

If you must type an

### **WRONG PITCH**

If you use a 10-pitch font, make sure typewriter is set to

Larry Miller, Jr.  
Landover Food & Bev.  
Suite 12B  
Burg, MD 24309 5182

### **DIGIT ZIP CODE**

Separate the two groups of digits with a dash, not a space

### **HANDWRITING**

Handwriting is not acceptable and will interfere with the reading of the rest of the list  
10 pitch

### **STRAY MARKS**

No lines, symbols, Letterhead, or other No address data should appear on the creditor list.

### **PAGE NUMBER**

Do not number pages or type anything but creditors on 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 CALIFORNIA

IN RE: JOHN LESTER SMITH, CASE NUMBER: \_\_\_\_\_

CHAPTER 7

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:

\$ 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.

1 Date: \_\_\_\_\_

2 Applicant

3 \_\_\_\_\_  
4 504 LOW GAP ROAD

5 \_\_\_\_\_  
6 UKIAH, CA. 95482

7 address

8 ORDER

9 IT IS ORDERED that the debtor pay the filing fee in installments on the terms set  
10 forth in the foregoing application.

11 IT IS ORDERED that until the filing fee is paid in full the debtor shall not pay,  
12 and no person shall accept, any money for the services in connection with this case,  
13 and the debtor shall not relinquish, and no person shall accept, any property as  
14 payment for services in connection with this case.

15 Date: \_\_\_\_\_ BY THE COURT

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17 United States Bankruptcy Court

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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 \_\_\_\_\_

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.

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Date: \_\_\_\_\_

Applicant

\_\_\_\_\_

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address

ORDER

IT IS ORDERED that the debtor pay the filing fee in installments on the terms set forth in the foregoing application.

IT IS ORDERED that until the filing fee is paid in full the debtor shall not pay, and no person shall accept, any money for the services in connection with this case, and the debtor shall not relinquish, and no person shall accept, any property as payment for services in connection with this case.

Date: \_\_\_\_\_

BY THE COURT

\_\_\_\_\_

United States Bankruptcy Court

## 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

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5. The attorney is licensed to practice before this Court and Courts of this State and is competent to handle a bankruptcy action like this case. The attorney 's office address is that stated below.

6. The attorney does not have an interest in the action except as the attorney in the action.

7. That in addition to the foregoing, Applicant makes the following statements pursuant to Bankruptcy Rule 2016(b):

(a) The details set forth by the debtor herein concerning compensation paid and to be paid to the attorney is a true, complete and accurate statement of the agreement between the debtor and the attorney for legal services rendered and to be rendered herein.

(b) The source of monies paid by the debtor to the attorney to the best of the knowledge and belief of said attorney was:

from savings earned from the debtor's work

© The attorney has not shared or agreed to share, other than with members of the law firm or corporation, any of the said compensation with any other person except: \_\_\_\_\_

none



UNITED STATES BANKRUPTCY COURT

\_\_\_\_\_ DISTRICT OF \_\_\_\_\_

7 IN RE: ) CASE NUMBER  
8 )  
9 ) CHAPTER  
10 )  
11 ) APPLICATION FOR ALLOWANCE OF  
12 ) COMPENSATION, STATEMENT OF  
13 ) ATTORNEY PURSUANT TO BANKRUPTCY  
14 ) RULE 2016(b) and ORDER THEREON

15 1. The total fee to be charged by the attorney for the legal  
16 services rendered or to be rendered in the above-entitled bankruptcy  
17 action are \_\_\_\_\_. This fee is exclusive of costs. To date  
18 \_\_\_\_\_ has been paid leaving an  
19 unpaid balance of \_\_\_\_\_.

20 2. By agreement with the debtors, the attorney shall be paid by  
21 the trustee, if any, as a priority administrative claim upon approval by  
22 the Bankruptcy Court.

23 3. A Statement of Disclosure, pursuant to Bankruptcy Rule 2016(b)  
24 has been filed with this Court and its provisions are incorporated  
25 herein by reference.

26 4. The legal services rendered or to be rendered by the attorney  
27 in this action are as follows: \_\_\_\_\_  
28 \_\_\_\_\_

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 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 \_\_\_\_\_  
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WHEREFORE the undersigned respectfully requests that this Application for Allowance of Compensation be allowed. Furthermore, it 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: \_\_\_\_\_

## 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.

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

IN RE: ) CASE NUMBER: \_\_\_\_\_  
JOHN LESTER SMITH and )  
JANE ALICE SMITH ) CHAPTER 7

**NOTICE TO INDIVIDUAL CONSUMER DEBTOR**

The purpose of this notice is to acquaint you with the four chapters of the federal Bankruptcy Code under which you may file a bankruptcy petition. The bankruptcy law is complicated and not easily described. Therefore, you should seek the advice of an attorney to learn of your rights and responsibilities under the law should you decide to file a petition with the court. Court employees are prohibited from giving you legal advice.

**Chapter 7: Liquidation (\$155 filing fee plus \$30 administrative fee plus \$15 trustee surcharge)**

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts.
2. Under chapter 7 a trustee takes possession of all your property. You may claim certain of your property as exempt under governing law. The trustee then liquidates the property and used the proceeds to pay your creditors according to priorities of the Bankruptcy Code.
3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, your discharge may be denied by the court, and the purpose for which you filed the bankruptcy petition will be defeated.
4. Even if you receive a discharge, there are some debts that are not discharged under the law. Therefore, you may still be responsible for such debts as certain taxes and student loans, alimony and support payments, criminal restitution, and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs.

5. Under certain circumstances you may keep property that you have purchased subject to a valid security interest. Your attorney can explain the options that are available to you.

**Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income (\$155 filing fee plus \$30 administrative fee)**

1. Chapter 13 is designed for individuals with regular income who are temporarily unable to pay their debts but would like to pay them in installments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.
2. Under Chapter 13 you must file a plan with the court to repay your creditors all or part of the money that you owe them, using your future earnings. Usually, the period allowed by the court to repay your debts is three years, but not more than five years. Your plan must be approved by the court before it can take effect.
3. Under chapter 13, unlike chapter 7, you may keep all your property, both exempt and nonexempt, as long as you continue to make payments under the plan.
4. After completion of payments under your plan, your debts are discharged except alimony and support payments, student loans, certain other debts including criminal restitution and debts for death or personal injury caused by driving while intoxicated from alcohol or drugs, and long term secured obligations.

**Chapter 11: Reorganization (\$800 filing fee plus \$30 administrative fee)**

Chapter 11 is designed primarily for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a chapter 11 petition should be reviewed with an attorney.

**Chapter 12: Family Farmer (\$200 filing fee plus \$30 administrative fee)**

Chapter 12 is designed to permit family farmers to repay their debts over a period of time from future earnings and is in many ways similar to a chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm.

I, the debtor, affirm that I have read this notice.

Date \_\_\_\_\_  
Signature of Debtor \_\_\_\_\_ Case Number \_\_\_\_\_

Date \_\_\_\_\_  
Signature of Debtor \_\_\_\_\_ Case Number \_\_\_\_\_

**CHAPTER 5****THE EFFECTS OF BANKRUPTCY UPON THE DEBTOR'S HOME****I. INTRODUCTION**

One of the prime concerns in any bankruptcy is the effect that it will have 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.

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. This is just not done for secured real property. In place of simply giving the home to the debtor, under the federal and most state laws, there are exemptions for the debtor's equity in a home of a fixed 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. This chapter will deal in detail with it.

Many persons filing for bankruptcy relief are also married. Some states have special laws that exempt property 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 exemptible whether the state has a homestead exemption or not. This chapter covers the laws of those states that permit such exemptions.

This chapter informs the reader on what is to be expected in the event of a foreclosure. The chapter also covers possible alternatives to maximize the debtor's recovery from any foreclosure.

Because of the importance of the homestead exemption and the possible exclusion of tenancy-by-the-entireties property from the debtor's bankruptcy, the debtor should review state law and consult a bankruptcy attorney for possible changes before filing the petition. The bankruptcy law is constantly being amended. New exemptions are added every few years and existing exemption amounts are sometimes increased. It only makes sense to review state law to make sure that the exemption amounts have not been raised. Example: If South Carolina raises its homestead exemption from \$5,000 to \$50,000 in the future, and 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.

Chapter 7 in this book lists the state exemptions and their appropriate code section numbers. The debtor can simply go to a set of the state codes (sets are present in all law libraries and many

public libraries) and study 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 is increased to 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, and every state capitol has one plus most county seats and large cities. All are 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 state laws a debtor is permitted to claim an exemption for his equity in the real or personal property that he uses as a residence. The exemption has a recorded fixed value. Some states also permit spouses who are filing bankruptcy, either separately or individually, to each claim the full amount of the homestead. Most states do not permit this "doubling" of the homestead exemption. The states that are known to permit or deny doubling are listed in Chapter 7. For the other states it is up to the debtor to determine if doubling is permitted in any state not listed. The simplest thing might be when in doubt, double (and see if the court or trustee object). If wrong, the doubling will simply be disallowed.

It is the debtor's burden to 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. Some states actually require the filing a homestead declaration prior to filing the bankruptcy petition to ensure the ability to claim the petition. A debtor should record a "Homestead Declaration" prior to filing the bankruptcy petition if a homestead exemption is sought whether the declaration is required or not. The reason: Filing the homestead declaration strengthens the homestead exemption and is proof that the property was the debtor's residence. This is 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 \$20. Given the fact that the declaration may save thousands in exemption, it is a cheap insurance policy and for that reason should be used by all homeowners.

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, and subtracting the amount of the debtor's equity that is less than or equal to the amount of the homestead exemption. The trustee keeps any remaining proceeds from the property for payment to the debtor's creditors. A trustee will not sell the debtor's home unless there will be money for payment to the creditors after the debts, costs of sale and homestead exemption are paid. An example of how the homestead exemption is employed would be in the situation where the debtor's home is worth

\$40,000, the loan on the property is \$19,000, the cost of the sale is \$2,000 and the homestead exemption is \$7,500.

|                                       |                   |
|---------------------------------------|-------------------|
| Sale price                            | \$40,000          |
| minus debts on home                   | - \$19,000        |
| minus costs of sale                   | - \$ 2,000        |
| minus homestead exemption             | - <u>\$ 7,500</u> |
| remainder trustee keeps for creditors | \$11,500          |

The above example shows the worst case scenario. The debtor has equity that will be lost in a bankruptcy sale. 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 those proceeds in the exempt property. Caution should be exercised in doing either of the above. Some bankruptcy courts consider such actions an abuse of the bankruptcy law. A debtor 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. The debtor should sell nonexempt assets to apply to the loan on the home prior to filing. This will increase the debtor's assets after bankruptcy. Example: The debtor's home is worth \$40,000 with loans of \$35,000 on it, \$2,000 cost of sale and a maximum homestead exemption of \$7,500. The debtor has a nonexempt bank account of \$2,000. The debtor will have a homestead exemption of just \$4,500. If the debtor uses the bank account that will otherwise be lost to pay down the loan the debtor's equity and homestead exemption will increase to \$6,500.

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)

### III. SETTING ASIDE A JUDICIAL LIEN ON A HOME

A judicial lien is a court judgment that the debtor pay a certain amount of money to a designated person. A judicial lien derives from a lawsuit that resulted in a monetary judgment against the debtor. When the judgment is recorded, it creates 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 who is entitled to a homestead exemption up to \$7,500 has a home of \$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, after the sale the debtor would receive only \$5,000 as a homestead exemption.

Under the Bankruptcy Code all judicial liens on exempt property such as homesteads are automatically set aside to the extent that they impair the exemption if the debtor requests it. Setting aside a judicial lien is discussed in detail in chapter 9. All that a debtor is required to do to remove a judicial lien is file the motion presented in Chapter 9 and attend the court hearing. It is a simple procedure and can 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 begin 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 and it will be done.

#### IV. EFFECT OF BANKRUPTCY ON TENANCY-BY-THE-ENTIRETIES 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. It changes the tenancy into that of a tenants in common.
2. Mutual agreement 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 his interest in property held in tenancy 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):

(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 nonbankruptcy law.

In practice, the only joint tenancy property of a debtor that has ever been held exempt is that of tenancy by the entireties. The following states permit a debtor to exempt tenancy by the entireties property when the debts of both spouses are not being discharged. 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 Appeals that 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 in tenancy by the entireties in a bankruptcy where both of the spouses are liable on the creditor's claim. The Sixth Circuit Court of Appeals reached a similar conclusion (*In the Matter of Grosslight* 757 F.2d. 773). The Third Circuit Court of Appeals (*In re Thicket* 5 C.B.C. 2d 85) also arrived at a similar judgement.

It is important for a debtor to know not only if his state permits property to be held as tenancy by the entireties but if the property will be exempt in a bankruptcy. Example: *In re Ford* 1

C.B.C.2d 840 held that under Maryland law tenancy by the entireties property was exempt under bankruptcy law.

In re Weiss 2 C.B.C.2d 426 held under New York law that tenancy by the entireties property could be sold under execution; it was not exempt.

In re Gibbons 13 C.B.C. 759 1985 held that tenancy by the entireties 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, that person should consult an attorney specializing in bankruptcy to determine if the joint property is exempt under state law. If a debtor lives in one of the above 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 save a great deal of money.

## V. FORECLOSURE ON DEBTOR'S HOME

### A. INTRODUCTION

An act that usually results in the debtor filing for bankruptcy relief is foreclosure on the debtor's home. Foreclosure happens in accordance with state law based on the security agreement the lender has on the property. There are two general types of security agreements a lender may employ. The remedies the

lender has resulting from a borrowers breach depend 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 lien on real property and is employed in most states. In a deed of trust the borrower (called the trustor) signs a promissory note for a 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). The deed of trust gives the trustee the authority to see the property without getting permission if the borrower fails to make the payments. The law of most states authorizes the trustee to give a 20 day notice to pay if the borrower fails to make the payments on the loan. If the back payments are not made, 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 not paid, the property is sold at a public sale, and the debtor loses all interest in the property. Any proceeds remaining 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 anti-deficiency legislation holding that there cannot be deficiency judgments for purchase money loans on residential property. Some states hold that there cannot be a deficiency judgment for property sold under a power of sale of a deed of trust. The debtor does not have any right to redeem 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 the borrower. The court will grant a judgment against the borrower. The lender has the sheriff sell the home at an execution sale. The proceeds pay the loan and the costs of sale. Any remaining proceeds are returned to the borrower. Most states permit deficiency judgments only for judicial sales under a mortgage foreclosure. Some states, like California, have anti-deficiency 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, 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.

Whichever 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 to foreclose on the

debtor's home or any other property is stopped 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.

It seems that filing a bankruptcy petition would protect the home, but such protection is only fleeting. Remember most Chapter 7 cases are closed within four months and purchase money security interests are not dischargeable.

The secured lender on any property, including the debtor's home, can and will, unless the back payments are made, make a motion with the court to lift the automatic stay on that property. If the debtor cannot pay the back payments and make the future payments, the court will usually lift the stay and permit the foreclosure to continue.

Any proceeds left over after the sale are first used to pay the lender and then cover the 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 a sale during bankruptcy by either a creditor or a trustee, the debtor should make sure there is enough to assure payment of the homestead exemption. This can be accomplished by selling nonexempt property prior to the bankruptcy and using the proceeds to increase the debtor's equity in his home.

The debtor should act before filing a bankruptcy petition to

assure that unused equity in the home will not be lost. This can be accomplished by taking a loan in the amount that the equity exceeds the homestead amount and using it to purchase exempt property. Where a home is involved, a debtor should consult an attorney specializing in bankruptcy for advice on the state's homestead exemption.

#### C. CONVERTING THE CHAPTER 7 TO CHAPTER 13 PETITION

Chapter 13 of the Bankruptcy Code is "debt reorganization." Unlike Chapter 7, which is a "liquidation of the debtor's assets," a Chapter 13 proceeding keeps but restructures and reduces or eliminates the debtor's obligations.

Under Chapter 13, the debtor pays his debts from income, not the sale of his property. The debtor may not have to sell his 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 repayment of the missed payments, late charges and interest over a span of time, as much as five years.

A Chapter 7 petition can be converted to a Chapter 13 petition at any time during the proceeding.

## CHAPTER 6

## THE EFFECT OF BANKRUPTCY ON THE DEBTOR'S PENSION

## I. INTRODUCTION

The bankruptcy law establishes a debtor's pension and retirement benefits as assets of the debtor's estate like any other property. To keep some or all of the pension the debtor must choose the federal or state schedule of exemptions that exempts the whole or a part of his pension. 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 as much as 75% of the pension benefits received if needed for support.

A pension is deductible depending on whether the debtor is using the state or federal exemptions. Pensions that are exempt under state exemptions are not always exempt under federal exemptions and vice versa.

A horrendous effect on a pension that can occur as a result of the bankruptcy is a huge tax bill that is not dischargeable. Take the situation where the debtor or his 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 they are treated as a

distribution to the debtor that must be presented to the trustee; even though the debtor does not get the pension he must pay income tax on the tax deferred contributions. A debtor having a pension plan should consult with an attorney experienced in bankruptcy law prior to filing the bankruptcy to review current bankruptcy law. If a debtor does not wish to consult with an attorney, the person 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 exempt will be so in the future when the reader intends to file.

There are a few things that can be done to minimize or prevent a partial or total loss of pension benefits. These alternatives will be discussed below.

## 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 a debtor's state exemptions provided the law of the debtor's home state permits him 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 are covered under the Employee Retirement Income Security Act commonly called ERISA are exempt to the extent needed for support. Almost all private retirement plans are covered by ERISA, whereas 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.

To determine if a pension plan is ERISA qualified, the employee merely calls the pension plan administrator and asks. The employer and the union (if there is one) 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 should consider using 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 the 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 or not 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.
5. The amount of assets that the debtor owns plus 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 his support. Even though the pension may be governed by ERISA, it may be found not to be needed for the debtor's support and will be entirely lost in the bankruptcy.

A recent Supreme Court case (Patterson vs. Shumate 1191 L.Ed2d 519 1992) held that whether or not federal or state exemptions are used, an ERISA pension plan having a transfer restriction (which means it cannot 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. Congress would not have created a limited federal exemption for pension plans. Until Congress passes legislation to change the Supreme Court's interpretation, ERISA plans will remain totally exempt.

If a pension is to be lost because it is not an ERISA plan or the debtor does not need it for support the debtor should consult a bankruptcy attorney for alternatives that will save some, if not all, of the pension.

### III. EXEMPTING A PENSION UNDER STATE LAW

#### A. NON-ERISA PENSIONS

Most governmental state pensions are not covered by ERISA. 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 that pension state or local public employees. Most states have only enacted limited exemptions for certain public employees. Only those non-ERISA plans that have been exempted under state law may be exempt in bankruptcy. Before filing a bankruptcy petition, public

employee should determine if his pension plan is exempt.

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 comes into play. Many state pensions for public workers are exempt, whereas 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 exempt those pensions of the average citizen. Yet, this is usually the case. If a debtor has a private pension that is not listed in the exemption chapter, the debtor must consult a bankruptcy attorney before filing.

Chapter 7 of this book lists and details state pension exemptions. Pension exemptions 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 going to file for bankruptcy relief he can cross-check the exemption chapter by either looking in the state code or consulting a bankruptcy attorney.

#### B. EXEMPTIONS OF ERISA PLANS UNDER STATE LAW

Many states have specific exemptions for ERISA pensions. These states are listed in Chapter 7. Some of these states exempt the

entire plan while others exempt only those payments needed for support. The United States Supreme Court in *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 that prevented a creditor from attaching a debtor's ERISA plan. The Supreme Court held 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 provision 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 if he could, how much of the pension could be exempted.

In contrast, the Circuit Court of Appeals for the Tenth Circuit in the case *Gladwell vs. Harline* 950 F2d 669 1991, permitted a debtor to exempt his ERISA pension under the federal nonbankruptcy exemption. Both the Fourth Circuit Court of Appeals in the case *Anderson vs. Raines* 907 F2d. 1476 and the Sixth Circuit in *Forbes vs. Lucas* 924 F2d. 597 held that ERISA pensions are not to be considered part of the debtor's estate. These courts reason it is irrelevant whether or not the ERISA 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.

A Supreme Court case (*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 REGARDLESS OF WHETHER or not federal or state exemptions are used, an ERISA pension plan having a transfer restriction (which means it cannot be transferred or assigned) is not part of the bankruptcy estate. 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 anti-alienation 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, the debtor has a couple of options available although they are somewhat extreme. The debtor can do the following:

##### A. MOVE TO A STATE THAT PERMITS THE EXEMPTION PRIOR TO

FILING. If before filing the debtor finds that the pension will be lost, the debtor can move to another state that will exempt the pension, establish residency and file for bankruptcy relief. The drawback is that the debtor might lose the homestead in the first state and the time involved as well. 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 move to another state on short notice. These are the practical problems in such a case.

B. CASH THE PENSION AND PURCHASE EXEMPT PROPERTY. The other alternative is to cash the plan, if possible, pay the taxes as required and buy exempt property that can be kept through the bankruptcy. It might even be possible to roll a nonexempt pension into an exempt pension.

Because a pension is an important part of a person's future, any reader who determines his pension may not be exempt must consult an attorney skilled in bankruptcy law.

#### V. EFFECT ON IRA'S AND SEP'S

Two common types 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 an attorney skilled in bankruptcy law before filing for bankruptcy relief.

IRA's and SEP's are considered part of a bankrupt's estate and can be lost in a bankruptcy. There is no federal exemption for

IRA's and SEP's under 11 USC 522(d)(10)(E) as there are for ERISA plans. The bankruptcy courts in denying an exemption for IRA's and SEP's reason that these plans are under the substantial control of the debtor and there is no assurance 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 the case In re Shackelford 1983, 27 BR. 372 rejected the argument that IRA's and SEP's were not part of the estate under the nonbankruptcy law exemptions.

The best chance a debtor has to keep IRA's, SEP's and Keogh plans is under state exemption. Many states specifically exempt such plans to the extent they are necessary for support. New York does (In re Fill 1988, 84 BR 332) and California does as well (In re Dalaimo 1988, 88 BR 268). If using the federal exemptions, there are some states that do not exempt IRA's, SEP's or Keogh Plans because of the substantial control the debtor has over the plan: Louisiana (In re Talbot 15 BR 536), Oregon (In re Mace 1978, 16 CBC 254, Nebraska Education Asst. Corp. vs. Zellner 827 F2d 1222).

Chapter 7 lists those states that permit IRA's, SEP's and Keogh plans to be exempted. The laws for these states frequently change. Before filing a petition for bankruptcy relief, if such a plan exists, the debtor should review the current status of the law either by reading the statutes as indicated and any amendments and by consulting a bankruptcy attorney.

## CHAPTER 7

### EXEMPTIONS AVAILABLE TO A DEBTOR

#### I. INTRODUCTION

The only property a debtor can keep after a bankruptcy is the property that was exempt or redeemed or had the debt reaffirmed. A bankruptcy starts with the premise that all of the property belongs in the estate and under the management of the trustee. Property that the debtor claims as exempt is removed from the bankruptcy estate. The debtor keeps the exempt property irrespective of what happens to the rest of the estate,

The purpose of the Bankruptcy Code is to provide the means for a person to get free from overbearing debt he cannot handle and start afresh. Since it would be difficult to start anew if totally broke, a debtor is given the opportunity to keep some of the property in the estate to begin a new life.

Property to the extent that it is classified as exempt cannot be taken and sold by the trustee. It can only be taken after the bankruptcy or earlier (if the automatic stay is lifted) by a creditor and only if the property had been pledged as collateral for a debt. For example, assume that George has a car that is worth \$6,000. There is lien on it for \$3,000. There is a state exemption of \$1,000. The trustee sells the car for \$6,000. He must pay the secured creditor \$3,000 and give the debtor the \$1,000 exemption. The trustee keeps the remaining \$2,000 for distribution among the unsecured creditors.

#### 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:

|                      |                    |                             |                      |
|----------------------|--------------------|-----------------------------|----------------------|
| <b>ARKANSAS</b>      | <b>CONNECTICUT</b> | <b>DISTRICT OF COLUMBIA</b> | <b>HAWAII</b>        |
| <b>MASSACHUSETTS</b> | <b>MICHIGAN</b>    | <b>MINNESOTA</b>            | <b>NEW HAMPSHIRE</b> |
| <b>NEW JERSEY</b>    | <b>NEW MEXICO</b>  | <b>PENNSYLVANIA</b>         | <b>RHODE ISLAND</b>  |
| <b>TEXAS</b>         | <b>VERMONT</b>     | <b>WASHINGTON</b>           | <b>WISCONSIN</b>     |

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 6-10-7.

### 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. 703140(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 o 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 ½ 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](http://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 ½ 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-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 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 property 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 many 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.

|                      |                    |                             |                      |
|----------------------|--------------------|-----------------------------|----------------------|
| <b>ARKANSAS</b>      | <b>CONNECTICUT</b> | <b>DISTRICT OF COLUMBIA</b> | <b>HAWAII</b>        |
| <b>MASSACHUSETTS</b> | <b>MICHIGAN</b>    | <b>MINNESOTA</b>            | <b>NEW HAMPSHIRE</b> |
| <b>NEW JERSEY</b>    | <b>NEW MEXICO</b>  | <b>PENNSYLVANIA</b>         | <b>RHODE ISLAND</b>  |
| <b>TEXAS</b>         | <b>VERMONT</b>     | <b>WASHINGTON</b>           | <b>WISCONSIN</b>     |

(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 8****THE MEETING OF CREDITORS****I. GENERAL**

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 is 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 prohibited from presiding over or even attending any meeting of creditors. The clerk of the bankruptcy court usually presides over the meeting, but the creditors may, under Rule 2003, elect another presiding officer.

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 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 while in others it is more difficult. Basic questions are asked of the debtor at the meeting by the trustee and by the creditors.

The purpose of the meeting is for the creditors to examine the debtor and ensure that all of 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. Most of the secured creditors will want an account of where their

collateral is located, its condition and how the debtor determined its value. The secured creditors will be somewhat hostile where the debtor is attempting to reduce or eliminate a lien on the property through a redemption or lien avoidance, but there is nothing they can do about it. If the creditors become overly obnoxious the debtor can complain to the clerk who will then admonish the creditors. The debtor should be prepared for some of 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. Will you be able to pay your debts in the future if the application you had filed for bankruptcy relief 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

Schedule E?

12. Have you listed all of your secured creditors on your Schedule D?
13. Have you listed all of your unsecured creditors on Schedule F?
14. Have you listed all of your real property on Schedule A?
15. Have you listed all of your personal property on Schedule B?
16. Have you listed all your other property on Schedule B?
17. Has all of the property that you claim as exempt been listed on Schedule C?
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 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 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?
5. Did you previously sell non exempt 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?
7. If a reaffirmation is sought the creditor will ask:
  - (a) How much is the collateral worth?
  - (b) What is its condition?
  - (c) How will you be able to make the payments?

It is usually at the meeting of creditors that the negotiations for redemption or ratification agreements take place. When a ratification agreement is completed it is submitted to the court for approval at a discharge hearing. A redemption agreement does not have to be approved by the court; although it could be. If the secured creditors do not agree to have their liens voided or the property redeemed, the debtor must file a motion to seek court resolution of the matter (see Chapters 9 and 10).

Ordinarily there is only one creditor's meeting. If the first meeting is not completed or new information such as an undisclosed creditor later arises, more creditor meetings may be held.

### III. CREDITORS OBJECTIONS

#### A. TO EXEMPTIONS CLAIMED BY DEBTOR

If after the meeting, a creditor objects to an exemption claimed by the debtor, the creditor is thereafter required to file objections with the court under Bankruptcy Rule 4003. Bankruptcy

Rule 4003 reads as follows:

- (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 is 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, however, in such an event the debtor should consult an attorney who specializes in bankruptcy law.

#### B. TO DISCHARGE OF A DEBT

Usually only a secured creditor will object to an exemption claimed by a debtor because the exemption usually applies to property that is collateral for the secured creditor's debt. It is usually an unsecured creditor who objects to discharge of a debt because most of the discharged debts are unsecured in nature. Unsecured creditors are immediately affected by a debtor filing for bankruptcy protection. When a debt is discharged it does not have to be paid (see Chapters 9 and 10).

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(c) governs the procedure in which a creditor objects to a discharge of a debt. Rule 4007(c) reads as follows:

- (c) Time for Filing Complaint Under Section 523(c) in Chapter 7 Liquidation; Notice of Time Fixed. A complaint to determine the dischargeability of any debt pursuant to Section 523(c) of the Code shall be filed not less than 60 days following the first date set for the meeting of creditors held pursuant to section 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed 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 subdivision. The motion shall be made before the time has expired.

Under the bankruptcy law, a creditor must file a complaint to challenge the dischargeability of a debt based upon false representation or financial statement, fiduciary fraud, theft or embezzlement, or wilful and malicious injury within 60 days of the meeting of creditors.

In the event 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 and, as such, the use of the attorney would be free to the debtor.

## CHAPTER 9

### LIEN AVOIDANCE

#### I. INTRODUCTION

It is not uncommon for a debtor to wish to keep certain property that would otherwise be lost in the bankruptcy. The purpose of the bankruptcy law is to provide a reasonable means for a debtor to begin anew when his debts are such that they cannot all be paid. Congress created an overall scheme of exemptions under both state and federal law.

Often some or all of the debtor's exempt property will be encumbered by judicial liens or security interests that prevent the exemption. Unless the lien is removed from the property, 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 and not allow them to be taken 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.

#### II. 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 a lien on otherwise exempt property to the extent the lien impairs an exemption. If the property would be exempt 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:

A. A JUDICIAL LIEN. A judicial lien is lien created by virtue of a court decree or judgment usually resulting from a lawsuit. For example, assume that a debtor had a judgment taken against him. Recordation of the judgment created a lien against 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.

Sometimes in order to get credit a creditor must execute a "confession of judgment" for use against the debtor in the event of default in making the 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 the 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 a confession of judgment is construed more liberally than 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).

A judicial lien is different from a statutory lien imposed on the debtor's property. A statutory lien is imposed by operation of law and created automatically by law such as mechanic's liens or a lien from a divorce decree. A statutory lien cannot be avoided; a judicial lien can. Some statutory liens can be avoided by the trustee under Section 545 which reads:

"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."

In order to perfect a statutory lien, the creditor is required to comply with all of the filing requirements under state law. A mechanic's lien requires that appropriate notices be filed within set time periods with the county recorder and to 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.

B. 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:

- (a) Household furnishing, goods, clothing, appliances, books, animals, crops, musical instruments or jewelry used primarily for the debtor's personal, family or household use;
- (b) Implements, professional books or tools-of-trade for either the debtor or a dependent; (some states do not have a tools of trade exemption; therefore if the federal exemptions are not used, no lien on this property can be avoided);
- (c) 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. Example: George borrows \$5,000 from Ed. Ed signs a security agreement using his house as collateral. By doing so, George has given Ed a nonpurchase money security interest in the house. Motor vehicles are not specifically mentioned as the type of property for which a nonpurchase money lien can be avoided. Unless the motor vehicle qualifies for an exemption as a "tool of the trade" the lien on it cannot be avoided (a lien on a motor vehicle might still be avoidable if it meets the requirements for a judgment lien).

### III. 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 lien avoidance depends on the amount of

the exemption on the property, the size of the lien on the property and the value of the property.

If all of the property is exempt, the size of the lien makes no difference because the entire lien will be avoided. Under Pennsylvania law sewing machines are exempt. A judicial lien or nonpurchase security lien on a sewing machine will be entirely avoided regardless of the amount.

If the property is worth more than the exemption limit the lien is reduced to guarantee the exemption and the remainder is given to the creditor. 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 and have the remaining \$300 of the lien eliminated.

The lien avoidance works as follows:

|                            |              |
|----------------------------|--------------|
| Value of the Property      | \$400        |
| minus the exemption amount | -\$200       |
| remaining part of lien     | <u>\$200</u> |

After the lien avoidance the debtor will still owe \$200 on the property. If the lien balance is not paid the creditor can still foreclose for the nonpayment of the unavaid balance.

#### IV. PROCEDURE

After the debtor has determined that a lien on exempt property is avoidable, his next step is to list the property on which the lien is to be avoided on the "Statement of Intention" filed with the court. If the creditor objects to the lien avoidance 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 simple. 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 the lien avoidance. 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. He then inserts the debtor's information where indicated and files it with the court.

The steps for filing a motion are as follows:

- 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 it requires a minimum of 30 days notice to the other party (in this case the creditor). Notice means that the hearing on the motion is set on a date at least 30 days after the motion is mailed to the creditor. The date of**

mailing is shown by the Proof of Service that is filed 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). The debtor then types out 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. Several sheets of this paper follow this chapter and more copies can be made of them if necessary.
3. Preparing the motion is nothing more than completing in the blanks. The sample motions following this chapter cover both avoiding judicial and nonpurchase security liens. Once the correct type of motion is chosen based on the type of lien to be avoided, the debtor 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. The information should be detailed enough that the bankruptcy court will be fully informed on 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 5 copies.
5. After the copies are made, a copy should be given to a

person over 18 years of age to mail. That person completes 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 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 along with the 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 will 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 automatically avoided by the court.

If arguments are necessary, the debtor goes first and simply states that the property is exempt under the applicable state or federal exemption and the current value of the property. The creditor responds, but his reply is limited to challenging the right to claim the exemption and arguing 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. 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 over again, and this time he will know the mistakes to avoid.

#### V. 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 not to allow the federal exemption scheme under Section 522(d) there is no similar option under 522(f): the debtor's lien avoidance powers remain 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 the 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 where a lien impairs an exemption that would otherwise be allowed, if not for the presence of the lien, lien can be avoided.

VI. 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 (4 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.  
22  
23  
24  
25  
26  
27  
28

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 MOTION TO AVOID LIEN

16 The debtor, JOHN Q. DOE respectfully declares as follows:

17 1. A voluntary petition for relief under Chapter 7 of Title 11 of  
18 the United States Code on (date petition filed).

19 2. This motion is brought under the provisions of 11 U.S.C.  
20 Section 522(f) and Bankruptcy Rule 4003 to avoid a nonpossessory,  
21 nonpurchase money security interest in household and personal goods.

22 3. On or about (date debt incurred), the debtor borrowed the  
23 amount of insert amount of loan from (insert name of creditor, for  
24 example ABCDE Corporation. As security for the loan, the creditor  
25 insisted on and received a note and security agreement granting to the  
26 creditor a security interest in and to the debtor's personal property  
27 that consisted of household furnishings, appliances, books and musical  
28 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 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 PROOF OF SERVICE

16 I, (Name of person doing the mailing, for example MARK P.  
17 SMITH, declare as follows:

18 1. I am a resident of the County of (insert name of county)  
19 \_\_\_\_\_ State of (California). I am over the age of eighteen years,  
20 and I am not a party to the within-entitled action.

21 2. My residence/business address and phone number are: insert  
22 address and phone number of person mailing the motion, for example 643  
23 B South Main Street, Ukiah, CA. 95482 (707) 468-0268.

24 3. On (insert date mailed, for example June 25, 2015) I served the  
25 within motion to avoid a nonpossessory, nonpurchase security interest  
26 lien by personally placing a true and correct copy thereof enclosed in  
27 a sealed envelope with postage fully prepaid in the United States mail  
28 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)  
12  
13  
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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 ORDER AVOIDING LIEN

16 On \_\_\_\_\_, there came before this court the  
17 motion of the debtor (INSERT NAME, FOR EXAMPLE JOHN Q. DOE) against the  
18 creditor (INSERT THE NAME OF THE CREDITOR , EXAMPLE: ABCDE CORPORATION  
19 to cancel a security interest that impaired an exemption of the debtor.

20 Upon consideration of the evidence, the argument of the parties and  
21 the pleadings submitted by the parties, the court finds that the lien is  
22 a nonpossessory, nonpurchase money lien that impairs the debtor's  
23 exemption in the property covered by the security agreement.

24 IT IS ORDERED that unless debtor's bankruptcy case is dismissed,  
25 the lien of the respondent is hereby extinguished, and the lien shall  
26 not survive bankruptcy or affix to or remain enforceable against the  
27 aforementioned property and is hereby canceled.

28 (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

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)  
(insert name) (insert State)

9 IN RE: ) CASE NUMBER:  
10 (type in debtor's name, for ) (insert filing number from  
11 example JOHN Q. DOE) ) the petition)  
12 ) CHAPTER 7  
13 )

14 NOTICE OF MOTION TO JUDICIAL LIEN

15 NOTICE IS HEREBY GIVEN that on (insert date of the hearing) at  
16 (insert time) at (insert address of the bankruptcy court)  
17 \_\_\_\_\_in courtroom (insert number) a motion will be heard to avoid  
18 the judicial lien of (state the name of the creditor holding the  
19 judicial lien) on exempt property of the debtor.  
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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)  
(insert name) (insert State)

9 IN RE: ) CASE NUMBER:  
10 (type in debtor's name, for ) (insert filing number from  
11 example JOHN Q. DOE) ) the petition)  
12 ) CHAPTER 7  
13 )

14 MOTION TO AVOID LIEN

15 The debtor, JOHN Q. DOE respectfully declares as follows:

16 1. A voluntary petition for relief under Chapter 7 of Title 11 of  
17 the United States Code on (date petition filed).

18 2. This motion is brought under the provisions of 11 U.S.C.  
19 Section 522(f) and Bankruptcy Rule 4003 to avoid a nonpossessory,  
20 nonpurchase money security interest in household and personal goods.

21 3. On or about (date debt incurred), the debtor borrowed the  
22 amount of insert amount of loan from insert name of creditor, for  
23 example, ABCDE Corporation. As security for the loan, the creditor  
24 insisted upon and received a note and security agreement granting to the  
25 creditor a security interest in and to the debtor's personal property  
26 that consisted of household furnishings, appliances, books and musical  
27 instruments that are held primarily for family and household use of the  
28 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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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)  
(insert name) (insert State)

9 IN RE: ) CASE NUMBER:  
10 (type in debtor's name, for ) (insert filing number from  
11 example JOHN Q. DOE) ) the petition)  
12 ) CHAPTER 7  
13 )

14 PROOF OF SERVICE

15 I, (Name of person doing the mailing for example MARK P. SMITH,  
16 declare as follows:

17 1. I am a resident of the County of (insert name of county),  
18 State of (California). I am over the age of eighteen years and am not  
19 a party to the within-entitled action.

20 2. My residence/business address and phone number are: insert  
21 address and phone number of person mailing the motion, for example 643  
22 B South Main Street, Ukiah, CA. 95482 (707) 468-0268.

23 3. On (insert date mailed, for example June 25, 2015) I served  
24 the within motion to avoid a judicial lien by personally placing a true  
25 and correct copy thereof enclosed in a sealed envelope with postage  
26 fully prepaid in the United States mail at (insert city where motion is  
mailed, example: Ukiah, California addressed as follows:

27 ABCD CORPORATION  
28 12356 Hazelton Blvd.  
Allentown, Pa. 23657

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I declare under penalty of perjury under the laws of the State of \_\_\_\_\_ that the foregoing is true and correct.

Executed this 15th day of JUNE 2015 at (place where executed, for example Ukiah, California).

\_\_\_\_\_  
MARK P. SMITH  
(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 canceled.

(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

## REDEMPTION OF SECURED PROPERTY

## I. INTRODUCTION

A debtor should never forget that the purpose behind the Bankruptcy Code is to provide a means for a person to begin afresh. As a society we no longer have debtor prisons or indenturement to force people in dire straits to enter into a life of virtual slavery. It is in furtherance of this avowed purpose that Congress created the bankruptcy law at a time when other civilized nations, such as Great Britain and France, still had debtors' prisons.

One of the provisions of the Bankruptcy Code permits a debtor to redeem personal property intended primarily for personal, family or household use that would otherwise be lost in the bankruptcy. The property is redeemed (purchased) from the creditor having a lien on the property by paying the fair market value, not what is actually owed on the property.

Redemption usually occurs where the debtor owes more on the property than it is worth. In this case the debtor simply pays what the property is worth, not what is owed. If a table is worth \$500 and the debt is \$1,000, on redemption the debtor pays \$500 for it. It makes no sense to pay \$1,000 for a property worth half that. If the debtor owes less than the property is worth, it makes no sense to redeem the property, but the debtor should either reaffirm the

debt or simply continue making the payments. Example: The table is worth \$1,000 and only \$400 is owed. Redeeming would mean the debtor would have to pay \$1,000 when only \$400 is owed. If the debt is reaffirmed, as discussed in the next chapter, the debtor simply continues to pay the original debt of \$400 and gets the \$1,000 table. In the absence of the reaffirmation agreement, the creditor simply continues to make the payments in the hope that the debtor doesn't repossess the property, which the creditor will not do as long as the payments are made.

Redemption is the favored means of keeping an automobile when the lien on the vehicle cannot be avoided because it is a purchase money lien, not a judicial lien or not used in business (see Chapter 9).

Usually redemption payments must be made in a lump sum unless the creditor agrees to take payments. A few courts will require the debtor to take the payment in installments at the same rate of interest (In re Clark 10 B.R. 605).

## II. DEFINITION

Under section 722 of the Bankruptcy Code a debtor may redeem certain exempt property encumbered by creditor's secured interests. Unlike lien avoidance, the secured interests the debtor is attempting to reduce can be either purchase money or nonpurchase money security interests.

Section 722 reads as follows:

722. Redemption. An individual debtor may, whether or not the debtor has waived the right to redeem under this section, redeem tangible personal property intended primarily for personal, family, or household use from a lien securing a dischargeable consumer debt if such property is exempted under section 522 of this title or has been abandoned under section 524 of this title by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien.

For there to be a redemption, the property must satisfy the each of the following requirements:

1. THE LIEN MUST BE FROM A CONSUMER DEBT. A consumer debt is one that was not incurred for business. This is proven by the fact that the property is used primarily for personal, household or family use.

2. THE LIEN MUST BE ON PERSONAL PROPERTY. To have a redemption, the lien must cover personal property, not real property. The personal property must be of a tangible nature. Example: cars, furniture, boats, clothing are tangible and redeemable property. Stocks, bonds and promissory notes are intangible property and not redeemable.

3. THE PROPERTY MUST BE EXEMPT OR ABANDONED BY THE TRUSTEE. As lien avoidance, only property that is exempt under whatever schedule of exemptions the debtor uses can be redeemed. Unlike lien avoidance, property that is not otherwise exempt may be redeemed if the trustee has abandoned it (allowed the creditor to take it). Since the trustee does not wish to be bothered with the property, there is no valid reason why the debtor should be prevented from redeeming it for fair market value.

In fact court decision In Re Williams 9 B.R. 701 held that redemption is possible even for property that is not exempt and not

abandoned by trustee. This was a special situation where the court denied an exemption unless the equity in the property exceeded the secured debt. This is a minority view, but there is no harm in asking for redemption when it would be beneficial. The worst the court can say is no because the motion would have been made in good faith.

### III. HOW THE REDEMPTION SUM IS CALCULATED

Once it is determined a redemption is possible on exempt property covered by a consumer property lien, the redemption price must be determined. In a redemption, the claims are classified as secured or unsecured rather than classifying the creditors as secured or unsecured.

Section 506 (a) reads as follows:

(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 set off under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to set off, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

Under section 506(a) when the value of property does not equal or exceed the lien, the lien is only secured to the value of the property, the remaining balance of the lien being an unsecured claim. The redemption price would be the secured value of the claim at the time of the filing of the bankruptcy petition.

For example, assume that the debtor has a piece of exempt property worth \$1,000; the lien is \$1,800. Under the redemption procedure, the exempt property can be purchased by paying the creditor the fair market value of \$1,000. The remaining \$800 that exceeds the value of the property is canceled.

After the court issues its order permitting the exemption, the debtor will have to pay the redemption price (\$1,000 in the above example) usually within 45 days unless the creditor agrees to take installments. If the payment is not made the creditor can proceed with the foreclosure for the entire amount of the original debt. In the case of foreclosure the creditor takes the property, sells it and applies the proceeds to the full outstanding balance. Any proceeds remaining they are paid to the debtor's trustee. If there is a balance owing, the creditor must absorb the loss and cannot get the deficiency from the debtor.

#### IV. PROCEDURE

The procedure for redemption is easier than it is for lien avoidance if the creditor does not object. With a lien avoidance the debtor must list on the Statement of Intention what property he wishes to redeem. If the creditor and debtor can agree on the fair market value of the property, the parties execute a redemption agreement detailing the payments to be made thereunder. Redemption payments must be made within 45 days of the agreement unless the creditor agrees to take installments. It is not necessary to seek

court approval of the redemption agreement. A sample form of the redemption agreement follows this chapter.

If the creditor will not agree to a redemption or disputes the fair market value of the property, the debtor must file a motion with the bankruptcy court. The judge determines if the redemption is proper and what should be the redemption price.

The request for redemption is made in the form of a motion. A pleading (a writing requesting redemption) is filed with the court and mailed to the creditor having the lien. The creditor may object to the redemption and file a pleading in opposition to the redemption. The creditor cannot prevent a redemption if it is proper under the law. The most a creditor can do is contest the fair market value given to the property in the calculation of the amount of the lien to be avoided if there is a valid exemption available.

Following this chapter is a sample form for a motion seeking redemption. A debtor wishing to redeem exempt personal property can type the redemption motion by inserting the debtor's information where indicated and file it with the court.

The steps for filing a motion are:

1. Consult the rules of the local bankruptcy court for any special procedures or format regarding motions. There probably will be no special requirements. The general rule requires a minimum of 30 days notice to the other

party (in this case the creditor). "Notice" means 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 with the motion.

2. The debtor should ask the clerk when motions for redemption are heard. Some courts hear these motions only 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 applies. The debtor then 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. Several sheets of this paper follow the lien avoidance chapter.
3. Preparing the motion is nothing more than filling the blanks. The sample motion for redemption follows this chapter. The debtor fills the blanks with the information from his case.
4. After the motion is typed, complete a proof of service and blank order approving the redemption 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 5 copies.

5. After the copies are made, a copy is given to a person over 18 years of age to mail. That person (the mailer) will sign the proof of service and mail it to the creditor. The date of the hearing must be at least 30 days after the date of mailing. The mailer must sign the proof of service for the original and other copies.
6. After the motion has been mailed to the creditor (with the proof of service and "order avoiding the lien"), the debtor files the motion in the clerk's office. The clerk will put a time and date stamp on the original and keep it with the 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 (the debtor must attend) to determine how much if any of the lien should be avoided. Creditors may appear to challenge exemptions, but more likely than not creditors will just send written objections. If no objections are filed, the lien will be automatically avoided by the court.

If arguments are necessary, the debtor appears first and states the property should be exempt under the applicable state or federal

exemption and describes the current value of the property. The creditor responds, but his reply is limited to challenging the right to claim the exemption and arguing the value of the property. The judge decides whether or not to grant or deny the redemption. Usually the judge announces the decision from the bench. Sometimes the judge takes the matter under submission and mails 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. 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 procedural errors. The debtor will simply be allowed to do it over again, and this time he will know the mistakes to be avoided.

#### V. FORMS

Following are basic forms that should be valid and acceptable in the bankruptcy courts of all 50 states and the District of Columbia:

1. Redemption Agreement
2. Notice of Motion to Redeem Personal Property
3. Motion to Redeem Personal Property
4. Proof of Service
5. Order Authorizing Redemption of Personal Property

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 REDEMPTION AGREEMENT

16 Debtor (insert name for example JOHN Q. DOE) and creditor  
17 (insert name for example ABCDE CORPORATION) agree that:

18 1. Creditor has a security interest in the following property  
19 owned by the debtor:

20 (list property to be redeemed)

21 2. The fair market value of the property is agreed to be (insert  
22 value agreed, for example \$10,000).

23 3. The creditor's security interest is valid and enforceable  
24 under the bankruptcy code.

25 4. Debtor agrees to pay the full value of the collateral in  
26 payments of (insert monthly payment) plus interest to be computed at the  
27 same annual percentage rate as in the original contract between the  
28 parties.

5. As long as the debtor makes the payments described in  
paragraph 4, the creditor will take no action to repossess or foreclose  
its security interest on the property.

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_

Dated: \_\_\_\_\_ Signed: \_\_\_\_\_



1 DEBTOR'S NAME  
2 643 B SOUTH MAIN STREET  
3 UKIAH, CA. 95482  
4 (707) 468-0268

5 IN PRO PER

6 UNITED STATES BANKRUPTCY COURT  
7 (NORTHERN) DISTRICT OF (CALIFORNIA)  
8 (insert name) (insert State)

9 IN RE: ) CASE NUMBER:  
10 (type in debtor's name, for ) (insert filing number  
11 example JOHN Q. DOE) ) from the petition)  
12 ) CHAPTER 7  
13 )

14 MOTION TO REDEEM PERSONAL PROPERTY

15 The debtor, JOHN Q. DOE respectfully declares as follows:

16 1. A voluntary petition for relief under Chapter 7 of  
17 Title 11 of the United States Code on (date petition filed)

18 2. This motion is brought under the provisions of 11  
19 U.S.C. Section 722 and Bankruptcy Rule 4003 to redeem tangible  
20 personal property.

21 3. The (list the property to be redeemed, for example a  
22 stereo) described in the debtor's Schedule B-4 constitutes  
23 tangible personal property intended for the personal, family,  
24 and household use of the debtor or the debtor's family.

25 4. The lien of (insert the name of the creditor, example  
26 ABCDE CORPORATION on such property secures a dischargeable  
27 debt that was  
28 incurred by the debtor for a personal, family or household use

1 to wit: (state what the purpose the property was to be used,  
2 for example to provide music in the home).

3  
4  
5 5. Such property is exempt under 11 U.S.C. 522(d), and  
6 such  
7 exemption has been claimed by the debtor on Schedule B-4 on  
8 file herein.

9 6. The debtor desires to redeem such property from the  
10 lien of the creditor (insert the name of the creditor) by  
11 paying to it the amount of its allowed secured claim secured  
12 by the lien on such property.

13 7. The value of such property is undetermined at this  
14 time, but the debtor believes it to be approximately (insert  
15 value of the property).

16 8. The amount of the claim of the creditor (insert  
17 creditor's name, for example ABCDE CORPORATION is  
18 approximately (insert amount owed, for example \$15,000.

19 WHEREFORE, the debtor prays the debtor be permitted to  
20 redeem the tangible personal property herein described by  
21 paying to the creditor (insert name, for example ABCDE  
22 CORPORATION) in installments to be set by the court the amount  
23 of the creditor's secured claim by the lien on such property  
24 that the debtor request the court to determine.

25  
26 Dated: \_\_\_\_\_

27  
28 \_\_\_\_\_  
(insert debtor's name and address)

1 DEBTOR'S NAME  
643 B SOUTH MAIN STREET  
2 UKIAH, CA. 95482  
3 (707) 468-0268

4 IN PRO PER

5  
6 UNITED STATES BANKRUPTCY COURT  
7 (NORTHERN) DISTRICT OF (CALIFORNIA)  
8 (insert name) (insert state)

9 IN RE: ) CASE NUMBER:  
(type in debtor's name, for ) (insert filing number  
10 example JOHN Q. DOE) ) from the petition)  
11 ) CHAPTER 7

12 PROOF OF SERVICE

13 I, (Name of person doing the mailing, for example MARK P.  
14 SMITH), declare as follows:

15 1. I am a resident of the County of (insert name of  
16 county) State of (California). I am over the age of eighteen  
17 years, and I am not a party to the within-entitled action.

18 2. My residence/business address and phone number are:  
19 (insert address and phone number of person mailing the motion,  
20 for example 643 B South Main Street, Ukiah, CA. 95482 (707)  
21 468-0268).

22 3. On (insert date mailed, for example June 25, 2015) I  
23 served the within motion to redeem tangible personal property  
24 by personally placing a true and correct copy thereof enclosed  
25 in a sealed envelope with postage fully prepaid in the United  
26 States mail at (insert city where motion is mailed, for  
27 example Ukiah, California) addressed as follows:

28 ABCD CORPORATION  
12356 Hazelton Blvd.

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Allentown, Pa. 23657

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 15th day of JUNE 2015 at (place where executed, for example Ukiah, California).

\_\_\_\_\_  
Mark P. SMITH  
(person doing the mailing)

1  
2  
3 UNITED STATES BANKRUPTCY COURT

4 (NORTHERN) DISTRICT OF (CALIFORNIA)  
5 (insert name) (insert State)

6 IN RE: ) CASE NUMBER:  
7 (type in debtor's name ) (insert filing number  
8 example JOHN Q. DOE) ) from the petition)  
9 ) CHAPTER 7

9 ORDER AUTHORIZING REDEMPTION OF PERSONAL PROPERTY

10 On \_\_\_\_\_, there came on before this  
11 court the motion of the debtor (INSERT NAME, EXAMPLE JOHN Q.  
12 DOE) against the creditor (INSERT THE NAME OF THE CREDITOR,  
13 EXAMPLE ABCDE CORPORATION) to redeem personal property.

14 Upon consideration of the evidence, the arguments of the  
15 parties and the pleadings submitted by the parties, the court  
16 finds that the

17 \_\_\_\_\_ (insert the description to be redeemed, for example a  
18 stereo) is used by the debtor primarily for personal and  
19 family purposes, that the value of the property does not  
20 exceed (leave amount blank for judge's use) and that the  
21 debtor is entitled to redeem such property for (leave blank  
22 for judge to insert amount).

23 It is therefore ORDERED that upon payment of (leave amount  
24 blank for Judge to fill in) to it (INSERT NAME OF CREDITOR)  
25 shall release its security interest in the property and take  
26 all steps necessary to remove any record of the lien from the  
27 aforementioned property of the debtor.

28 Dated: \_\_\_\_\_

\_\_\_\_\_  
U.S. Bankruptcy Judge

**CHAPTER 11****REAFFIRMATION OF DEBT ON SECURED PROPERTY****I. INTRODUCTION**

Reaffirming discharged debts revives the obligation of the debtor to pay them. By filing for bankruptcy protection the debtor was relieved of the responsibility to pay the dischargeable debts. By filing for bankruptcy relief the debtor lost the right to keep any property pledged as security for a discharged debt. To keep that property the debtor must do one of four things:

1. Seek a lien avoidance: good for judicial liens or nonpurchase money liens on personal property and tools of trade that are otherwise exempt (see Chapter 9).
2. Seek a redemption: a purchase of exempt property for its current fair market value.
3. List nonexempt property as abandoned and keep it until it is repossessed or continue to keep making the payments and it probably will not be repossessed.
4. Reaffirm the debt for nonexempt property. This guarantees that the property will not be repossessed as long as the payments are made under the agreement.

The only time a ratification agreement makes sense is when the property is worth more than is owed and it would cost the debtor more to replace than to continue to pay. Example: The debtor's car

is worth \$2,000 and is not exempt under state law. The debtor owes \$500 on it. Unless the debtor reaffirms the debt the creditor may repossess and sell the car for a potential loss to the debtor of \$1,500.

## II. DEFINITION

Under section 524(c) of the Bankruptcy Code a debtor may reaffirm the debts on certain exempt property encumbered by creditors secured interests. Unlike lien avoidance or redemption, the property is not exempt, and the court will not reduce or eliminate the lien. In a reaffirmation the debtor must agree to pay some or all of the outstanding balance owed in order to keep the property. No debtor should ever agree to a ratification agreement if the outstanding balance is more than the property is worth. Most bankruptcy courts will not approve a reaffirmation if this is the result.

Section 524 (c) reads as follows:

(c) An agreement between a holder of a claim and the debtor, the consideration of which, in whole or in part, is based on a debt that is dischargeable under this title is enforceable only to the extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, if:

(1) such agreement was made before the granting of the discharge under section 727, 1141, 1228 or 1328 of this title;

(2) such agreement contains a clear and conspicuous statement which advises the debtor that the agreement may be rescinded at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim;

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that such agreement:

(A) represents a fully informed and voluntary agreement by the debtor, and

(B) does not impose an undue hardship on the debtor or a dependent of the debtor.

(4) the debtor has not rescinded such agreement at any time prior to discharge or within sixty days after such agreement is filed with the court, whichever occurs later, by giving notice of rescission to the holder of such claim,

(5) the provisions of subsection (d) of this section have been complied with, and

(6)(A) in a case concerning an individual who was not represented by an attorney during the course of negotiating an agreement under this subsection, the court approves such agreement as:

(i) not imposing an undue hardship on the debtor or a dependent of the debtor, and

(ii) in the best interests of the debtor.

(B) Subparagraph (A) shall not apply to the extent that such debt is a consumer debt secured by real property.

For there to be a valid reaffirmation the bankruptcy court must approve it. The bankruptcy court will decide at the discharge hearing whether or not to approve the ratification. The court advises the debtor that he cannot be forced to enter into a reaffirmation agreement. The court also informs the debtor of the legal effect of the reaffirmation and the hazards following a default in the payments. The reaffirmation agreement is not

enforceable unless the court was made aware of it. A debtor may have informal agreements regarding reaffirmations or redemptions. These "equitable reaffirmations" may be enforced by the court if the court finds they are equitable and fair attempts to resolve the matter (In re La Fave 9 B.R. 859 1981). To avoid additional court hearings, it is better to have a reaffirmation agreement approved by the court.

The debtor should bear in mind that if the debtor wishes to keep the property without reaffirming the debt, the debtor should list the property as surrendered on the list of intentions and continue making the payments. The creditor is left with only a lien on the property that the debtor is not required to pay. Some courts hold that a creditor cannot foreclose as long as the debtor is making the payments. It is better planning to make arrangements with the creditor, formally or informally, to continue to make payments and avoid a situation where the creditor repossesses the property even though payments have been made. If no payments are made the creditor will have the right to repossess the secured property at any time.

### III. PROCEDURE

The procedure for reaffirmation is essentially the same as it is for a redemption. The debtor must list on the form "Statement of Intention" what property and debts the debtor intends to reaffirm. The debtor and creditor will have executed a ratification agreement

which spells out the respective duties and obligations of each party. A sample form of the ratification agreement follows this chapter.

Under Bankruptcy Code 524(c) and Bankruptcy Rule 4008, the debtor must file a motion with the bankruptcy court for approval of the reaffirmation agreement. The judge can then determine if the reaffirmation is proper and give the debtor the required admonitions and warnings regarding the legal effects of a ratification.

The request for reaffirmation is made in the form of a motion (a writing requesting reaffirmation). Preparing the motion is nothing more than filling the blanks. A sample motion for reaffirmation follows this chapter. The debtor simply fills the blanks with the information from his case. The debtor should also prepare a blank court order approving the reaffirmation 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 5 copies.

The motion and ratification agreement are presented to the court for its approval at the discharge hearing. The court will approve the ratification agreement if it:

1. Does not impose an undue hardship ~~dependent on the debtor,~~ and
2. Is in the best interests of the debtor.

The debtor should consult with the rules of the local court for any

special requirements prior to attending the hearing.

A debtor may under section 524(c)(2) rescind a ratification agreement at any time prior to the court's granting of discharge or within 60 days after such ratification agreement is filed with the court, whichever is later, by giving notice of the rescission to the creditor.

#### IV. FORMS

Following basic forms are generally should be acceptable in the bankruptcy courts of all 50 states and the District of Columbia.

1. Ratification Agreement
2. Motion for Approval of Ratification Agreement
3. Order Approving Ratification Agreement

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)  
(insert name) (insert State)

9  
10 IN RE: ) CASE NUMBER:  
(type in debtor's name, for ) (insert filing number from  
11 example JOHN Q. DOE) ) the petition)  
12 ) CHAPTER 7  
13 )

14 RATIFICATION AGREEMENT

15 Debtor (insert name, for example JOHN Q. DOE) and creditor (insert  
16 name, for example ABCDE CORPORATION) agree as follows:

17 1. Creditor has a security interest in the following property  
18 owned by the debtor:

19 (list property to be reaffirmed)

20 2. The fair market value of the property is agreed to be (insert  
21 value agreed, for example \$10,000).

22 3. Debtor, subject to approval of the Bankruptcy Court, hereby  
23 affirms the debtor's debt to the creditor (insert name, for example  
24 ABCDE CORPORATION) in the amount of (insert amount, for example \$5,000)  
25 in the property described in Paragraph 1.

26 4. Creditor agrees to waive all previous and current defaults on  
27 the debt for the property.



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  
12 example JOHN Q. DOE) ) from the petition)  
13 ) CHAPTER 7

14 MOTION FOR APPROVAL OF RATIFICATION AGREEMENT

15 1. The Debtor, (JOHN Q. DOE), hereby respectfully requests  
16 the court to enter an order at the debtor's discharge hearing  
17 required to be held under Bankruptcy Code Section 524  
18 approving the ratification agreement between the debtor and  
19 the creditor (insert the creditor's name, for example ABCDE  
20 CORPORATION) executed on (insert date of the agreement), a  
21 copy of the Ratification Agreement is attached to this  
22 motion and incorporated by reference.

23 2. The debtor has not been represented by an attorney  
24 during the course of the negotiations or preparation of the  
25 ratification agreement.

26 3. The debtor believes that the ratification agreement  
27 does not impose an undue hardship on the debtor or any of the  
28 debtor's dependents and that the ratification agreement is in  
the debtor's best interest.

4. The debtor's current income is \_\_\_\_\_ per month

1 and the debtor's monthly expenses are \_\_\_\_\_  
2 .

3 5. No discharge has been granted to the debtor nor has  
4 the debtor  
5  
6 rescinded the ratification agreement.

7 WHEREFORE the debtor prays that the court enter an order  
8 approving the ratification agreement and for such other and  
9 further relief as the Court deems just and proper.

10  
11 Dated: \_\_\_\_\_

12 \_\_\_\_\_  
13 (insert debtor's name and address)

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1  
2  
3 UNITED STATES BANKRUPTCY COURT

4 (NORTHERN) DISTRICT OF (CALIFORNIA)  
5 (insert name) (insert State)

6  
7 IN RE: ) CASE NUMBER:  
8 (type in debtor's name, for ) (insert filing number  
9 example JOHN Q. DOE) ) from the petition)  
10 ) CHAPTER 7

11 ORDER APPROVING RATIFICATION AGREEMENT

12 On \_\_\_\_\_, there came on before this  
13 court the motion of the debtor (INSERT NAME, FOR EXAMPLE JOHN  
14 Q. DOE) for approval of a ratification agreement with the  
15 creditor, (INSERT THE NAME OF THE CREDITOR, FOR EXAMPLE ABCDE  
16 CORPORATION).

17 Upon consideration of the evidence, the arguments of the  
18 parties and the pleadings submitted, the court finds that the  
19 proposed ratification agreement is in the best interests of  
20 the debtor and does not impose a hardship on the debtor or the  
21 debtor's dependents.

22 Therefore it is:

23 ORDERED that the reaffirmation agreement between the  
24 debtor and (insert name of creditor) is approved.

25 Dated: \_\_\_\_\_

26 \_\_\_\_\_  
27 U.S. Bankruptcy Judge  
28

**CHAPTER 12****AMENDMENT OF THE PETITION****I. INTRODUCTION**

It is the rare bankruptcy petition that will not need to be amended at some point in time. The bankruptcy petition is intended to reflect the life of the debtor. A long measure of the debtor's life can be reconstructed from the contents of the petition. It is not surprising and perhaps even expected that the petition will be incomplete or mistaken as to certain aspects of a person's life. It is a rare person who can condense his life into 20 or so pages when specific detail is required.

Amendments exist to correct mistakes on the petition that can jeopardize or limit a debtor's discharge. There is a filing fee of \$20 every time an amendment is filed. 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 a bankruptcy petition, the debt to that creditor is not discharged. The following must be filed whenever a petition is amended to add an overlooked creditor:
  - (a) An amended mailing matrix that lists all the creditors and their addresses, including the new creditor.
  - (b) An amended Schedule E, if the creditor's debt is priority debt that must be paid first.
  - (c) An amended Schedule D if the creditor's debt is secured by personal or real property.

- (d) An amended Schedule F if the payment of the creditor's property is unsecured.
  - (e) An amended Schedule C if the creditor's debt is secured and any portion of the property securing the debt (the collateral) will be claimed as exempt by the debtor.
  - (f) An amended statement of financial affairs, if listing the new creditor and the property changes the original form in any manner.
2. The next most common mistake is the debtor wants to change the property claimed as exempt. To add or delete exempt property, the debtor must file:
- (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, if the change to Schedule C results in adding or taking away 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) Statement of financial affairs, if the use of the property was not previously listed or identified.
    - (v) Statement of intention, if the property is collateral for a debt and the debtor's intention for that property is not stated on the original form.
    - (vi) The summary sheet, if the changes to Schedule C alter 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) the following schedules may have to be amended:
  - (a) Schedule D and the statement of intention, if the changes involve property that is collateral for secured debt.
  - (b) Schedule A, if real property is being added.
  - © Schedule B, if personal property is being added
  - (d) Schedule C. if the property being added is collateral for a secured debt and is being claimed as exempt.
4. Statement of intention if the debtor changes his intentions concerning his disposition of debts on secured properties (redeem, reaffirm or lien avoidance).
5. A change of address is not really an amendment of the case. A debtor is required, however, to keep the bankruptcy court informed of the debtor's address and phone number. Therefore, in the event of a move, the debtor is required to notify the court of his new address and phone number. Failure can result in a discharge being denied to the debtor. Following this chapter is a format for of a change of address by a debtor. It should be filed with the bankruptcy court with a proof of service showing that a copy was mailed to the trustee. (See chapter 9 for a discussion of a 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 except for a Statement of Intention. An amendment to the Statement of Intention can only be amended within 45 days of the filing of the original Statement of Intention.

The steps to amending a schedule are simple and easy to follow for any debtor wishing to amend the petition:

1. COMPLETE THE COVER SHEET FOR THE AMENDMENTS. Before completing the amendments, the debtor should read the local rules and determine if the court uses its own cover sheet for amendments. 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. Following this chapter is a representative format for a cover sheet to 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 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 completes 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 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 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.

Depending on local rules, if the first meeting of creditors has not been held either the clerk or the debtor 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. FORMS

Following forms are basic forms which should be generally valid and acceptable in the bankruptcy courts of all 50 states and the District of Columbia.

1. Notice of Change of Address
2. Chapter 7 Amendments Cover Sheet

1 DEBTOR'S NAME  
JOHN Q. DOE  
2 643 B SOUTH MAIN STREET  
UKIAH, CA. 95482  
3 (707) 468-0268

4  
5  
6 UNITED STATES BANKRUPTCY COURT

7 (NORTHERN) DISTRICT OF (CALIFORNIA)  
8 (insert name) (insert state)

9 IN RE: ) CASE NUMBER:  
(type in debtor's name, for ) (insert filing number  
10 example JOHN Q. DOE) ) from the petition)  
11 Debtor ) CHAPTER 7  
12 ) NOTICE OF CHANGE OF  
13 ) ADDRESS

14 The debtor of the above-entitled action hereby gives notice to the  
15 court of the debtor's change of address and phone number  
16 Effective immediately the debtor's address and phone number  
17 are as follows:

18 Address: \_\_\_\_\_  
19 \_\_\_\_\_

20 Phone Number: \_\_\_\_\_

21 Dated: \_\_\_\_\_  
22

23 \_\_\_\_\_

24 Debtor

25 Dated: \_\_\_\_\_  
26

27 \_\_\_\_\_

28 Debtor Spouse

1 JOHN Q. DOE  
643 B SOUTH MAIN STREET  
2 UKIAH, CA. 95482  
(707) 468-0268  
3

4 PRO PER  
5  
6

7 UNITED STATES BANKRUPTCY COURT  
8 (NORTHERN) DISTRICT OF (CALIFORNIA)  
(insert name) (insert state)  
9

10 IN RE: ) CASE NUMBER:  
11 (type in debtor's name, for ) (insert filing number  
example JOHN Q. DOE) ) from the petition)  
12 ) CHAPTER 7  
Debtor ) AMENDMENTS TO  
13

14 PETITION

15 The debtor \_\_\_\_\_, of the above-entitled action  
16 hereby respectfully submits the following amendments of debtor's CHAPTER  
17 7 VOLUNTARY PETITION on file herein in accordance with Bankruptcy Rule  
18 1009:  
19

- 20 ( ) Petition Cover Sheet
- 21 ( ) Creditor List
- 22 ( ) Schedules: ( ) A, ( ) B, ( ) C  
( ) D, ( ) E, ( ) F ( ) G, ( ) H, ( ) I ( ) J
- 23 ( ) Statement of Affairs
- 24 ( ) Statement of Intentions
- 25

26 ( ) Enclosed herewith is the \$20.00 fee for adding new creditors  
27 or changing addresses of creditors after the original Notice of the  
Meeting of Creditors had been sent.  
28

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\_\_\_\_\_

Debtor

\_\_\_\_\_

Debtor Spouse

I, (We) \_\_\_\_\_, Debtor(s) of the above-entitled  
action hereby declare under penalty of perjury that the information  
contained in amendments attached hereto consisting of \_\_\_\_ pages are  
true and correct to the best of my information and belief.

Dated: \_\_\_\_\_

\_\_\_\_\_

Debtor

Dated: \_\_\_\_\_

\_\_\_\_\_

Debtor Spouse

**CHAPTER 13****CREDITOR'S ATTEMPT TO LIFT THE AUTOMATIC STAY**

Once a debtor files for bankruptcy relief there is an automatic stay on all proceedings against the debtor's estate. All collection and repossession proceedings against the debtor are automatically delayed 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 on request by individual creditors under certain circumstances.

To get the stay withdrawn the creditor must file a complaint with the court to lift the automatic stay and serve it on both the trustee and the debtor. Bankruptcy Rule 9014 describes the procedure for having a hearing to lifting an automatic stay. Bankruptcy Rule 9014 reads as follows:

"In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to the motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069 and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. An entity that desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional

rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order."

Under Rule 9014, the debtor is not required to file a response to the complaint unless the local rules require it. The creditor has the burden of proof. He must provide sufficient evidence to convince the court the automatic stay should be lifted on that particular creditor. The debtor should appear to explain to the court why the stay should not be lifted whether a response is filed or not.

Generally, a bankruptcy court will not lift an automatic stay unless there is a compelling reason to do so. Over the years case law has developed certain situations where the court is likely to lift a stay. These situations are:

1. In a foreclosure on real property (including the debtor's home), where the court is convinced that the foreclosure will ultimately take place anyway because the debtor is unable to make the payments. Since the debtor will be unable to keep the property, allowing the stay to continue will harm the creditor.
2. The matter being stayed is not really subject to bankruptcy adjudication. The automatic stay might stop a divorce, child custody, or other legal action that does not involve the debtor's estate. There is no reason for the action to remain stayed.

3. The creditor's interest in nonexempt property is being harmed by the stay. This is similar to the first item and arises where payments for the property have ceased or the property is being abandoned to deteriorate. If the creditor's collateral or other legal interest in the debtor's estate is decreasing in value as time passes the court may release the stay to allow the creditor to proceed with the collection or other action.

4. The debtor does not have any ownership interest in the property. Example: A debtor may be required to be given notice in a quiet title action to property the debtor does not own. The bankruptcy court will lift the automatic stay because although the debtor must be given notice of the action, the debtor has no interest in the property that will go into the creditor's estate.

The lifting of the automatic stay is within the discretion of the bankruptcy judge. The judge will hear the evidence and decide whether or not the equities in the case justify lifting the stay. If justified, the court will issue the appropriate order lifting the stay.

If a creditor files a complaint to lift a stay, the debtor should consult a bankruptcy attorney. If the complaint is denied, the court may award the debtor's attorney fees in opposing the complaint, but is not required to do so.

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 30<sup>th</sup> 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 refiling 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)p

## CHAPTER 14

## DISCHARGE HEARING

**CONGRATULATIONS!** When a person has reached this point the hard parts are over. When the judge lowers his gavel, the case is over. It is the rare bankruptcy case that will have anything else occur after the bankruptcy. In order to get to this point, the debtor had to go through the meeting of creditors and weather any and all complaints to set aside the automatic stay along with any motions regarding exceptions or objections to the debtor's discharge. Unless the debtor receives property after the discharge within 180 days of initial filing (as discussed in the Chapter 15) or has deliberately concealed assets, the case is over, finished, completed and concluded.

The discharge hearing is mandated by Section 524(d) of the bankruptcy code which reads as follows:

"(d) In a case concerning an individual, when the court has determined whether to grant or not to grant a discharge under section 727, 1141, 1228, or 1328 of this title, the court may hold a hearing at which the debtor shall appear in person. At any such hearing, the court shall inform the debtor that a discharge has been granted or the reason why a discharge has not been granted. If a discharge has been granted and if the debtor desires to make an agreement of the kind specified in subsection (c) of this section, then the court shall hold a hearing at which the debtor shall appear in person and at any such hearing the court shall:

(1) inform the debtor:

(A) that such an agreement is not required under

this title, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section, and

(B) of the legal effect and consequences of:

(i) an agreement of the kind specified in subsection (c) of this section, and

(ii) a default under such an agreement,

(2) determine whether the agreement that the debtor desires to make complies with the requirements of subsection (c)(6) of this section, if the consideration for such agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor."

The discharge and ratification hearing is governed by Bankruptcy Rule 4008 that reads as follows:

"Not more than 30 days following the entry of an order granting or denying a discharge or confirming a plan in a Chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court may hold a hearing as provided in section 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing."

The clerk will send notice of the discharge hearing to the debtor. Since so much of the case has been settled prior to this time, unless the debtor is seeking to reaffirm a debt, there actually is nothing for the court to do or accomplish at the discharge hearing. Many bankruptcy courts will only hold a discharge hearing if the debtor seeks to reaffirm a debt. The clerk will know by the statement of intention filed by the debtor whether a ratification agreement is being sought. Should the debtor change

his mind about reaffirming a debt an amended statement of intention should be filed. This is important because otherwise the court might schedule an unnecessary discharge hearing.

If the debtor is seeking to reaffirm a debt, the court is required to hold a discharge hearing. Congress mandated a discharge hearing under these circumstances, because it was concerned that a naive debtor might mistakenly be tricked, connived, cajoled or otherwise convinced into reaffirming a debt that is against his interest.

No ratification agreement will be valid unless it meets the following requirements:

1. The agreement must have been made prior to the granting of the discharge,
2. The agreement must clearly state that the debtor can rescind it at any time prior to the discharge and for 60 days thereafter, and
3. The agreement must have been approved by the court. It is for this reason that the agreement is submitted to the court for approval.

The court will approve a ratification agreement at the discharge hearing if it finds that the ratification will not impose an undue hardship on the debtor or the debtor's dependents and is in the debtor's best interest. To make that determination, the judge usually asks the following questions in some fashion:

1. Are you aware that you are not required to reaffirm this debt?

2. Are you aware that the debt for the property is discharged and that you do not have to pay it?
3. Do you understand that if you reaffirm this debt, you will owe this money even though a discharge is granted?
4. How will you make the payments for this property?
5. What is the fair market value of the property? (Usually, the court will not approve a ratification for a debt that is more than the property is worth.)
6. Will the payment for this property be made from the sale of exempt property?
7. Was this debt incurred for consumer goods?
8. Is the property for which the debt was incurred still owned by the debtor? In the case *In re Hinkle*, 9 B.R. 283 1981 the court denied a ratification where the debtor no longer had the property which was the basis for the debt.
9. Is the ratification being entered under duress? In the case *In re Griffin* 13 B.R. 591 the court refused to reaffirm the debt, calling it extortion, where the creditor was requiring the ratification in order not to prosecute the debtor's wife for a bad check.

If the court is satisfied that reaffirmation of the debt should occur, it approves the agreement and issues the final discharge. Unless something happens that requires the case to be reopened (such as newly discovered property, an omitted creditor or a complaint to set aside the discharge for fraud), the case is closed and the debtor is now free to continue his life without fear of the discharged creditors.

## CHAPTER 15

### LIFE AFTER BANKRUPTCY

#### I. INTRODUCTION

For the vast number of people who file for bankruptcy protection, when the court issues the final discharge, their case is closed, and they can begin to enjoy the bankruptcy's promise of new life. For a few people their contact with the bankruptcy court, trustee and creditors does not end with the final discharge. There are special circumstances that sometimes arise that, like a rubber band, can pull the debtor into the bankruptcy court despite the final discharge. The two most frequent situations are likely to result in the debtor returning to bankruptcy court after a final discharge is granted are:

1. The debtor receives nonexempt property within 180 days of the final discharge, or
2. A creditor or the trustee seeks to revoke the final discharge.

Another set of problems arises not from the bankruptcy court but from third parties and their relations to the debtor once they learn of the bankruptcy. In certain segments of our society filing for bankruptcy relief carries with it a personal stigma. While such stigma may attach personally, it cannot legally be attached to

the debtor. A debtor suffering discrimination because of the bankruptcy should be aware of how the law handles and redresses such discrimination.

## II. NEWLY DISCOVERED PROPERTY AFTER THE FINAL DISCHARGE

To obtain a valid final discharge, the debtor is required to list on the bankruptcy petition all of the property he owned or has an interest at the time of filing of the petition. A debtor is not permitted knowingly to omit property from a bankruptcy petition. A willful failure to disclose the existence of property is grounds for revoking the debtor's discharge and may result in criminal prosecution if egregious.

In most instances the property was omitted by oversight or a genuine lack of knowledge of its existence. Once the undisclosed property is discovered, the debtor must report it to the trustee. Failure to report the property after its discovery will turn an innocent mistake into a deliberate attempt to evade the law. What was once a mistake becomes an actual criminal concealment.

Once new property is discovered, the debtor is required to notify the former trustee and clerk of the bankruptcy court. The notification need be nothing more than a simple letter stating the following:

Dear (name of trustee)

You were the trustee of my case, In re \_\_\_\_\_,  
case number \_\_\_\_\_. On \_\_\_\_\_, a final discharge

was granted. I discovered the existence of some property that I had mistakenly failed to list on my petition. The property is \_\_\_\_\_ the property is worth about \_\_\_\_\_ dollars. I am reporting it to you because I believe that I am required to do so under the law and do not wish to do anything to violate the law or jeopardize my final discharge.

Please inform me if you wish to reopen the case to sell and distribute the proceeds of this property.

Respectfully,

As a general rule the trustee will do nothing. The debtor not only complied with the law and preserved the final judgment but also got to keep the property. A trustee will not reopen a closed case just because of newly discovered property unless it happens to be very valuable. The proceeds from the sale of the property must be sufficient to cover the trustee's fees and the cost of selling the property. If there are not going to be any proceeds for creditors after the sale there is no justification for the trustee the property: the property will be abandoned to the debtor.

Even if the trustee wants to reopen the case to sell the property, the court might not allow it. The trustee must file a complaint with the Bankruptcy Court to reopen the case. The court will look at the length of time since the discharge and the value of the property and make its decision. The debtor can oppose any attempt of the trustee to reopen the case. While the debtor may be

his own attorney in court, he should consider employing a bankruptcy attorney because of the complexity of the law.

### III. NEWLY ACQUIRED PROPERTY

Under Bankruptcy Code Section 541(a)(5) there is a provision that certain property acquired within 180 days of the filing date for the bankruptcy petition is to be included in the estate of the debtor. This constraint prevents someone who is shortly expecting to come into valuable property from discharging their current debts before receiving the property.

Section 541(a)(5) reads:

"Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date:

- (A) By bequest, device or inheritance,
- (B) As a result of a property settlement agreement with debtor's spouse, or of an interlocutory or final decree, or
- (C) As beneficiary of a life insurance policy or of a death benefit plan."

The properties covered by Section 541(a)(5) (inheritances, property settlements and insurance proceeds) are the types of windfall that a person could expect to receive with enough certainty that a bankruptcy petition might be filed to protect the anticipated property from the claims of creditors. If received within 180 days of the bankruptcy filing, it must be reported to the trustee and the court.

The best way to handle the reporting of such property is to file a "supplemental schedule of property acquired after discharge" with the court and have a copy served on the trustee. Following

this chapter is a copy of the format for this schedule.

As with newly discovered property, the trustee will have to decide whether or not the value of such newly acquired property justifies reopening the case. If the trustee decides to reopen the case, the debtor should consult with a bankruptcy attorney regarding opposing such action.

#### IV. AN ATTEMPT TO REVOKE A DEBTOR'S FINAL DISCHARGE

In an extremely rare situation, a trustee or a creditor may seek to have a debtor's final discharge set aside. The debtor should run, not walk, to the nearest bankruptcy attorney. Setting aside a bankruptcy discharge is a difficult thing for a trustee or a creditor to do. That knowledgeable trustee or creditor's attorney would attempt to do so must be viewed as extremely serious.

The grounds for setting aside a final discharge that was granted to a debtor are set forth in Bankruptcy Code Section 727. The grounds for revoking a discharge are:

1. The discharge was obtained through fraud that was unknown to the trustee or creditor until after the discharge was granted,
2. The debtor knowingly and fraudulently failed to report and deliver property belonging to the estate to the trustee, or
3. The debtor deliberately failed to obey a lawful order of the court.

If a complaint for revocation of the discharge is granted, the debtor immediately becomes liable again for payment of all the debts that had been discharged. All of the redemption and reaffirmation agreements the debtor entered become null and void. A debtor must see a bankruptcy attorney if a complaint to revoke a discharge is filed.

## V. DISCRIMINATION

Winning a new life through a bankruptcy discharge is of no avail if the person can never again hold a job or get credit. For many years the filing of a bankruptcy petition was viewed as a scarlet letter branding a person as undesirable and unemployable. That is no longer the case.

### A. GOVERNMENT DISCRIMINATION

Section 525(a) of the Bankruptcy Code prevents any government agency from discriminating against a person solely because the person sought protection under the Bankruptcy Code. Section 525(a) reads as follows:

"(a) Except as provided in the Perishable Agricultural Commodities Act 1930, the Packers and Stockyards Act 1921 and section 1 of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944 and for other purposes", a government unit may not deny, revoke, suspend or refuse to license, permit, charter, franchise or other similar grant to, condition such a grant to discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act, or another person with whom such bankrupt has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act has been

insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act."

Under this section no government agency, state or federal, can deny a person who has been granted bankruptcy relief any government employment, assistance, education, licenses or any other benefit that is available to a person who has not filed for bankruptcy relief. If a person who owes the government money files for bankruptcy relief and has the debt discharged, the government cannot thereafter use the failure to pay the discharged governmental debt as grounds for denying any type of government license or benefit. The government is treated no differently than any other creditor. When a person is granted a bankruptcy discharge, all excused governmental debts are immediately canceled. Canceling a debt has the same effect as paying it, therefore a government agency cannot use the nonpayment of discharged government debt as justification for any type of discrimination.

If a government agency wrongly discriminates against an individual because of the granting of a bankruptcy discharge, the person can file a discrimination lawsuit against the agency and win if that was the only reason for the discrimination.

#### B. PRIVATE DISCRIMINATION

Section 525(b) of the Bankruptcy Code also prohibits discrimination by an employer because of the filing of a bankruptcy petition. At one time it was quite common for an employer to fire

any employee who filed a petition for bankruptcy. This is no longer the case. A person cannot be denied employment, fired, transferred, denied training benefits available to other employees or in any other manner discriminated solely because the person sought protection under the bankruptcy law.

In fact many states forbid outright an employer asking an employee or prospective employee whether or not a bankruptcy petition has ever been filed. These states view the question as improper since the information cannot be used to base an employment decision.

Any person who has been granted a discharge and is denied employment after admitting in a job application he once filed bankruptcy might have an excellent case of discrimination against the prospective employer and should consult an attorney skilled in bankruptcy.

#### VI. REESTABLISHING CREDIT

Once a person has filed for bankruptcy protection, that information will remain on the records of the credit reporting agencies for 10 years. The information that the debtor filed bankruptcy will always be a public record; it is just that under federal law credit agencies can only report it for 10 years. Example: After 11 years a person doing a credit check on a debtor cannot get knowledge of the bankruptcy from the credit report but can get it from the court.

In some instances filing bankruptcy actually can increase a

person's credit worthiness. Remember once discharge has been granted the person cannot file bankruptcy again for 7 years. Moreover, he has had most of his debts discharged. A potential lender may view the person as being a better risk than many who have not filed bankruptcy. A lender looks at the income and the outstanding debts of the borrower when deciding to make a loan. If the borrower has (1) a good job and (2) no debts and (3) the inability to go bankrupt for 7 years, some lenders will consider that an ideal situation.

On the other hand credit card companies probably will not give a credit card to a person who has filed a bankruptcy petition for some time after the discharge is granted. In fact some credit card companies will cancel their cards once they discover a holder has been bankrupt even if he has a perfect payment record. Not having a credit card can be a major problem since many businesses, such as car rentals and hotels, will not do business for cash.

An alternative is to obtain a "secured credit card": a secured account with a bank. A person deposits a fixed amount into an account and is given a credit card with a limit equal to the amount in the account. The interest rate on these accounts are the same as a regular credit card or lower.

#### VII. REOPENING THE CASE BY THE DEBTOR

Section 350(b) of the Bankruptcy Code vests the bankruptcy court with full discretion to reopen a case when good cause is shown. Usually it is a creditor who asks for the reopening of the

case in order to have the discharge revoked on certain debts. In the Advisory Note to Bankruptcy Rule 515 it is explicitly acknowledged that granting relief to a debtor is a proper cause for reopening a case.

There is no express time limitation for reopening an estate for cause shown (*Brust vs. Irving Trust Company* 129 F. Supp 462). The motion must state with particularity those facts that give rise to the reason for the reopening. The court will then take judicial notice of the original case and all of the pleadings thereunder. 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 of the case will not automatically reinstate the trustee.

A debtor will seek to reopen a case for one of two reasons. The first is that a creditor was mistakenly omitted, and it is necessary to have that creditor's debt discharged. The second is the debtor wishes to amend the exemptions in the original petition, usually because of after-acquired property.

Once the court determines the equities of the case justify reopening, creditors whose interests will be affected are given an opportunity to present their opposition. After the presentation of the motion, the court will decide whether or not the debtor's requested relief is proper.

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 the first time.

## VIII. FORMS

The following basic form is generally valid and acceptable in the bankruptcy courts of all 50 states and the District of Columbia:

Supplemental Schedule of Property Acquired  
After the Final Discharge

1 DEBTOR'S NAME  
ADDRESS  
2 PHONE NUMBER

3 IN PRO PER

4

5 UNITED STATES BANKRUPTCY COURT

6 \_\_\_\_\_ DISTRICT OF \_\_\_\_\_

7

8 In re ) CASE NUMBER:  
 )  
9 ) SUPPLEMENTAL SCHEDULE  
 ) OF PROPERTY ACQUIRED  
10 Debtor ) AFTER THE FINAL DISCHARGE  
 )  
11 \_\_\_\_\_

11

12 Pursuant to Bankruptcy Code Section 541(a)(5) Bankruptcy Rule  
13 1007(h), the debtor in the above-entitled action hereby files this  
14 supplemental schedule of property acquired after the final discharge but  
15 within one hundred and eighty (180) days of the filing of the bankruptcy  
petition.

16 The property described below was obtained through inheritance,  
17 marital agreement or divorce decree, death benefits or life insurance  
proceeds:

18 \_\_\_\_\_  
19 \_\_\_\_\_  
20 \_\_\_\_\_

21 The following described property is claimed as exempt under the  
22 following law:

23 \_\_\_\_\_  
24 \_\_\_\_\_

25 I, \_\_\_\_\_, the petitioner is the above-  
26 entitled case, declare under penalty of perjury that the foregoing is  
true and correct.

27 Dated: \_\_\_\_\_

28

\_\_\_\_\_  
Petitioner

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|   |                           |
|---|---------------------------|
| <b>United States Bankruptcy Court</b><br><b>District of _____</b> | <b>Voluntary Petition</b> |
|---|---------------------------|

|  |  |
|--|--|
| Name of Debtor (if individual, enter Last, First, Middle):   | Name of Joint Debtor (Spouse) (Last, First, Middle):   |
| All Other Names used by the Debtor in the last 8 years (include married, maiden, and trade names): | All Other Names used by the Joint Debtor in the last 8 years (include married, maiden, and trade names): |
| Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):    | Last four digits of Soc. Sec./Complete EIN or other Tax I.D. No. (if more than one, state all):          |
| Street Address of Debtor (No. & Street, City, and State):  | Street Address of Joint Debtor (No. & Street, City, and State):  |
| ZIPCODE  | ZIPCODE  |
| County of Residence or of the Principal Place of Business:   | County of Residence or of the Principal Place of Business:   |
| Mailing Address of Debtor (if different from street address):                                      | Mailing Address of Joint Debtor (if different from street address):                                      |
| ZIPCODE  | ZIPCODE  |
| Location of Principal Assets of Business Debtor (if different from street address above):          |  |
| ZIPCODE  |  |

|  |  |  |
|--|--|--|
| <b>Type of Debtor</b> (Form of Organization)<br>(Check <b>one</b> box.)<br><br><input type="checkbox"/> Individual (includes Joint Debtors)<br><input type="checkbox"/> Corporation (includes LLC and LLP)<br><input type="checkbox"/> Partnership<br><input type="checkbox"/> Other (If debtor is not one of the above entities, check this box and provide the information requested below.)<br><br>State type of entity: _____<br>_____   | <b>Nature of Business</b><br>(Check <b>all</b> applicable boxes.)<br><br><input type="checkbox"/> Health Care Business<br><input type="checkbox"/> Single Asset Real Estate as defined in 11 U.S.C. § 101 (51B)<br><input type="checkbox"/> Railroad<br><input type="checkbox"/> Stockbroker<br><input type="checkbox"/> Commodity Broker<br><input type="checkbox"/> Clearing Bank<br><input type="checkbox"/> Nonprofit Organization qualified under 15 U.S.C. § 501(c)(3) | <b>Chapter of Bankruptcy Code Under Which the Petition is Filed</b> (Check one box)<br><br><input type="checkbox"/> Chapter 7 <input type="checkbox"/> Chapter 11 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Main Proceeding<br><input type="checkbox"/> Chapter 9 <input type="checkbox"/> Chapter 12 <input type="checkbox"/> Chapter 15 Petition for Recognition of a Foreign Nonmain Proceeding<br><input type="checkbox"/> Chapter 13  |
|  |  | <b>Nature of Debts</b> (Check one box)<br><br><input type="checkbox"/> Consumer/Non-Business <input type="checkbox"/> Business   |
| <b>Filing Fee</b> (Check one box)<br><br><input type="checkbox"/> Full Filing Fee attached<br><input 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 3A.<br><input type="checkbox"/> Filing Fee waiver requested (Applicable to chapter 7 individuals only). Must attach signed application for the court's consideration. See Official Form 3B. |  | <b>Chapter 11 Debtors</b><br><br><b>Check one box:</b><br><input type="checkbox"/> Debtor is a small business debtor as defined in 11 U.S.C. § 101(51D).<br><input type="checkbox"/> Debtor is not a small business debtor as defined in 11 U.S.C. § 101(51D).<br><hr style="border-top: 1px dashed black;"/> <b>Check if:</b><br><input type="checkbox"/> Debtor's aggregate noncontingent liquidated debts owed to non-insiders or affiliates are less than \$2 million. |

|  |                                  |                          |                          |                             |                              |                               |                               |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |  |
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| <b>Statistical/Administrative Information</b><br><br><input type="checkbox"/> Debtor estimates that funds will be available for distribution to unsecured creditors.<br><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 IS FOR COURT USE ONLY |                          |                          |                             |                              |                               |                               |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |  |
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| 1-49   | 50-99                            | 100-199                  | 200-999                  | 1,000-5,000                 | 5,001-10,000                 | 10,001-25,000                 | 25,001-50,000                 | 50,001-100,000           | OVER 100,000             |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |  |
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| \$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       |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |  |
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| \$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 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):

**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 \_\_\_\_\_

**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](http://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:<br>_____<br>_____ | Value: \$ _____<br>Amount owed on mortgages and liens: \$ _____ |
| Other real estate | Address:<br>_____<br>_____ | Value: \$ _____<br>Amount owed on mortgages and liens: \$ _____ |
| Motor vehicle     | Model/Year: _____<br>_____ | Value: \$ _____<br>Amount owed: \$ _____                        |
| Motor vehicle     | Model/Year: _____<br>_____ | Value: \$ _____<br>Amount owed: \$ _____                        |
| Other             | Description _____<br>_____ | Value: \$ _____<br>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.



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 \_\_\_\_\_

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 petitioner 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<br>O<br>N<br>E | DESCRIPTION AND LOCATION OF PROPERTY | HUSBAND, WIFE, JOINT,<br>OR COMMUNITY | CURRENT VALUE OF DEBTOR'S INTEREST IN PROPERTY, WITHOUT DEDUCTING ANY SECURED CLAIM OR EXEMPTION |
|--|------------------|--------------------------------------|---------------------------------------|--|
| 1. Cash on hand.<br><br>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.<br><br>3. Security deposits with public utilities, telephone companies, landlords, and others.<br><br>4. Household goods and furnishings, including audio, video, and computer equipment.<br><br>5. Books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.<br><br>6. Wearing apparel.<br><br>7. Furs and jewelry.<br><br>8. Firearms and sports, photographic, and other hobby equipment.<br><br>9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.<br><br>10. Annuities. Itemize and name each issuer.<br><br>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<br>O<br>N<br>E | DESCRIPTION AND LOCATION<br>OF PROPERTY | HUSBAND, WIFE, JOINT,<br>OR COMMUNITY | CURRENT VALUE OF<br>DEBTOR'S INTEREST<br>IN PROPERTY, WITH-<br>OUT DEDUCTING ANY<br>SECURED CLAIM<br>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<br>O<br>N<br>E | DESCRIPTION AND LOCATION<br>OF PROPERTY | HUSBAND, WIFE, JOINT,<br>OR COMMUNITY | CURRENT VALUE OF<br>DEBTOR'S INTEREST<br>IN PROPERTY, WITH-<br>OUT DEDUCTING ANY<br>SECURED CLAIM<br>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 |
|-------------------------|--------------------------------------|----------------------------|---|
|                         |                                      |                            |   |

**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<br><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 \$   |            |              |          |   |                           |

\_\_\_\_ continuation sheets attached

Subtotal ▶  
(Total of this page)

Total ▶  
(Use only on last page)

|    |
|----|
| \$ |
| \$ |

Form B6D – Cont.  
(10/05)

In re \_\_\_\_\_,  
**Debtor**

Case No. \_\_\_\_\_  
**(If known)**

**SCHEDULE D – CREDITORS HOLDING SECURED CLAIMS**  
(Continuation Sheet)

| CREDITOR'S NAME AND MAILING ADDRESS INCLUDING ZIP CODE AND A ACCOUNT NUMBER<br><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 \$   |            |              |          |   |                           |

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,<br>MAILING ADDRESS<br>INCLUDING ZIP CODE,<br>AND ACCOUNT NUMBER<br>(See instructions.) | CODEBTOR | HUSBAND, WIFE,<br>JOINT, OR<br>COMMUNITY | DATE CLAIM WAS INCURRED<br>AND CONSIDERATION FOR<br>CLAIM | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT<br>OF<br>CLAIM | AMOUNT<br>ENTITLED TO<br>PRIORITY |
|---|----------|--|---|------------|--------------|----------|-----------------------|-----------------------------------|
| Account No.   |          |  |   |            |              |          |                       |                                   |
|   |          |  |   |            |              |          |                       |                                   |
| Account No.   |          |  |   |            |              |          |                       |                                   |
|   |          |  |   |            |              |          |                       |                                   |
| Account No.   |          |  |   |            |              |          |                       |                                   |
|   |          |  |   |            |              |          |                       |                                   |
| Account No.   |          |  |   |            |              |          |                       |                                   |
|   |          |  |   |            |              |          |                       |                                   |

Sheet no. \_\_\_ of \_\_\_ sheets attached to Schedule of Creditors  
Holding Priority Claims

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,<br>MAILING ADDRESS<br>INCLUDING ZIP CODE,<br>AND ACCOUNT NUMBER<br><small>(See instructions above.)</small> | CODEBTOR | HUSBAND, WIFE,<br>JOINT, OR<br>COMMUNITY | DATE CLAIM WAS<br>INCURRED AND<br>CONSIDERATION FOR<br>CLAIM.<br>IF CLAIM IS SUBJECT TO<br>SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF<br>CLAIM |
|--|----------|--|--|------------|--------------|----------|--------------------|
| ACCOUNT NO.  |          |  |  |            |              |          |                    |
|  |          |  |  |            |              |          |                    |
| ACCOUNT NO.  |          |  |  |            |              |          |                    |
|  |          |  |  |            |              |          |                    |
| ACCOUNT NO.  |          |  |  |            |              |          |                    |
|  |          |  |  |            |              |          |                    |
| ACCOUNT NO.  |          |  |  |            |              |          |                    |
|  |          |  |  |            |              |          |                    |
| Subtotal ▶   |          |  |  |            |              |          | \$                 |
| Total ▶  |          |  |  |            |              |          | \$                 |

(Use only on last page of the completed Schedule F.)  
( Report also on Summary of Schedules.)

\_\_\_\_\_ continuation sheets attached

In re \_\_\_\_\_,  
 Debtor

Case No. \_\_\_\_\_  
 (If known)

**SCHEDULE F - CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**  
 (Continuation Sheet)

| CREDITOR'S NAME,<br>MAILING ADDRESS<br>INCLUDING ZIP CODE,<br>AND ACCOUNT NUMBER<br><small>(See instructions above.)</small> | CODEBTOR | HUSBAND, WIFE,<br>JOINT, OR<br>COMMUNITY | DATE CLAIM WAS<br>INCURRED AND<br>CONSIDERATION FOR<br>CLAIM.<br>IF CLAIM IS SUBJECT TO<br>SETOFF, SO STATE. | CONTINGENT | UNLIQUIDATED | DISPUTED | AMOUNT OF<br>CLAIM |
|--|----------|--|--|------------|--------------|----------|--------------------|
| ACCOUNT NO.<br><br>  |          |  |  |            |              |          |                    |
| ACCOUNT NO.<br><br>  |          |  |  |            |              |          |                    |
| ACCOUNT NO.<br><br>  |          |  |  |            |              |          |                    |
| ACCOUNT NO.<br><br>  |          |  |  |            |              |          |                    |
| ACCOUNT NO.<br><br>  |          |  |  |            |              |          |                    |

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.)

In re \_\_\_\_\_,  
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 or 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. If a minor child is a party to one of the leases or contracts, 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).

Check this box if debtor has no executory contracts or unexpired leases.

| <b>NAME AND MAILING ADDRESS,<br/>INCLUDING ZIP CODE,<br/>OF OTHER PARTIES TO LEASE OR CONTRACT.</b> | <b>DESCRIPTION OF CONTRACT OR LEASE AND<br/>NATURE OF DEBTOR'S INTEREST. STATE<br/>WHETHER LEASE IS FOR NONRESIDENTIAL<br/>REAL PROPERTY. STATE CONTRACT<br/>NUMBER OF ANY GOVERNMENT CONTRACT.</b> |
|---|---|
|   |   |
|   |   |
|   |   |
|   |   |
|   |   |
|   |   |
|   |   |



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:   |
| <b>Employment:</b>       | 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<br>(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.<br>(Attach detailed statement)                             | \$ _____          | \$ _____ |
| 8. Income from real property   | \$ _____          | \$ _____ |
| 9. Interest and dividends  | \$ _____          | \$ _____ |
| 10. Alimony, maintenance or support payments payable to the debtor for<br>the debtor's use or that of dependents listed above. | \$ _____          | \$ _____ |
| 11. Social security or government assistance<br>(Specify): _____   | \$ _____          | \$ _____ |
| 12. Pension or retirement income   | \$ _____          | \$ _____ |
| 13. Other monthly income<br>(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:

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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<br>(YES/NO) | NO. OF SHEETS | ASSETS | LIABILITIES | OTHER |
|---|----------------------|---------------|--------|-------------|-------|
| A - Real Property                                     |                      |               | \$     |             |       |
| B - Personal Property                                 |                      |               | \$     |             |       |
| C - Property Claimed<br>as Exempt                     |                      |               |        |             |       |
| D - Creditors Holding<br>Secured Claims               |                      |               |        | \$          |       |
| E - Creditors Holding Unsecured<br>Priority Claims    |                      |               |        | \$          |       |
| F - Creditors Holding Unsecured<br>Nonpriority Claims |                      |               |        | \$          |       |
| G - Executory Contracts and<br>Unexpired Leases       |                      |               |        |             |       |
| H - Codebtors   |                      |               |        |             |       |
| I - Current Income of<br>Individual Debtor(s)         |                      |               |        |             | \$    |
| J - Current Expenditures of Individual<br>Debtors(s)  |                      |               |        |             | \$    |
| <b>TOTAL</b>  |                      |               | \$     | \$          |       |

# 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 \_\_\_\_\_ 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: \_\_\_\_\_  
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/<br>TRANSFERS | AMOUNT PAID OR<br>VALUE OF<br>TRANSFERS | AMOUNT<br>STILL<br>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<br>AND RELATIONSHIP TO DEBTOR | DATE OF<br>PAYMENT | AMOUNT<br>PAID | AMOUNT<br>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<br>AND CASE NUMBER | NATURE OF PROCEEDING | COURT OR AGENCY<br>AND LOCATION | STATUS OR<br>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<br>OF PERSON FOR WHOSE<br>BENEFIT PROPERTY WAS SEIZED | DATE OF<br>SEIZURE | DESCRIPTION<br>AND VALUE<br>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<br>OF CREDITOR OR SELLER | DATE OF REPOSSESSION,<br>FORECLOSURE SALE,<br>TRANSFER OR RETURN | DESCRIPTION<br>AND VALUE<br>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<br>OF ASSIGNEE | DATE OF<br>ASSIGNMENT | TERMS OF<br>ASSIGNMENT<br>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<br>OF CUSTODIAN | NAME AND LOCATION<br>OF COURT<br>CASE TITLE & NUMBER | DATE OF<br>ORDER | DESCRIPTION<br>AND VALUE<br>Of PROPERTY |
|----------------------------------|--|------------------|---|
|----------------------------------|--|------------------|---|

### 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<br>OF PERSON<br>OR ORGANIZATION | RELATIONSHIP<br>TO DEBTOR,<br>IF ANY | DATE<br>OF GIFT | DESCRIPTION<br>AND VALUE<br>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<br>AND VALUE OF<br>PROPERTY | DESCRIPTION OF CIRCUMSTANCES AND, IF<br>LOSS WAS COVERED IN WHOLE OR IN PART<br>BY INSURANCE, GIVE PARTICULARS | DATE<br>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<br>OF PAYEE | DATE OF PAYMENT,<br>NAME OF PAYER IF<br>OTHER THAN DEBTOR | AMOUNT OF MONEY OR<br>DESCRIPTION AND<br>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,<br>RELATIONSHIP TO DEBTOR | DATE | DESCRIBE PROPERTY<br>TRANSFERRED AND<br>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<br>DEVICE | DATE(S) OF<br>TRANSFER(S) | AMOUNT OF MONEY OR DESCRIPTION<br>AND VALUE OF PROPERTY OR DEBTOR'S<br>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<br>OF INSTITUTION | TYPE OF ACCOUNT, LAST FOUR<br>DIGITS OF ACCOUNT NUMBER,<br>AND AMOUNT OF FINAL BALANCE | AMOUNT AND<br>DATE OF SALE<br>OR CLOSING |
|------------------------------------|--|--|
|------------------------------------|--|--|

### 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<br>OF BANK OR<br>OTHER DEPOSITORY | NAMES AND ADDRESSES<br>OF THOSE WITH ACCESS<br>TO BOX OR DEPOSITORY | DESCRIPTION<br>OF<br>CONTENTS | DATE OF TRANSFER<br>OR SURRENDER,<br>IF ANY |
|--|---|-------------------------------|---|
|--|---|-------------------------------|---|

### 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 |
|------------------------------|----------------|------------------|
|------------------------------|----------------|------------------|

#### 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 |
|---------------------------|-----------------------------------|----------------------|
|---------------------------|-----------------------------------|----------------------|

#### 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<br>AND ADDRESS | NAME AND ADDRESS<br>OF GOVERNMENTAL UNIT | DATE OF<br>NOTICE | ENVIRONMENTAL<br>LAW |
|--------------------------|--|-------------------|----------------------|
|--------------------------|--|-------------------|----------------------|

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<br>AND ADDRESS | NAME AND ADDRESS<br>OF GOVERNMENTAL UNIT | DATE OF<br>NOTICE | ENVIRONMENTAL<br>LAW |
|--------------------------|--|-------------------|----------------------|
|--------------------------|--|-------------------|----------------------|

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<br>OF GOVERNMENTAL UNIT | DOCKET NUMBER | STATUS OR<br>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<br>OF SOC. SEC. NO./<br>COMPLETE EIN OR<br>OTHER TAXPAYER<br>I.D. NO. | ADDRESS | NATURE OF BUSINESS | BEGINNING AND<br>ENDING DATES |
|------|--|---------|--------------------|-------------------------------|
|------|--|---------|--------------------|-------------------------------|

---

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 |
|------|---------|
|------|---------|

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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 **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.)*

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#### 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 |
|------|---------|
|------|---------|

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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<br>OF INVENTORY<br>(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<br>OF CUSTODIAN<br>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<br>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 |
|------------------|-------|---------------------|

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**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<br>OF RECIPIENT,<br>RELATIONSHIP TO DEBTOR | DATE AND PURPOSE<br>OF WITHDRAWAL | AMOUNT OF MONEY<br>OR DESCRIPTION<br>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) |
|----------------------|--------------------------------------|

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\* \* \* \* \*

*[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                 |



**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.   |
| <b>Legal Advice</b>                              | 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



**EXPLANATIONS**

**Form B9I (10/05)**

|   |  |
|---|--|
| <p>Filing of Chapter 13 Bankruptcy Case</p>             | <p>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.</p>   |
| <p><b>Legal Advice</b></p>                              | <p>The staff of the bankruptcy clerk's office cannot give legal advice. Consult a lawyer to determine your rights in this case.</p>  |
| <p>Creditors Generally May Not Take Certain Actions</p> | <p>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.</p>   |
| <p>Meeting of Creditors</p>                             | <p>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</p>   |
| <p>Claims</p>   | <p>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. <b>Filing Deadline for a Foreign Creditor:</b> 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.</p> |
| <p>Discharge of Debts</p>                               | <p>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.</p>   |
| <p>Exempt Property</p>                                  | <p>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.</p>  |
| <p>Bankruptcy Clerk's Office</p>                        | <p>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.</p>   |
| <p>Foreign Creditors</p>                                | <p>Consult a lawyer familiar with United States bankruptcy law if you have any questions regarding your rights in this case.</p>   |

Refer To Other Side For Important Deadlines and Notices

|   |   |                                  |
|---|---|----------------------------------|
| UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____  |   | <b>PROOF OF CLAIM</b>            |
| 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.<br><input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.<br><input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court. | THIS SPACE IS FOR COURT USE ONLY |
| Name and address where notices should be sent: _____  |   |                                  |
| 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: _____   |                                  |
| <b>1. Basis for Claim</b><br><input type="checkbox"/> Goods sold<br><input type="checkbox"/> Services performed<br><input type="checkbox"/> Money loaned<br><input type="checkbox"/> Personal injury/wrongful death<br><input type="checkbox"/> Taxes<br><input type="checkbox"/> Other _____   |   |                                  |
| <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a)<br><input type="checkbox"/> Wages, salaries, and compensation (fill out below)<br>Last four digits of your SS #: _____<br>Unpaid compensation for services performed from _____ to _____<br><div style="display: flex; justify-content: space-between; width: 100%;"> <span>(date)</span> <span>(date)</span> </div>  |   |                                  |
| <b>2. Date debt was incurred:</b> _____   | <b>3. If court judgment, date obtained:</b> _____   |                                  |
| <b>4. Classification of Claim.</b> 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.  |   |                                  |
| <b>Unsecured Nonpriority Claim</b> \$ _____<br><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.   |   |                                  |
| <b>Unsecured Priority Claim</b><br><input type="checkbox"/> Check this box if you have an unsecured claim, all or part of which is entitled to priority.<br>Amount entitled to priority \$ _____<br>Specify the priority of the claim:<br><input type="checkbox"/> Domestic support obligations under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B)<br><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).<br><input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(5). |   |                                  |
| <b>Secured Claim</b><br><input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff).<br>Brief Description of Collateral:<br><input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____<br>Value of Collateral: \$ _____<br>Amount of arrearage and other charges at time case filed included in secured claim, if any: \$ _____  |   |                                  |
| <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).<br><input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8).<br><input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____).<br>*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.   |   |                                  |
| <b>5. Total Amount of Claim at Time Case Filed:</b> \$ _____<br><div style="display: flex; justify-content: space-around; width: 100%;"> <span>(unsecured)</span> <span>(secured)</span> <span>(priority)</span> <span>(Total)</span> </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.   |   |                                  |
| <b>6. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.   |   | THIS SPACE IS FOR COURT USE ONLY |
| <b>7. Supporting Documents:</b> 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.  |   |                                  |
| <b>8. Date-Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.  |   |                                  |
| 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.*



**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**

|          |   |
|----------|---|
| <b>1</b> | <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"/> <b>Veteran's Declaration.</b> 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> |
|----------|---|

**Part II. CALCULATION OF MONTHLY INCOME FOR § 707(b)(7) EXCLUSION**

|          |   |                             |                |    |    |   |    |    |                 |                             |    |    |  |  |
|----------|---|-----------------------------|----------------|----|----|---|----|----|-----------------|-----------------------------|----|----|--|--|
| <b>2</b> | <p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></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." <b>Complete only Column A ("Debtor's Income") for Lines 3-11.</b></p> <p>c. <input type="checkbox"/> Married, not filing jointly, without the declaration of separate households set out in Line 2.b above. <b>Complete both Column A ("Debtor's Income") and Column B (Spouse's Income) for Lines 3-11.</b></p> <p>d. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 3-11.</b></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> |                             |                |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>3</b> | Gross wages, salary, tips, bonuses, overtime, commissions.  | \$                          | \$             |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>4</b> | <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. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td style="text-align: center;">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 |                |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>5</b> | <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. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part V.</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td>Gross receipts</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: center;">\$</td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td style="text-align: center;">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 |                |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>6</b> | Interest, dividends and royalties.  | \$                          | \$             |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>7</b> | Pension and retirement income.  | \$                          | \$             |    |    |   |    |    |                 |                             |    |    |  |  |
| <b>8</b> | 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. <b>Do not include</b> 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                         | <b>Subtotal of Current Monthly Income for § 707(b)(7).</b> 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                         | <b>Total Current Monthly Income for § 707(b)(7).</b> 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 | <b>Annualized Current Monthly Income for § 707(b)(7).</b> Multiply the amount from Line 12 by the number 12 and enter the result.   | \$ _____ |
| 14 | <b>Applicable median family income.</b> Enter the median family income for the applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)<br>a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____  | \$ _____ |
| 15 | <b>Application of Section 707(b)(7).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 13 is less than or equal to the amount on Line 14.</b> 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.<br><input type="checkbox"/> <b>The amount on Line 13 is more than the amount on Line 14.</b> 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 | <b>Enter the amount from Line 12.</b>  | \$ _____ |
| 17 | <b>Marital adjustment.</b> 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 | <b>Current monthly income for § 707(b)(2).</b> 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  | <b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> Enter "Total" amount from IRS National Standards for Allowable Living Expenses for the applicable family size and income level. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) | \$ _____ |
| 20A | <b>Local Standards: housing and utilities; non-mortgage expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court).  |                              |    |  |    |    |  |    |    |   |                              |    |
| 20B | <p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Housing and Utilities Standards; mortgage/rental expense</td> <td style="width:20%;">\$</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><b>Local Standards: housing and utilities; adjustment.</b> 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><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>   |                              | \$ |  |    |    |  |    |    |   |                              |    |
| 23  | <p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Transportation Standards, Ownership Costs, First Car</td> <td style="width:20%;">\$</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><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width:5%; text-align:center;">a.</td> <td style="width:75%;">IRS Transportation Standards, Ownership Costs, Second Car</td> <td style="width:20%;">\$</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><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>  |                              |    |  |    |    |  |    |    |   |                              |    |
| 26  | <p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>   |                              | \$ |  |    |    |  |    |    |   |                              |    |

|    |  |    |
|----|--|----|
| 27 | <b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>  | \$ |
| 28 | <b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 44.</b>   | \$ |
| 29 | <b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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 | <b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>  | \$ |
| 31 | <b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 34.</b>   | \$ |
| 32 | <b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>                                 | \$ |
| 33 | <b>Total Expenses Allowed under IRS Standards.</b> 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 | <b>Health Insurance, Disability Insurance and Health Savings Account Expenses.</b> 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 | <b>Continued contributions to the care of household or family members.</b> 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 | <b>Protection against family violence.</b> 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 | <b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>   | \$                     |    |                             |
| 38 | <b>Education expenses for dependent children less than 18.</b> 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. <b>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.</b>  | \$                     |    |                             |
| 39 | <b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b> | \$                     |    |                             |
| 40 | <b>Continued charitable contributions.</b> 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 | <b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 34 through 40  | \$                     |    |                             |

| Subpart C: Deductions for Debt Payment                |  |  |                              |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
|---|--|--|------------------------------|--|---------------------------------------|---------------------------|--|---|----|---|-------------------------------|----|--|----|----|--|--|----|--|--|--|------------------------------|----|
| 42  |  | <p><b>Future payments on secured claims.</b> 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.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 20%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt</th> <th style="width: 40%;">60-month Average Payment</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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. |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
| 43  |  | <p><b>Past due payments on secured claims.</b> 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.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 5%;"></th> <th style="width: 20%;">Name of Creditor</th> <th style="width: 35%;">Property Securing the Debt in Default</th> <th style="width: 40%;">1/60th of the Cure Amount</th> </tr> </thead> <tbody> <tr> <td>a.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>b.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td>c.</td> <td></td> <td></td> <td style="text-align: right;">\$</td> </tr> <tr> <td colspan="3"></td> <td style="text-align: right;">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  |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
| 44  |  | <p><b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.</p>   | \$                           |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
| 45  |  | <p><b>Chapter 13 administrative expenses.</b> 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.</p> <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%; text-align: right;">\$</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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 style="text-align: right;">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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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  |  | <p><b>Total Deductions for Debt Payment.</b> Enter the total of Lines 42 through 45.</p>   | \$                           |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
| Subpart D: Total Deductions Allowed under § 707(b)(2) |  |  |                              |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |
| 47  |  | <p><b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 33, 41, and 46.</p>  | \$                           |  |                                       |                           |  |   |    |   |                               |    |  |    |    |  |  |    |  |  |  |                              |    |

| 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 | <p><b>Initial presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than \$6,000</b> 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.</p> <p><input type="checkbox"/> <b>The amount set forth on Line 51 is more than \$10,000.</b> 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.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is at least \$6,000, but not more than \$10,000.</b> Complete the remainder of Part VI (Lines 53 through 55).</p> |    |
| 53 | <p><b>Enter the amount of your total non-priority unsecured debt</b></p>  | \$ |
| 54 | <p><b>Threshold debt payment amount.</b> Multiply the amount in Line 53 by the number 0.25 and enter the result.</p>  | \$ |
| 55 | <p><b>Secondary presumption determination.</b> Check the applicable box and proceed as directed.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is less than the amount on Line 54.</b> 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.</p> <p><input type="checkbox"/> <b>The amount on Line 51 is equal to or greater than the amount on Line 54.</b> 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.</p>   |    |

**Part VII: ADDITIONAL EXPENSE CLAIMS**

|    |  |                |
|----|--|----------------|
| 56 | <p><b>Other Expenses.</b> 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.</p> |                |
|    | Expense Description  | Monthly Amount |
|    | a.   | \$             |
|    | b.   | \$             |
|    | c.   | \$             |
|    | Total: Add Lines a, b and c  | \$             |

**Part VIII: VERIFICATION**

|    |   |   |
|----|---|---|
| 57 | <p>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></p> |   |
|    | Date: _____   | Signature: _____<br><small>(Debtor)</small>               |
|    | Date: _____   | Signature: _____<br><small>(Joint Debtor, if any)</small> |

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.

| <b>Part I. CALCULATION OF CURRENT MONTHLY INCOME</b>                            |  |                 |                                |   |                 |                 |    |    |   |    |  |    |                 |  |                             |    |    |
|---|--|-----------------|--------------------------------|---|-----------------|-----------------|----|----|---|----|--|----|-----------------|--|-----------------------------|----|----|
|   |  |                 | Column A<br>Debtor's<br>Income | Column B<br>Spouse's<br>Income  |                 |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 1   | <p><b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.</p> <p>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>b. <input type="checkbox"/> Married, not filing jointly. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b></p> <p>c. <input type="checkbox"/> Married, filing jointly. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b></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> |                 |                                |   |                 |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 2   | <b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>  |                 |                                | \$  | \$              |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 3   | <p><b>Net income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number 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: 40%;">Gross receipts</td> <td style="width: 15%; text-align: right;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary business expenses</td> <td style="text-align: right;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Business income</td> <td></td> <td style="text-align: right;">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   | <p><b>Net rental and other real property income.</b> Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number 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: 40%;">Gross receipts</td> <td style="width: 15%; text-align: right;">\$</td> <td style="width: 40%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td>Ordinary and necessary operating expenses</td> <td style="text-align: right;">\$</td> <td></td> </tr> <tr> <td style="text-align: center;">c.</td> <td>Rental income</td> <td></td> <td style="text-align: right;">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   | <b>Interest, dividends, and royalties.</b>   |                 |                                | \$  | \$              |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 6   | <b>Pension and retirement income.</b>  |                 |                                | \$  | \$              |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 7   | <b>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse if Column B is completed.   |                 |                                | \$  | \$              |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 8   | <p><b>Unemployment compensation.</b> 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:</p> <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: 10%;">Debtor \$ _____</td> <td style="width: 50%;">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   | <p><b>Income from all other sources.</b> If necessary, list additional sources on a separate page. <b>Do not include</b> 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.</p> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td style="width: 5%; text-align: center;">a.</td> <td style="width: 60%;"></td> <td style="width: 15%; text-align: right;">\$</td> <td style="width: 20%;"></td> </tr> <tr> <td style="text-align: center;">b.</td> <td></td> <td style="text-align: right;">\$</td> <td></td> </tr> </table> <p>Total and enter on Line 9</p>   |                 |                                | a.  |                 | \$              |    | b. |   | \$ |  | \$ | \$              |  |                             |    |    |
| a.  |  | \$              |                                |   |                 |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| b.  |  | \$              |                                |   |                 |                 |    |    |   |    |  |    |                 |  |                             |    |    |
| 10  | <b>Subtotal of current monthly income.</b> 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  | <b>Total current monthly income.</b> 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: 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: _____<br>(Debtor)               |
|    | Date: _____  | Signature: _____<br>(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                        | <b>Marital/filing status.</b> Check the box that applies and complete the balance of this part of this statement as directed.<br>a. <input type="checkbox"/> Unmarried. <b>Complete only Column A ("Debtor's Income") for Lines 2-10.</b><br>b. <input type="checkbox"/> Married. <b>Complete both Column A ("Debtor's Income") and Column B ("Spouse's Income") for Lines 2-10.</b><br>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. |   |                             | <b>Column A</b> | <b>Column B</b> |    |
|                          |   |   | <b>Debtor's</b>             | <b>Spouse's</b> |                 |    |
|                          |   |   | <b>Income</b>               | <b>Income</b>   |                 |    |
| 2                        | <b>Gross wages, salary, tips, bonuses, overtime, commissions.</b>   |   |                             | \$              | \$              |    |
| 3                        | <b>Income from the operation of a business, profession, or farm.</b> Subtract Line b from Line a and enter the difference on Line 3. Do not enter a number less than zero. <b>Do not include any part of the business expenses entered on Line b as a deduction in Part IV.</b>   |   |                             |                 |                 |    |
|                          | a.  | Gross receipts                            | \$                          |                 |                 |    |
|                          | b.  | Ordinary and necessary business expenses  | \$                          |                 |                 |    |
|                          | c.  | Business income                           | Subtract Line b from Line a | \$              | \$              |    |
| 4                        | <b>Rent and other real property income.</b> Subtract Line b from Line a and enter the difference on Line 4. Do not enter a number less than zero. <b>Do not include any part of the operating expenses entered on Line b as a deduction in Part IV.</b>   |   |                             |                 |                 |    |
|                          | a.  | Gross receipts                            | \$                          |                 |                 |    |
|                          | b.  | Ordinary and necessary operating expenses | \$                          |                 |                 |    |
|                          | c.  | Rental income                             | Subtract Line b from Line a | \$              | \$              |    |
| 5                        | <b>Interest, dividends, and royalties.</b>  |   |                             | \$              | \$              |    |
| 6                        | <b>Pension and retirement income.</b>   |   |                             | \$              | \$              |    |
| 7                        | <b>Regular contributions to the household expenses of the debtor or the debtor's dependents, including child or spousal support.</b> Do not include contributions from the debtor's spouse.   |   |                             | \$              | \$              |    |
| 8                        | <b>Unemployment compensation.</b> 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:  |   |                             |                 |                 |    |
|                          | Unemployment compensation claimed to be a benefit under the Social Security Act   |   | Debtor \$ _____             | Spouse \$ _____ | \$              | \$ |
| 9                        | <b>Income from all other sources.</b> Specify source and amount. If necessary, list additional sources on a separate page. Total and enter on Line 9. <b>Do not include</b> 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.   |   |                             |                 |                 |    |
|                          | a.  |   | \$                          |                 |                 |    |
|                          | b.  |   | \$                          | \$              | \$              |    |
| 10                       | <b>Subtotal.</b> 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                       | <b>Total.</b> 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   | <b>Marital adjustment.</b> 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   | <b>Annualized current monthly income for § 1325(b)(4).</b> Multiply the amount from Line 14 by the number 12 and enter the result.  | \$ |
| 16   | <b>Applicable median family income.</b> Enter the median family income for applicable state and household size. (This information is available by family size at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)<br>a. Enter debtor's state of residence: _____ b. Enter debtor's household size: _____  | \$ |
| 17   | <b>Application of § 1325(b)(4).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 15 is less than the amount on Line 16.</b> 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. <b>Do not complete Parts III, IV, V or VI.</b><br><input type="checkbox"/> <b>The amount on Line 15 is not less than the amount on Line 16.</b> 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  | <b>Marital adjustment.</b> 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  | <b>Current monthly income for § 1325(b)(3).</b> Subtract Line 19 from Line 18 and enter the result.   |    |
| 21  | <b>Annualized current monthly income for § 1325(b)(3).</b> Multiply the amount from Line 20 by the number 12 and enter the result.  | \$ |
| 22  | <b>Applicable median family income.</b> Enter the amount from Line 16.  | \$ |
| 23  | <b>Application of § 1325(b)(3).</b> Check the applicable box and proceed as directed.<br><input type="checkbox"/> <b>The amount on Line 21 is more than the amount on Line 22.</b> 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.<br><input type="checkbox"/> <b>The amount on Line 21 is not more than the amount on Line 22.</b> 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. <b>Do not complete Parts IV, V, or VI.</b> |    |

| Part IV. CALCULATION OF DEDUCTIONS ALLOWED UNDER § 707(b)(2)                |   |    |
|---|---|----|
| Subpart A: Deductions under Standards of the Internal Revenue Service (IRS) |   |    |
| 24  | <b>National Standards: food, clothing, household supplies, personal care, and miscellaneous.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) | \$ |
| 25A   | <b>Local Standards: housing and utilities; non-mortgage expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)                                  | \$ |

|     |  |                              |  |    |    |  |    |    |   |                              |    |
|-----|--|------------------------------|--|----|----|--|----|----|---|------------------------------|----|
| 25B | <p><b>Local Standards: housing and utilities; mortgage/rent expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align:right;">\$</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 style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net mortgage/rental expense</td> <td style="text-align:right;">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><b>Local Standards: housing and utilities; adjustment.</b> 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> <p>_____</p> <p>_____</p> <p>_____</p>  | \$                           |  |    |    |  |    |    |   |                              |    |
| 27  | <p><b>Local Standards: transportation; vehicle operation/public transportation expense.</b> 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 &amp; Public Transportation Costs for the applicable number of vehicles in the applicable Metropolitan Statistical Area or Census Region. (This information is available at <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.)</p>   | \$                           |  |    |    |  |    |    |   |                              |    |
| 28  | <p><b>Local Standards: transportation ownership/lease expense; Vehicle 1.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align:right;">\$</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 style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 1</td> <td style="text-align:right;">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><b>Local Standards: transportation ownership/lease expense; Vehicle 2.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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. <b>Do not enter an amount less than zero.</b></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%; text-align:right;">\$</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 style="text-align:right;">\$</td> </tr> <tr> <td style="text-align:center;">c.</td> <td>Net ownership/lease expense for Vehicle 2</td> <td style="text-align:right;">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><b>Other Necessary Expenses: taxes.</b> 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. <b>Do not include real estate or sales taxes.</b></p>  | \$                           |  |    |    |  |    |    |   |                              |    |
| 31  | <p><b>Other Necessary Expenses: mandatory payroll deductions.</b> Enter the total average monthly payroll deductions that are required for your employment, such as mandatory retirement contributions, union dues, and uniform costs. <b>Do not include discretionary amounts, such as non-mandatory 401(k) contributions.</b></p>  | \$                           |  |    |    |  |    |    |   |                              |    |

|    |  |    |
|----|--|----|
| 32 | <b>Other Necessary Expenses: life insurance.</b> Enter average monthly premiums that you actually pay for term life insurance for yourself. <b>Do not include premiums for insurance on your dependents, for whole life or for any other form of insurance.</b>  | \$ |
| 33 | <b>Other Necessary Expenses: court-ordered payments.</b> Enter the total monthly amount that you are required to pay pursuant to court order, such as spousal or child support payments. <b>Do not include payments on past due support obligations included in Line 49.</b>   | \$ |
| 34 | <b>Other Necessary Expenses: education for employment or for a physically or mentally challenged child.</b> 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 | <b>Other Necessary Expenses: childcare.</b> Enter the average monthly amount that you actually expend on childcare. <b>Do not include payments made for children's education.</b>  | \$ |
| 36 | <b>Other Necessary Expenses: health care.</b> 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. <b>Do not include payments for health insurance listed in Line 39.</b>   | \$ |
| 37 | <b>Other Necessary Expenses: telecommunication services.</b> 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. <b>Do not include any amount previously deducted.</b>                                | \$ |
| 38 | <b>Total Expenses Allowed under IRS Standards.</b> 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 | <b>Health Insurance, Disability Insurance, and Health Savings Account Expenses.</b> 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 | <b>Continued contributions to the care of household or family members.</b> 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. <b>Do not include payments listed in Line 34.</b>   | \$                     |    |                              |
| 41 | <b>Protection against family violence.</b> 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 | <b>Home energy costs in excess of the allowance specified by the IRS Local Standards.</b> Enter the average monthly amount by which your home energy costs exceed the allowance in the IRS Local Standards for Housing and Utilities. <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b>   | \$                     |    |                              |
| 43 | <b>Education expenses for dependent children under 18.</b> 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. <b>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.</b>  | \$                     |    |                              |
| 44 | <b>Additional food and clothing expense.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> or from the clerk of the bankruptcy court.) <b>You must provide your case trustee with documentation demonstrating that the additional amount claimed is reasonable and necessary.</b> | \$                     |    |                              |
| 45 | <b>Continued charitable contributions.</b> 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 | <b>Total Additional Expense Deductions under § 707(b).</b> Enter the total of Lines 39 through 45.   | \$                     |    |                              |

| Subpart C: Deductions for Debt Payment                |  |  |                               |
|---|--|--|-------------------------------|
| 47  | <b>Future payments on secured claims.</b> 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  |
|   |  |  | \$                            |
| 48  | <b>Past due payments on secured claims.</b> 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.   |  |                               |
|   | 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  | <b>Payments on priority claims.</b> Enter the total amount of all priority claims (including priority child support and alimony claims), divided by 60.  |  | \$                            |
| 50  | <b>Chapter 13 administrative expenses.</b> 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 <a href="http://www.usdoj.gov/ust/">www.usdoj.gov/ust/</a> 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  | <b>Total Deductions for Debt Payment.</b> Enter the total of Lines 47 through 50.  |  | \$                            |
| Subpart D: Total Deductions Allowed under § 707(b)(2) |  |  |                               |
| 52  | <b>Total of all deductions allowed under § 707(b)(2).</b> Enter the total of Lines 38, 46, and 51.   |  | \$                            |

| Part V. DETERMINATION OF DISPOSABLE INCOME UNDER § 1325(b)(2) |  |    |
|---|--|----|
| 53  | <b>Total current monthly income.</b> Enter the amount from Line 20.  | \$ |
| 54  | <b>Support income.</b> 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  | <b>Qualified retirement deductions.</b> 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  | <b>Total of all deductions allowed under § 707(b)(2).</b> Enter the amount from Line 52.   | \$ |
| 57  | <b>Total adjustments to determine disposable income.</b> Add the amounts on Lines 54, 55, and 56 and enter the result.   | \$ |
| 58  | <b>Monthly Disposable Income Under § 1325(b)(2).</b> Subtract Line 57 from Line 53 and enter the   | \$ |

result.

**Part VI: ADDITIONAL EXPENSE CLAIMS**

|    |  |                |    |
|----|--|----------------|----|
| 59 | <p><b>Other Expenses.</b> 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.</p> |                |    |
|    | Expense Description  | Monthly Amount |    |
|    | a.   | \$             |    |
|    | b.   | \$             |    |
|    | c.   | \$             |    |
|    | Total: Add Lines a, b, and c   |                | \$ |

**Part VII: VERIFICATION**

|    |   |                  |                        |
|----|---|------------------|------------------------|
| 60 | <p>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></p> |                  |                        |
|    | 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: \_\_\_\_\_