

# **Bankruptcy for Beginners “Intensive”**

Hosted by the Tampa Bay Bankruptcy Bar Association,  
Bay Area Legal Services, Inc.,  
the Hillsborough County Bar Association, and the  
United States Bankruptcy Court for the Middle District of Florida

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# KEY BANKRUPTCY CONCEPTS

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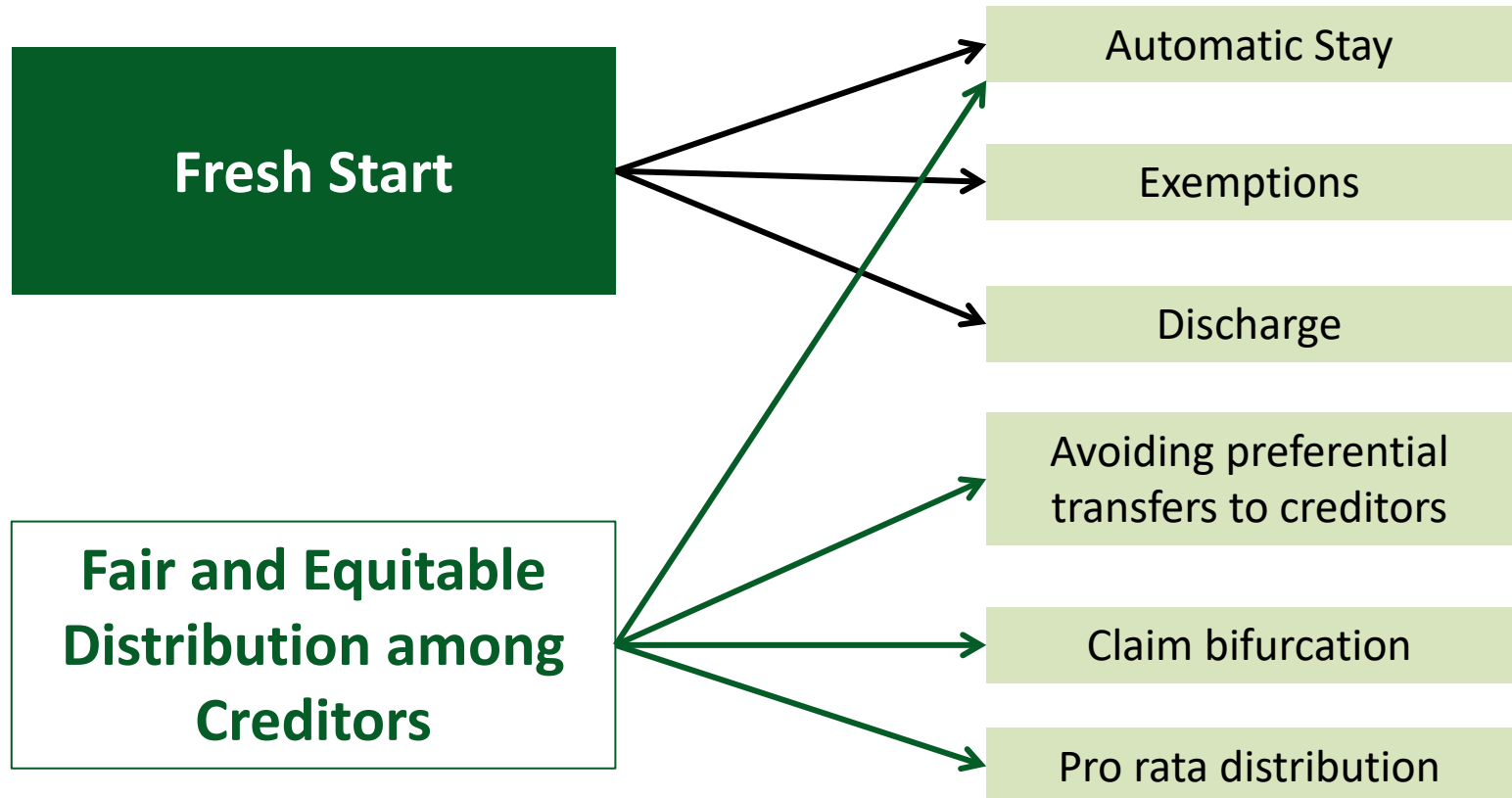
# Two Key Bankruptcy Concepts:

**Fresh Start for Debtors**

**Fair and Equitable Distribution of  
Non-Exempt Assets to Creditors**



# Key Bankruptcy Concepts



# **Property of the Estate and Exemptions**

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# The Bankruptcy Estate

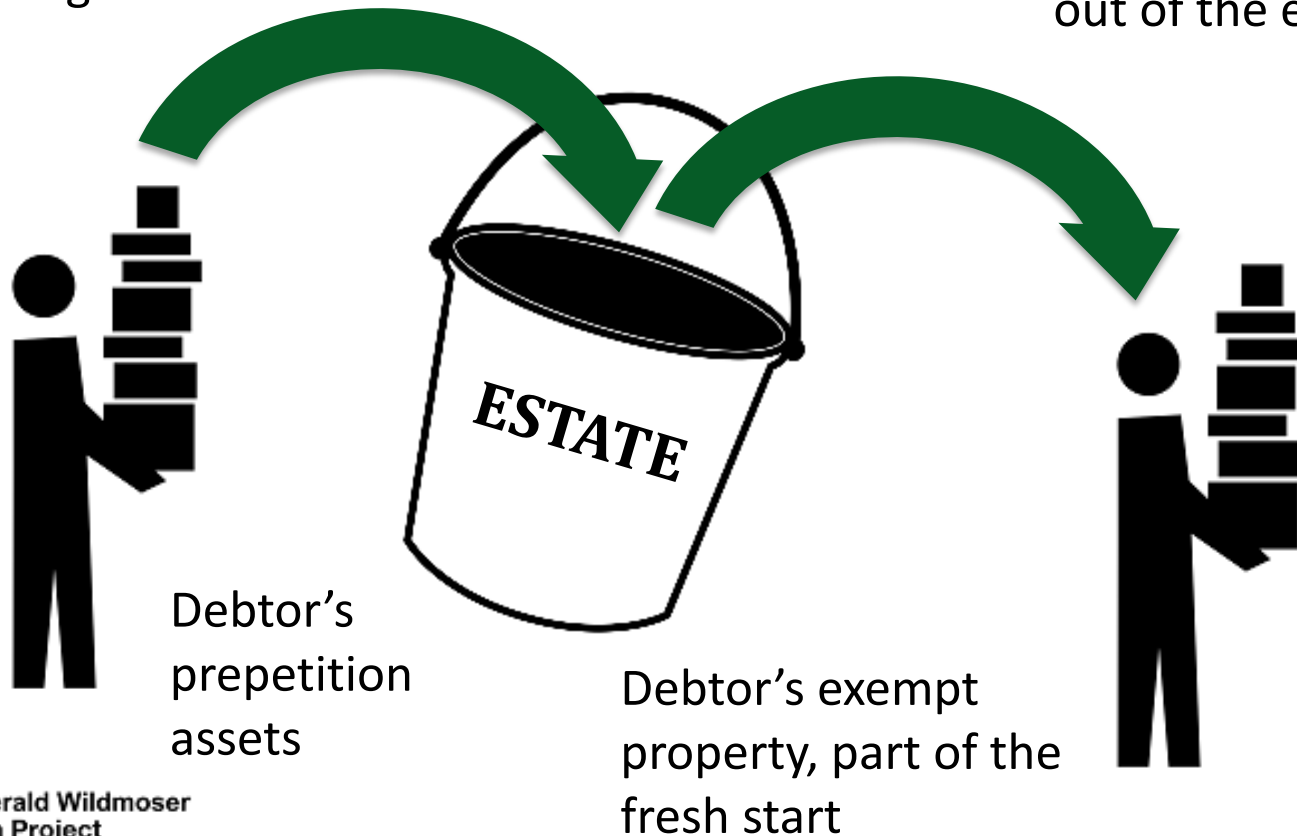
- Virtually all property debtor has interest in at time of filing goes into bankruptcy estate
  - includes intangible, contingent, and future property interests
    - examples include potential cause of action or anticipated tax refund
- Exempt property comes back out of estate
  - property the debtor gets to keep as part of the fresh start

**11 U.S.C. § 541**

# The Bankruptcy Estate

1. Debtor's assets go into the estate upon filing

2. Property claimed as exempt comes out of the estate







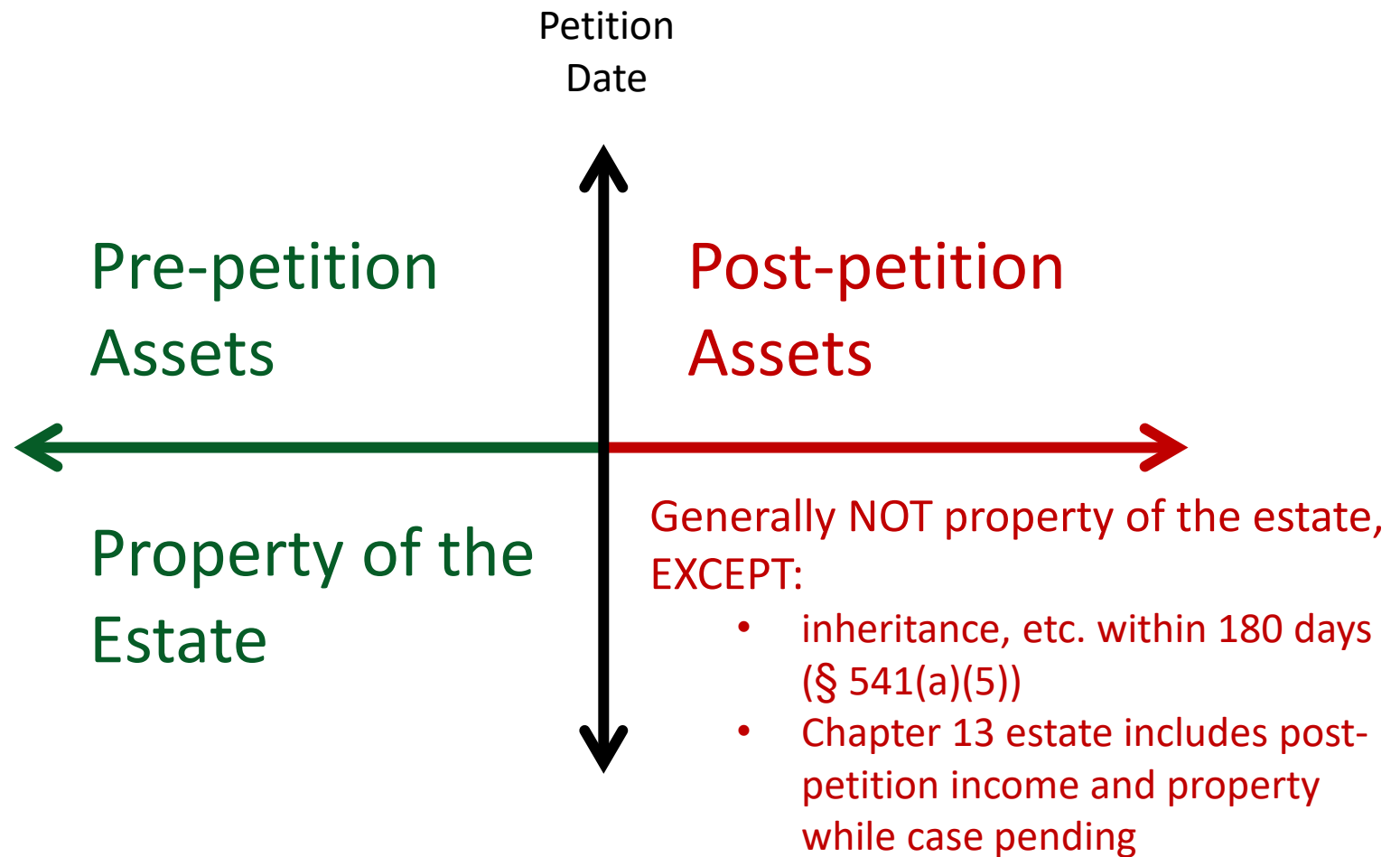
# The Bankruptcy Estate

- In chapter 7 cases, estate does not include property acquired post-petition, except:
  - certain types of property acquired within 180 days after filing:
    - by bequest or inheritance;
    - through a spousal property settlement or divorce decree; or
    - as a life insurance beneficiary
- In chapter 13 cases, includes property and earnings acquired while the case is pending

**11 U.S.C. §§ 348(f), 1306**



# The Bankruptcy Estate





# Commonly Missed Assets

- Tax refunds (when?)
- Alimony or support arrearages
- Security deposits
- Deposits in dormant savings accounts
- Personal injury or other legal claims -- any possible claims, even though law suit not filed (risk of judicial estoppel)
- Cash value in whole life insurance policies



# Commonly Missed Assets

- Inherited real estate/heir property
- Cars being driven by someone else
- Pledged goods at pawnbrokers
- Voidable preferences (payments to creditors in past 90 days)
- Pension plans
- Burial plots



# Protection for Exempt Property

Exempt property is not liable **during or after** case for prepetition debts (even some nondischargeable debts), except:

- Debts for taxes, domestic support obligations
- Debts secured by liens not avoided during the bankruptcy
- Fraudulently obtained: student loan or aid and debt owed to insured bank

**11 U.S.C. § 522(c)**



# Exemption Choice

**Generally, one of two schemes will apply:**

- Exemptions available under § 522(d)

OR

- Exemptions available under state law

Select Year: 2016 ▾ Go

## The 2016 Florida Statutes

[Title XV](#)  
 HOMESTEAD AND  
 EXEMPTIONS

[Chapter 222](#)  
 METHOD OF SETTING APART HOMESTEAD AND  
 EXEMPTIONS

[View Entire  
 Chapter](#)

**TITLE XV****HOMESTEAD AND EXEMPTIONS****CHAPTER 222****METHOD OF SETTING APART HOMESTEAD AND EXEMPTIONS**

- [222.01](#) Designation of homestead by owner before levy.  
[222.02](#) Designation of homestead after levy.  
[222.03](#) Survey at instance of dissatisfied creditor.  
[222.04](#) Sale after survey.  
[222.05](#) Setting apart leasehold.  
[222.061](#) Method of exempting personal property; inventory.  
[222.07](#) Defendant's rights of selection.  
[222.08](#) Jurisdiction to set apart homestead and exemption.  
[222.09](#) Injunction to prevent sale.  
[222.10](#) Jurisdiction to subject property claimed to be exempt.  
[222.11](#) Exemption of wages from garnishment.  
[222.13](#) Life insurance policies; disposition of proceeds.  
[222.14](#) Exemption of cash surrender value of life insurance policies and annuity contracts from legal process.  
[222.15](#) Wages or reemployment assistance or unemployment compensation payments due deceased employee may be paid spouse or certain relatives.  
[222.16](#) Wages or reemployment assistance or unemployment compensation payments so paid not subject to administration.  
[222.17](#) Manifesting and evidencing domicile in Florida.  
[222.18](#) Exempting disability income benefits from legal processes.  
[222.20](#) Nonavailability of federal bankruptcy exemptions.  
[222.201](#) Availability of federal bankruptcy exemptions.  
[222.21](#) Exemption of pension money and certain tax-exempt funds or accounts from legal processes.  
[222.22](#) Exemption of assets in qualified tuition programs, medical savings accounts, Coverdell education savings accounts, and hurricane savings accounts from legal process.  
[222.25](#) Other individual property of natural persons exempt from legal process.  
[222.29](#) No exemption for fraudulent transfers.  
[222.30](#) Fraudulent asset conversions.



# Exemption Choice

- If the state has “opted out,” then debtor must use state law exemptions
- If the state has not “opted out,” then debtor may choose exemptions under either § 522(d) or state law
  - In a joint case, both spouses must choose same exemption scheme





# Exemption Choice

**If state law exemption scheme is elected or required (as in an opt-out state), debtor may also exempt:**

- Tenancy by entirety or joint tenancy property interest, if exempt from process under state law
- Property exempt under Federal nonbankruptcy law (e.g. Social Security benefits)
- Retirement funds, if exempt from taxation

**11 U.S.C. §§ 522(b)(3)(B) and (b)(3)(C)**



# Which Exemptions Apply?

**State law as to opt-out applies as follows:**

- In most cases, controlling state law will be where debtor was domiciled for 730 days before filing
- If the debtor moved to a different state any time during the 730 days, look **instead** at where the debtor was domiciled for longest portion of the 180 days preceding the 730-day period
- Federal exemptions under § 522(d) apply if debtor ineligible for any state's exemptions

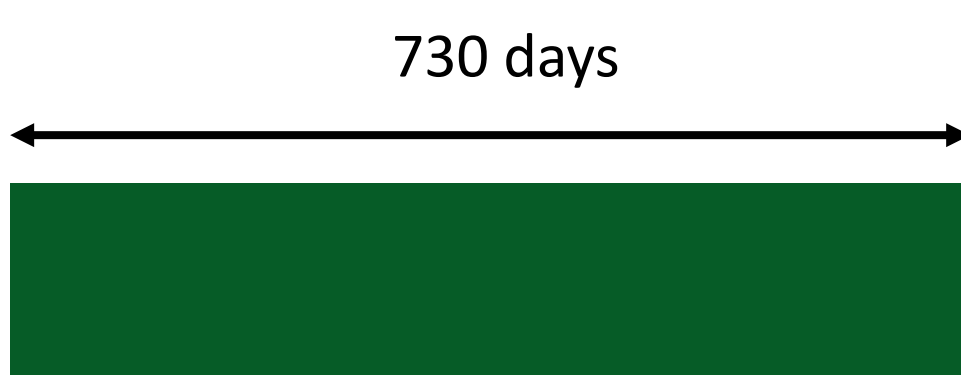
**11 U.S.C. § 522(b)(3)(A)**



# Which Exemptions Apply?

Date  
petition  
filed

730 days

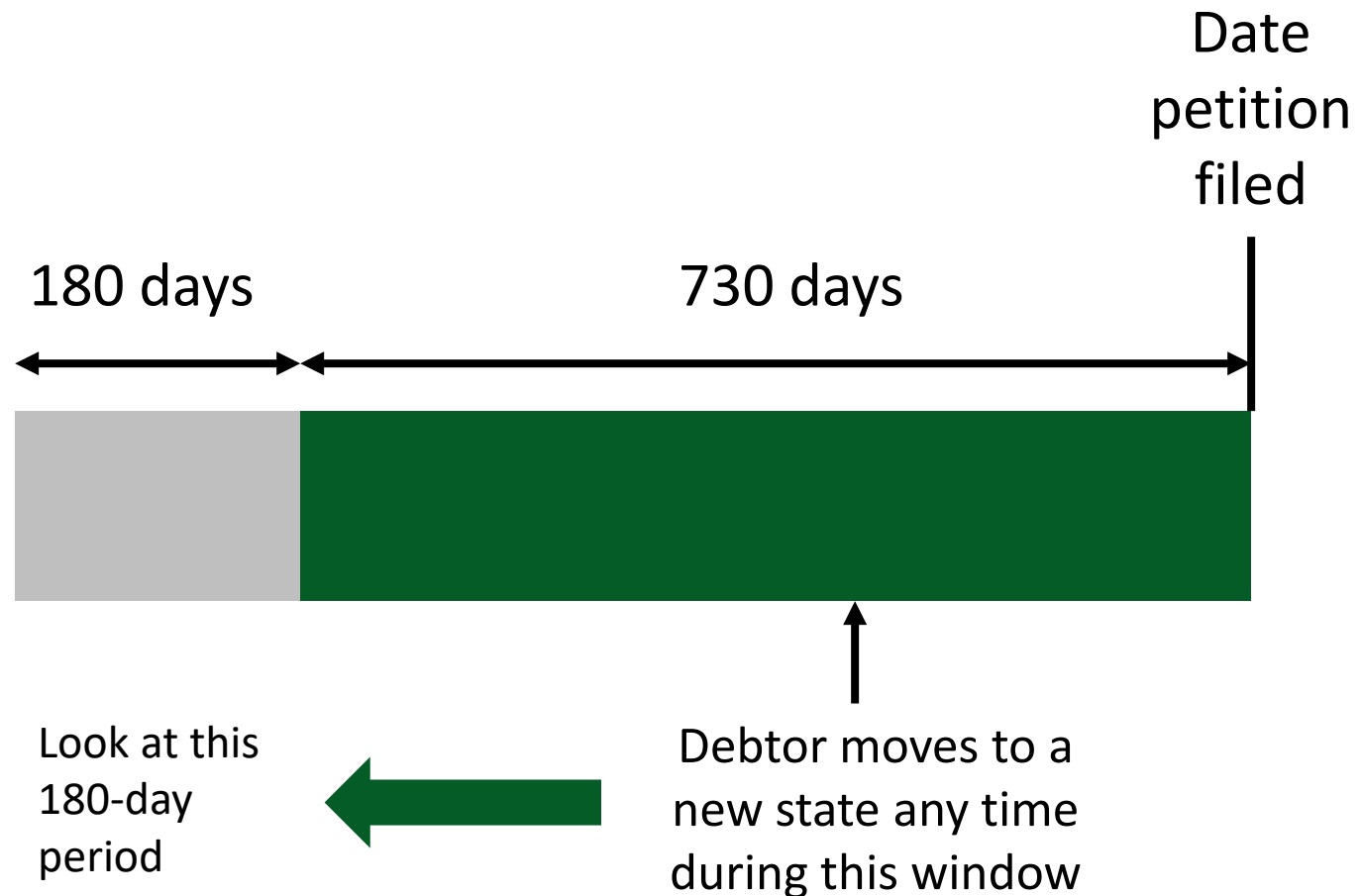


Apply State X  
exemption law



Lived in State X for past two  
years

# Which Exemptions Apply?

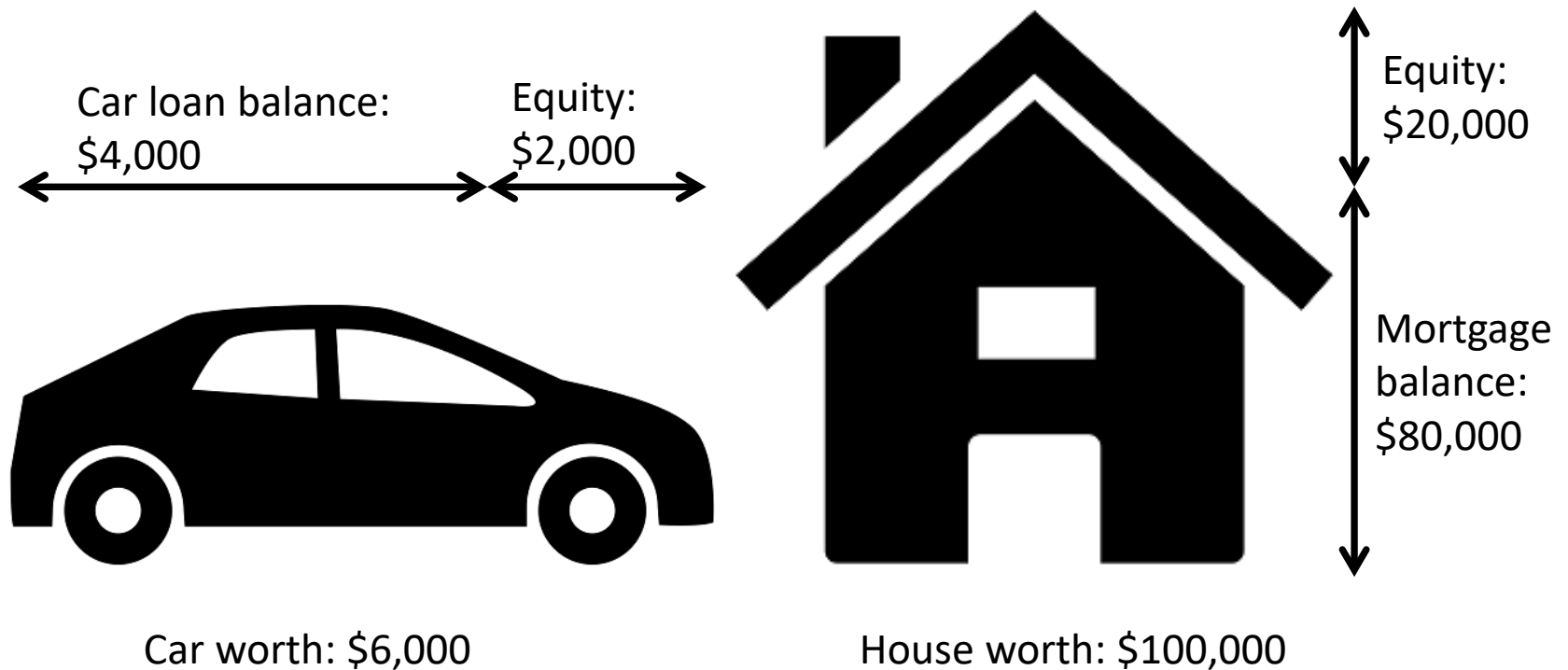




**Remember Florida is an “opt out” State. Therefore State Exemptions Apply As Previously Discussed Unless Timing/Domicile Is An Issue!**

# Calculating Exemptions

Exemptions only apply to **equity** in the property



A \$2,000 vehicle exemption and a \$20,000 real estate exemption would fully exempt this car and house



# State Homestead Exemption Limitations

- 522(o) – reduction to extent of fraudulent conversion within 10 years before filing of petition
- 522(p) - \$160,375 cap (4/1/16) based on interest acquired within 1215 days before filing of petition
- 522(q) - \$160,375 cap (4/1/16) based on certain criminal and wrongful conduct

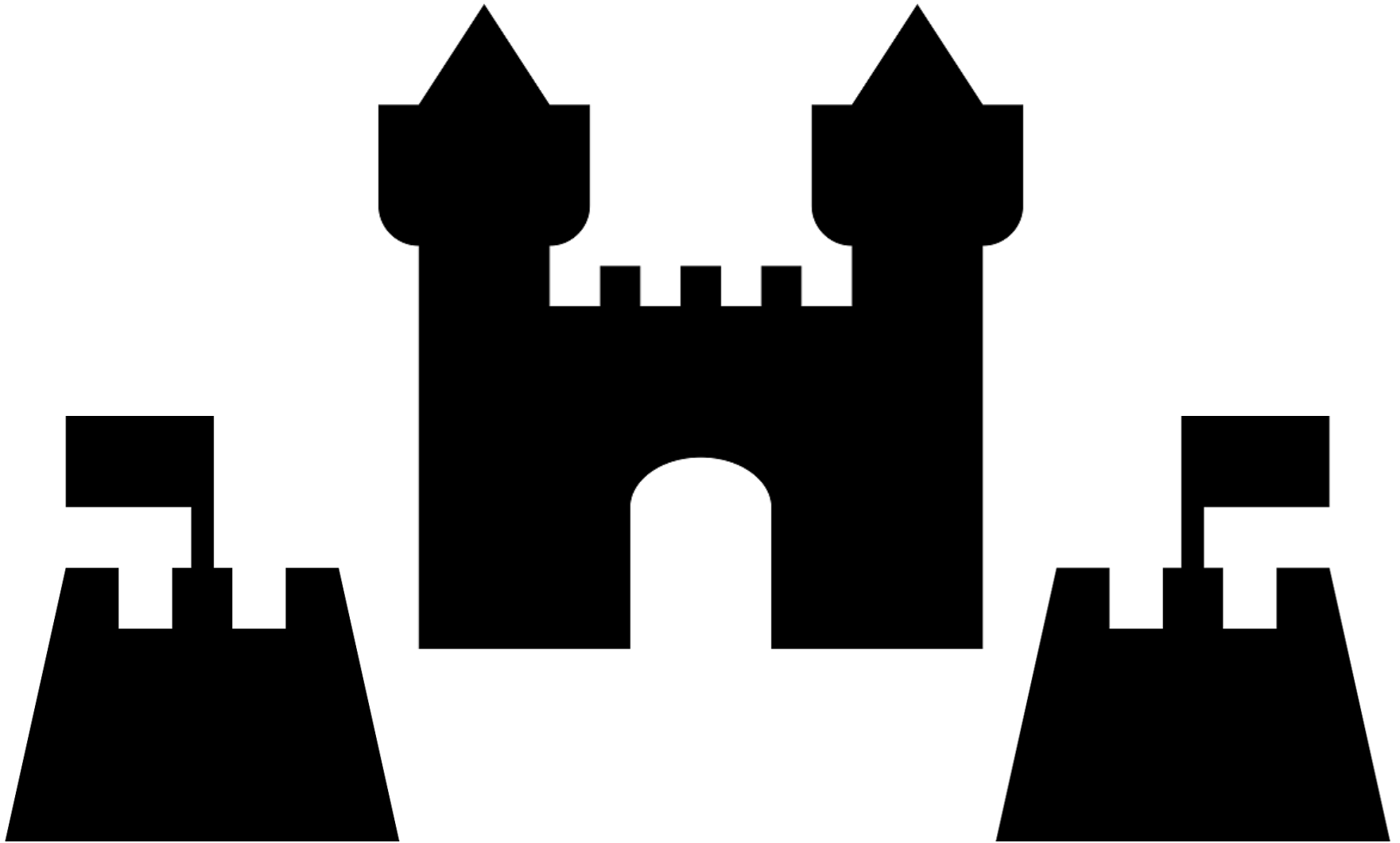
# **The Automatic Stay**

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# The Automatic Stay





# Scope of the Stay

## **The Automatic Stay prohibits:**

- Attempts to collect pre-petition debts
- Commencement or continuation of judicial or other proceedings to collect pre-petition debts (e.g., foreclosure, garnishment)
- Efforts to create, perfect or enforce liens on property of the estate or of the debtor, if relating to a pre-petition claim



# Scope of the Stay

## The Automatic Stay prohibits:

- Efforts to take possession of or assume control of property of the estate (e.g., repossession of a car)
- Enforcement against the debtor or property of the estate of a pre-petition judgment
- Setoff of pre-petition debts

**11 U.S.C. § 362(a)**



# Exceptions to Automatic Stay

**Section 362(b) contains 28 exceptions to the stay, including:**

- Criminal actions or proceedings
- Enforcement of domestic support obligations
- Enforcement of police or regulatory powers



# Repeat Filings

## **362(c)(3) ONE PRIOR CASE DISMISSED WITHIN ONE YEAR BEFORE THIS FILING (Chap. 7,11 or 13):**

- Automatic stay expires 30 days after petition date in individual chapter 7, 11, or 13 case
- No effect on codebtor stay under § 1301 in chapter 13 cases
- Motion to extend stay must be filed AND heard before 30 days expires
- Split of authority on technical issue of whether applies only to “property of the Debtor” (wording of statute) or to both “property of the Debtor” and “property of the estate” Compare *In re Holcomb*, 380 B.R. 813 (B.A.P. 10<sup>th</sup> Cir. 2008) (majority) and *In re Curry*, 362 B.R. 394 (Bankr. N.S. Ill. 2007) (minority)
- Practice pointer: Obtain comfort order from the Court!



# Repeat Filings

- Debtor must demonstrate case filed in good faith with respect to creditors to be stayed
- Debtor may need to rebut presumption of bad faith
- Court may extend stay as to all or some creditors, and may impose conditions on extension

**11 U.S.C. § 362(c)(3) – *motions to extend stay covered in Module 4***



# Repeat Filings

## TWO OR MORE PRIOR CASES DISMISSED WITHIN ONE YEAR BEFORE THIS FILING:

- Automatic stay does NOT go into effect upon filing
- No effect on codebtor stay under § 1301
- Court may impose the stay as to all or some creditors (upon motion by debtor)

**11 U.S.C. § 362(c)(4) – *motion to impose stay covered in Module 4***



# Violation of Automatic Stay

- Actions taken in violation of automatic stay generally are void
- Debtor may recover actual damages, including attorneys' fees, if willful violation
  - Willful, meaning act done intentionally with knowledge of the filing
  - Split of authority on whether emotional distress damages may be recovered
- Punitive damages may be recovered in “appropriate” circumstances

**11 U.S.C. 362(k)**





# Motion for Relief from Stay

## **COURT MAY TERMINATE, ANNUL, MODIFY, OR CONDITION THE STAY**

- For cause, including lack of adequate protection
- Lack of equity and property not necessary for effective reorganization
- Burden of proof
  - Equity – burden is on party requesting relief
  - All other issues – burden is on party opposing relief

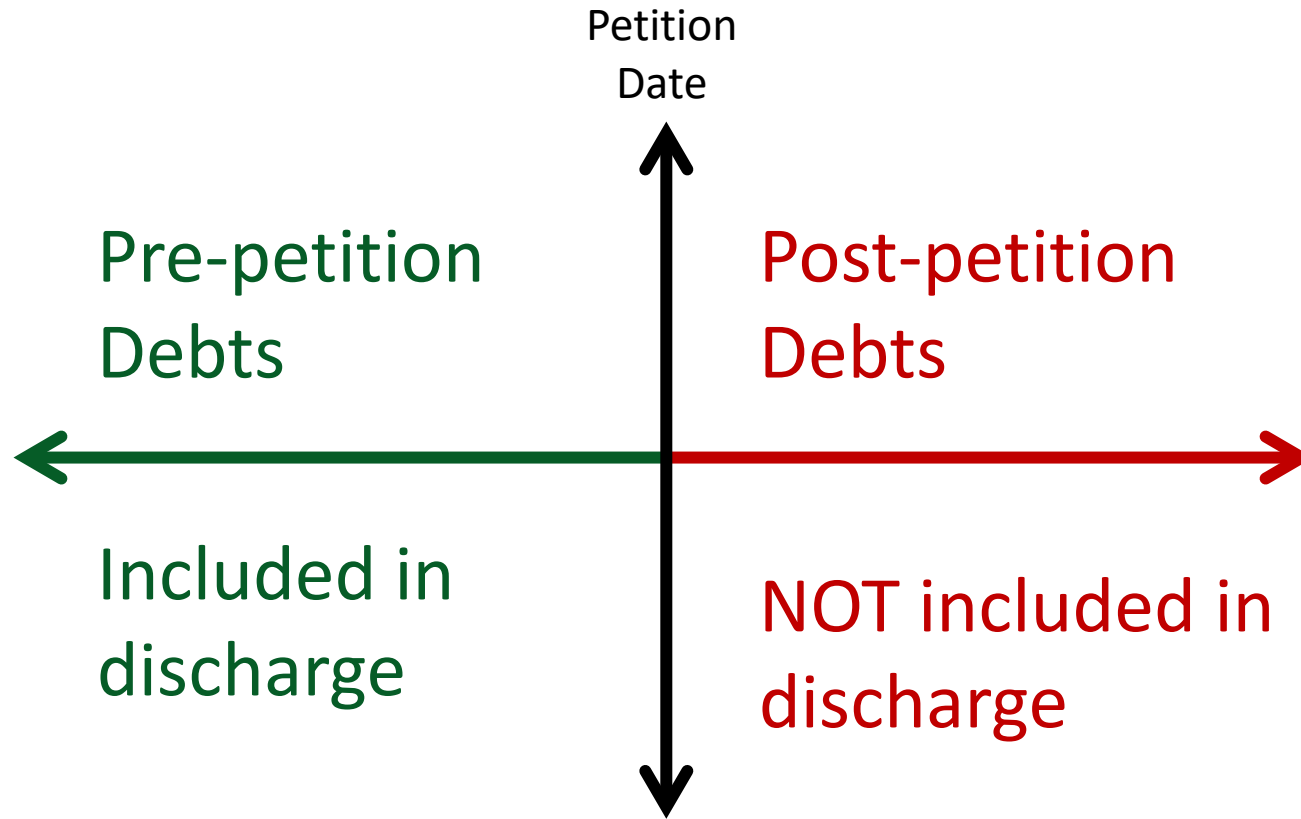
**11 U.S.C. 362(d)**

# **Discharge and Dischargeability**

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# The Fresh Start





# Discharge of Debts

- Court enters a Discharge Order
  - In chapter 7, any time after 60 days after first scheduled meeting of creditors;
  - In chapter 13, upon plan completion
- Operates as an injunction preventing creditors from attempting to collect discharged debts in the future as personal liability of debtor
- Violations of the discharge injunction may be punished by contempt

**11 U.S.C. § 524(a)**



# Exceptions to the Discharge

## Debts that are *not* dischargeable:

- Most taxes;
- Debts the debtor failed to list in the schedules (unless creditor had notice, or no-asset case);
- Domestic support obligations (child support and alimony);
- Most fines and penalties owed to government agencies;



# Exceptions to the Discharge

- Student loans, unless the debtor can prove to the court that repaying them will be an “undue hardship;”
- Debts incurred by driving while intoxicated;
- Debts the debtor has formally agreed to repay by entering into a reaffirmation agreement.

11 U.S.C. § 523(a)



# Exceptions to the Discharge

Debts *potentially* non-dischargeable if a timely adversary proceeding is filed:

- **Debts incurred by fraud – 523(a)(2)**

Presumption of fraud:

Luxury goods - \$675 within 90 days pre-petition (4/1/16)

Cash advances - \$950 within 70 days pre-petition (4/1/16)



# Exceptions to the Discharge

- **Fraud as fiduciary, embezzlement, larceny – 523(a)(4)**
- **Willful and malicious injury to person or property** (applicable only in chapter 7 cases) – 523(a)(6)

**11 U.S.C. § 523(c)(1); Bankruptcy Rule 4007(c)**





# Grounds for Denial of Discharge:

A party may object to the discharge within 60 days after the first scheduled meeting of creditors

Court can deny the discharge if debtor has done any of the following (or other conduct in § 727):

- Transferred or concealed property with intent to hinder, delay, or defraud a creditor or trustee within one year prior to filing;
- Destroyed or concealed financial records;



# Grounds for Denial of Discharge:

- Made a false oath or account, presented or used a false claim, or withheld books and records from the trustee;
- Failed to explain satisfactorily the loss or deficiency of assets;
- Received a prior discharge in the too-recent past;
- Failed to complete an approved financial education course after filing the petition.

**11 U.S.C. § 727(a)**

# CHAPTER 7 AND CHAPTER 13 BASICS

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# **Counseling the Consumer Debtor**

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# What Bankruptcy Can Do

- Eliminate the legal obligation to pay most debts
- Stop foreclosure on a home and allow the debtor an opportunity to cure a default
- Prevent repossession of an automobile or other personal property (and force creditor to return property even after repossession)
- Prevent termination of utility service or restore service after a shutoff



# What Bankruptcy Can Do

- Stop garnishment of wages or a bank account (and get back money taken in the 90 days before filing)
- Prevent government agencies from collecting overpayments (such as Social Security), unless the overpayment was obtained by fraud
- Lower the monthly payments on some secured debts such as car loans



# What Bankruptcy Cannot Do

- Force a modification of a mortgage secured by the debtor's principal residence, except that a chapter 13 debtor can:
  - cure a default, but will have to make the regular post-petition payments on time
  - modify a mortgage that is wholly unsecured, secured by additional property, or has final payment due before end of chapter 13 plan

# But Modification Mediation May Result in *Consensual* Modification

- Middle District – District Wide
- Available in all cases
- File Motion within 90 days
- 150 days to conclude
- Mediation Portal





# What Bankruptcy Cannot Do

- Discharge certain debts, such as:
  - child support and alimony
  - most student loans
  - court restitution orders and criminal fines
  - most taxes
- Discharge liability of a cosigner who doesn't file bankruptcy
- Discharge debts that are incurred after bankruptcy has been filed



# Pros and Cons of Bankruptcy

- **Advantages of Bankruptcy**

- Fresh start
- Automatic stay
- Deal with secured debts
- Affordable repayment plan
- Raise claims and defenses against creditors

- **Disadvantages of Bankruptcy**

- Loss of certain property
- Impact on credit rating
- Moral obligation
- Discrimination

# Overview of Chapter 7

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# Eligibility to File Chapter 7

- Any individual who lives in the United States or has property or a business in the United States
- Debtor must obtain briefing from an approved credit counseling agency within 180 days before filing



# Eligibility to File Chapter 7

- Under § 109(g), debtor must not within the 180-day period prior to filing:
  - have had prior case dismissed for willful violation of court order or failure to prosecute prior case; or
  - have voluntarily dismissed prior case after motion for relief from automatic stay filed

**11 U.S.C. § 109**



# Eligibility for Chapter 7 Discharge

- Debtor is disqualified from receiving chapter 7 discharge if debtor got prior discharge:
  - under chapter 7 in a case filed within 8 years before filing of this case; or
  - under chapter 13 in a case filed within 6 years before filing of this case, unless:
    - unsecured claims were paid in full in the ch. 13
    - payments under the ch. 13 plan totaled at least 70% of allowed secured claims, court finds best effort and good faith



# Chapter 7 Trustee

- After the case is filed, a chapter 7 trustee is appointed as representative of debtor's bankruptcy estate
  - Selected from a panel of private trustees established by the U.S. Trustee
- Duties include:
  - examining debtor at meeting of creditors;
  - collecting any nonexempt property that can be sold;
  - distributing proceeds from sale of nonexempt property to creditors with valid claims; and
  - making a final accounting to the court.



# Meeting of Creditors

- Also known as the “section 341” meeting, as it is required by 11 U.S.C. § 341
- Scheduled about 30 days after the case is filed
- Chapter 7 trustee and creditors have the opportunity to examine the debtor under oath
  - Creditors rarely attend the meeting





# Trustee Looks For Assets To Liquidate

- **Nonexempt assets** – must be turned over to the Trustee
- **Fraudulent transfers:** **11 U.S.C. §§ 544 and 548**
  - Any transfer within the 2 years prior to filing (or longer under state statutes) . . .
    - for less than reasonably equivalent value, while insolvent, or
    - with intent to hinder, delay or defraud a creditor
- **Voidable preferences:** **11 U.S.C. § 547**
  - Payments made to a creditor totaling \$600 or more within 90 days prior to the filing of the petition, if the transfer enables the creditor to get more than it otherwise would have gotten



# General Rule: Secured Creditors Stay Secured

- Personal liability on secured debts is wiped out (no deficiency after foreclosure, for example)
- Unless court orders otherwise, lien (or security interest) survives the bankruptcy
- Thus, secured creditors will still be able to foreclose on a home or seize other property if consumer is in default
  - They may file a motion for relief from stay or wait for the discharge to be entered



# In Summary: When is Chapter 7 a Good Option?

- Debtor has significant dischargeable unsecured debt
- Debtor does not have nonexempt assets that debtor wants to keep
- Debtor is not behind on debts secured by collateral the debtor wants to keep
- Debtor's debt load has **peaked**

# Overview of Chapter 13

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# How is Chapter 13 Different?

- Instead of possibly getting paid from non-exempt assets, creditors get paid from debtor's future income – through chapter 13 plan
- Debtor may keep nonexempt assets
- Chapter 13 plan gives debtor opportunity to cure arrearages on secured debts – to save a home or car
- Generally, no discharge until plan is completed

# How is Chapter 13 Different?

- Bankruptcy estate is bigger – includes debtor's future income
- Debtor has more control over property of the estate (standing to raise legal claims)
  - Debtor has same standing as chapter 7 Trustee to do things like going after preferences, fraudulent transfers, etc.
- The discharge is slightly broader **11 U.S.C. § 1328(a) and 523(a)**
- Some postpetition debts can be included in plan **11 U.S.C. § 1305**



# Chapter 13 Eligibility

- Chapter 13 is available to “individuals with regular income”
  - Regular income includes government benefits, child support
- Debt limits to file chapter 13:
  - \$394,725 in unsecured debts; (4/1/16)
  - \$1,184,200 in secured debts (amounts are adjusted for inflation every three years (4/1/16))



# Eligibility for Ch. 13 Discharge

- Debtor is disqualified from receiving chapter 13 discharge if debtor got prior discharge:
  - under chapter 7, 11, or 12 in a case filed within 4 years before the filing of this case; or
  - under chapter 13 in a case filed within 2 years before the filing of this case
- Unlike chapter 7, there may still be reason to file chapter 13 case even if not eligible for discharge
  - *e.g.*, debtor may use the plan to cure and reinstate secured claims

**11 U.S.C. § 1328(f)**





# Codebtor Stay

- Unlike chapter 7, chapter 13 case puts into effect a stay preventing creditors from taking any action against codebtors (cosigners) who have not filed for bankruptcy
- Applies to “consumer debt” (debt incurred for a personal, family, or household purpose)
- Prevents a creditor from pursuing collection against the cosigner
- Remains in place until the case is closed, dismissed, or converted to another chapter; or until the codebtor stay is lifted by the court upon a creditor’s motion

**11 U.S.C. § 1301**



# Chapter 13 Trustee

- Has more to do than a chapter 7 trustee
- Must review debtor's chapter 13 plan to ensure that it is feasible and complies with the law; object to confirmation if it does not
- If plan is confirmed, chapter 13 trustee collects payments from debtor and distributes money to creditors who have filed claims
- Both debtor and chapter 13 trustee may object to claims



# Chapter 13 Plan

- Plan sets out how much debtor pays each month, how much each class of creditors will get, and treatment of secured claims
- Debtor must make first chapter 13 payment to trustee within 30 days after filing
- Plan must propose to pay priority claims in full, such as tax debts and domestic support obligations

# Model Plan

- <http://www.flmb.uscourts.gov/procedures/documents/Chapter13Plan.pdf>

# CHAPTER 13 MODEL PLAN

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
DIVISION

Debtor(s) \_\_\_\_\_

Case No: \_\_\_\_\_

/# AMENDED (if applicable) CHAPTER 13 PLAN

**CHECK ONE:**

\_\_\_\_\_ Debtor<sup>1</sup> certifies that the Plan does not deviate from the model plan adopted by the Court at the time of the filing of this case. Any nonconforming provisions are deemed stricken.

\_\_\_\_\_ The Plan contains provisions that are specific to this Plan in paragraph 9, Nonconforming Provisions. Any nonconforming provision not set forth in paragraph 9 is deemed stricken.

1. MONTHLY PLAN PAYMENTS. Plan payments include the Trustee's fee of 10% and shall begin 30 days from petition filing/conversion date. Debtor shall make payments to the Trustee for the period of \_\_\_\_\_ months. If the Trustee does not retain the full 10%, any portion not retained will be disbursed to allowed claims receiving payment under the plan and may cause an increased distribution to the unsecured class of creditors:

- (A) \$ \_\_\_\_\_ for months \_\_\_\_\_ through \_\_\_\_\_  
(B) \$ \_\_\_\_\_ for months \_\_\_\_\_ through \_\_\_\_\_  
(C) \$ \_\_\_\_\_ for months \_\_\_\_\_ through \_\_\_\_\_

to pay the following creditors:

2. ADMINISTRATIVE ATTORNEY'S FEES.

Base Fee \$ \_\_\_\_\_ Total Paid Prepetition \$ \_\_\_\_\_ Balance Due \$ \_\_\_\_\_

Estimated Additional Fees Subject to Court Approval \$ \_\_\_\_\_

Attorney's Fees Payable through Plan \$ \_\_\_\_\_ Monthly (subject to adjustment)

<sup>1</sup> All references to "Debtor" include and refer to both of the debtors in a case filed jointly by two individuals.

Rev. 9/6/2016

3. PRIORITY CLAIMS (as defined in 11 U.S.C. §507).

Last 4 Digits of Acct No.	Creditor	Total Claim
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4. TRUSTEE FEES. Trustee shall receive a fee from each payment received, the percentage of which is fixed periodically by the United States Trustee.

5. SECURED CLAIMS. Pre-confirmation payments allocated to secured creditors under the Plan, other than amounts allocated to cure arrearages, shall be deemed adequate protection payments.

(A) Claims Secured by Real Property Which Debtor Intends to Retain/ Mortgage Payments and Arrears, if any, Paid through the Plan. If the Plan provides to cure prepetition arrearages on a mortgage, Debtor will pay, in addition to all other sums due under the proposed Plan, all regular monthly postpetition mortgage payments to the Trustee as part of the Plan. These mortgage payments, which may be adjusted up or down as provided for under the loan documents, are due beginning the first due date after the case is filed and continuing each month thereafter. The Trustee shall pay the postpetition mortgage payments on the following mortgage claims:

Last 4 Digits of Acct No.	Creditor	Collateral Address	Reg. Mo. Pmt.	Gap Pmt.	Arrears
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(B) Claims Secured by Real Property/Debtor Intends to Seek Mortgage Modification. If Debtor is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Plan. Pending the resolution of a mortgage modification request, Debtor shall make the following adequate protection payments to the Trustee: (1) for *homestead* property, the lesser of 31% of the gross monthly income of Debtor and non-filing spouse, if any (after deducting homeowner association fees), or the normal monthly contractual mortgage payment, or (2) for *non-homestead*, income producing property, 75% of the gross rental income generated from the property:

Last 4 Digits of Acct. No.	Creditor	Collateral Address	Pmt. Amt.
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(C) **Claims Secured by Real Property or Personal Property to Which Section 506 Valuation APPLIES.** Under 11 U.S.C. § 1322(b)(2), this provision does not apply to a claim secured solely by Debtor's principal residence. A separate motion to determine secured status or to value the collateral must be filed. The secured portion of the claim, estimated below shall be paid:

Last 4 Digits of Acct No.	Creditor	Collateral Desc./Address	Claim Amt. Value	Pmt. Interest @ ____%

(D) **Claims Secured by Real Property and/or Personal Property to Which Section 506 Valuation DOES NOT APPLY.** Claims of the following secured creditors shall be paid in full with interest:

Last 4 Digits of Acct No.	Creditor	Collateral Desc./Address	Claim Amt.	Pmt. Interest @ ____%

(E) **Claims Secured by Personal Property – Maintaining Regular Payments and Curing Arrearages, if any, with All Payments in Plan.**

Last 4 Digits of Acct No.	Creditor	Collateral Description	Regular Payment	Arrearages

(F) **Secured Claims/Lease Claims Paid Direct by Debtor.** The following secured claims/lease claims are being made via automatic debit/draft from Debtor's depository account and are to continue to be paid direct to the creditor or lessor by Debtor outside the Plan via automatic debit/draft. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. Nothing herein is intended to terminate or abrogate Debtor's state law contract rights. (Note: The Plan must provide for the assumption of lease claims that Debtor proposes to pay direct in the Lease/Executory Contract Section 6 below.)

Last 4 Digits of Acct No.	Creditor	Property/Collateral

(G) **Liens to be Avoided per 11 U.S.C. §522 or Stripped Off per 11 U.S.C. §506.** A separate motion to avoid a lien under § 522 or to determine secured status and to strip a lien under § 506 must be filed.

Last 4 Digits of Acct No.	Creditor	Collateral Description/Address

(H) **Surrender of Collateral/Leased Property.** Debtor will surrender the following collateral/leased property. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor as to these creditors and lessors upon the filing of this Plan. (Note: The Plan must provide for the rejection of lease claims in the Lease/Executory Contract section below.)

Last 4 Digits of Acct No.	Creditor	Property/Collateral to be Surrendered

(I) **Other Secured Claims.** Debtor does not intend to make payments to the following secured creditors. The automatic stay is terminated *in rem* as to Debtor and *in rem* and *in personam* as to any codebtor with respect to these creditors. Debtor's state law contract rights and defenses are neither terminated nor abrogated.


## 6. LEASES/EXECUTORY CONTRACTS.

Last 4 Digits of Acct No.	Creditor	Property	Assume/Reject-Surrender	Est. Arrears

7. **GENERAL UNSECURED CREDITORS.** General unsecured creditors with allowed claims shall receive a *pro rata* share of the balance of any funds remaining after payments to the above referenced creditors or shall otherwise be paid under a subsequent Order Confirming Plan. The estimated dividend to unsecured creditors shall be no less than \$\_\_\_\_\_.

## 8. ADDITIONAL PROVISIONS:

(A) Unless otherwise ordered, secured creditors, whether or not dealt with under the Plan, shall retain the liens securing such claims;

- (B) Payments made to any creditor shall be based upon the amount set forth in the creditor's proof of claim or other amount as allowed by an Order of the Bankruptcy Court.
- (C) Property of the estate (check one)\*
- (1) \_\_\_\_\_ shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise; or
- (2) \_\_\_\_\_ shall vest in Debtor upon confirmation of the Plan.
- \*If Debtor fails to check (1) or (2) above, or if Debtor checks both (1) and (2), property of the estate shall not vest in Debtor until the earlier of Debtor's discharge or dismissal of this case, unless the Court orders otherwise.
- (D) The amounts listed for claims in this Plan are based upon Debtor's best estimate and belief and/or the proofs of claim as filed and allowed. The Trustee shall only pay creditors with filed and allowed proof of claims. An allowed proof of claim shall control, unless the Court orders otherwise.
- (E) Debtor may attach a summary or spreadsheet to provide an estimate of anticipated distributions. The actual distributions may vary. If the summary or spreadsheet conflicts with this Plan, the provisions of the Plan shall control prior to confirmation; after confirmation the Order Confirming Plan shall control.
- (F) Debtor shall timely file all tax returns and make all tax payments and deposits when due. (However, if Debtor is not required to file tax returns, Debtor shall provide Trustee with a statement to that effect.) For each tax return that becomes due after the case is filed, Debtor shall provide a complete copy of the tax return, including business returns if Debtor owns a business, together with all related W-2s and Form 1099s, to the Trustee within 14 days of filing the return. Unless otherwise consented to by the Trustee or ordered by the Court, Debtor shall turn over to the Trustee all tax refunds in addition to regular Plan payments. Debtor shall not instruct the Internal Revenue Service or other taxing agency to apply a refund to the following year's tax liability. **Debtor shall spend no tax refunds without first having obtained the Trustee's consent or court approval.**

9. **NONCONFORMING PROVISIONS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
 Debtor

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

\_\_\_\_\_  
 Debtor

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



# Chapter 13 Plan

- Below-median debtors may propose a three-year plan, or up to five years to make plan payments affordable
- Debtors with income above the state median income may be required to remain in chapter 13 for five years – the “Applicable Commitment Period”

**11 USC § 1325**





# Plan Confirmation Tests

- **Best Interest of Creditors:** Are unsecured creditors getting at least as much as they would get if debtor filed chapter 7 (and trustee liquidated any nonexempt assets)?
- **Good Faith:** Is plan proposed in good faith?



# Plan Confirmation Tests

- **Ability to Pay:** Is debtor paying all disposable income into plan (if unsecured creditors are getting paid less than 100%)?
  - Below median: consider reasonably necessary expenses
  - Above median: consider expenses provided by the means test
- **Feasibility:** Can debtor afford the plan payment?

11 USC § 1325

# Anti-Modification Provision



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, ***other than a claim secured only by a security interest in real property that is the debtor’s principal residence***, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”

# Parsing the Language



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, other than a ***claim secured*** only by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”

# Upside-Down Homes



Value of Home: \$120,000

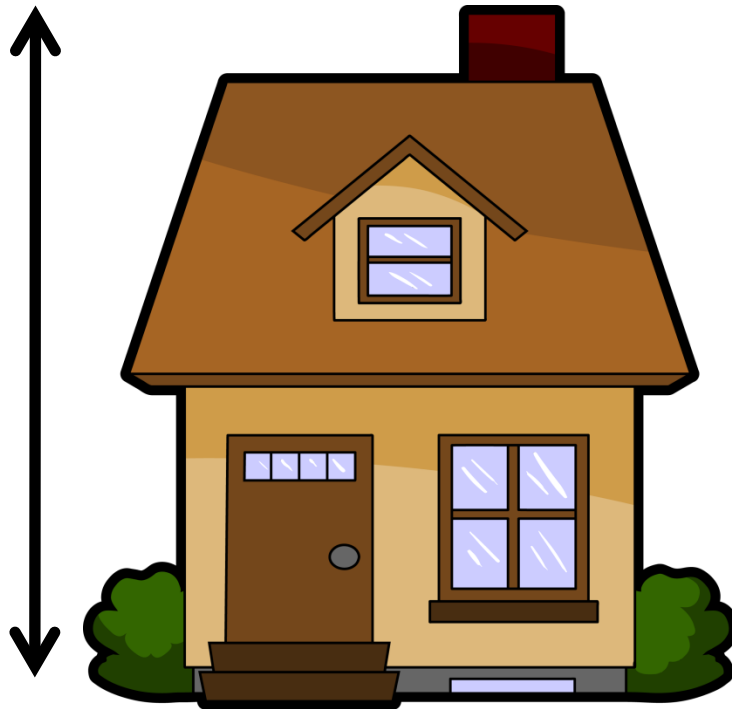
Amount due on First Mortgage: \$125,000

Amount due on Second Mortgage: \$15,000

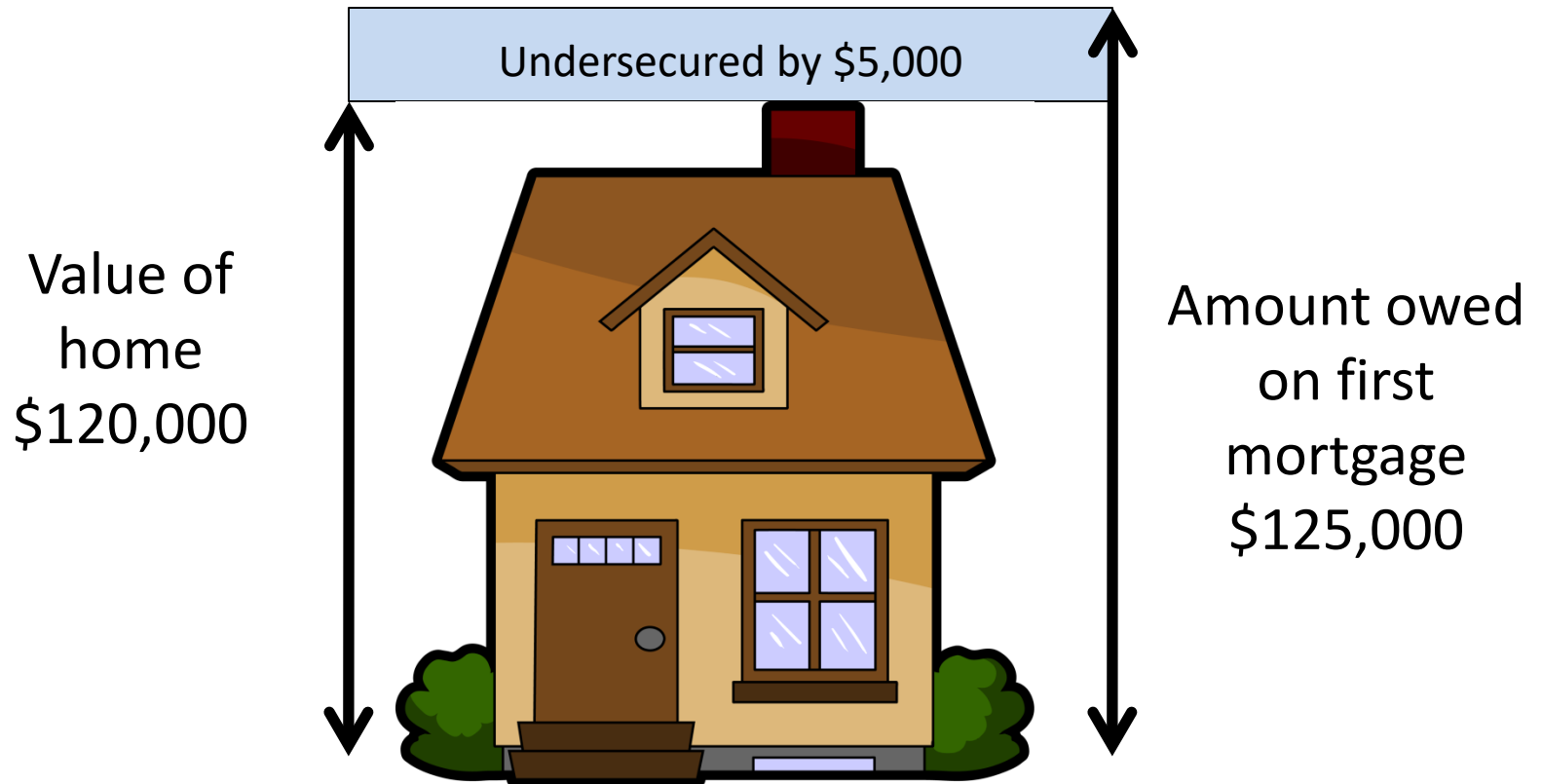
Total Amount of debt: \$140,000

# Underwater Mortgages

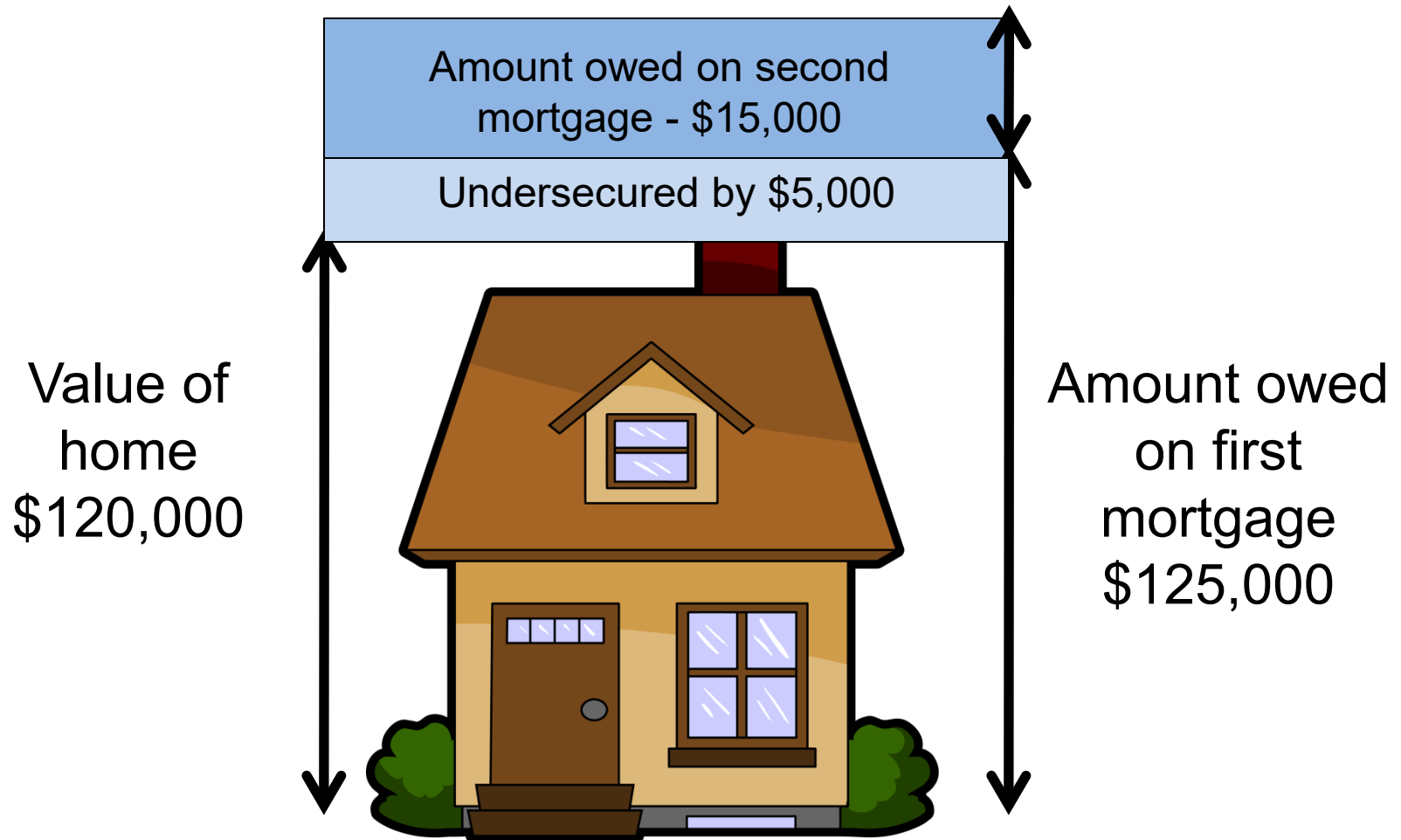
Value of  
home  
\$120,000



# Underwater Mortgages



# Underwater Mortgage





# Stripping Off Underwater Mortgages

- Typically 2nd or 3rd mortgages
- Value of senior liens exceeds property value so that mortgage is “wholly unsecured”
- Security interest rendered void
- Creditor’s claim treated as unsecured claim in chapter 13

# Doing the Calculations

- If total of all **senior liens** equal or exceed property's **value**, junior lien creditor has no allowed secured claim
- Overlooked items:
  - Statutory tax liens (timing issues)
  - Prepayment penalties
  - Interest subsidy recapture
  - “Silent seconds”

# **Other Permissible Modifications**

# Parsing the Language



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, other than a claim secured **only** by a security interest in real property that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”

# Additional Security

- Anti-modification provision does not apply if debt secured by additional property (e.g., furniture, appliances, cars, etc.)
- Definition of “debtor’s principal residence” added in 2005, includes “incidental property” – § 101(13A)
- “Incidental property” defined to include: rents, fixtures, escrow funds, insurance proceeds – § 101(27B)

# Parsing the Language



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property ***that is*** the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”

# Multi-family Buildings

- Modification permitted when other real property, such as rental units, is part of security interest



# Parsing the Language



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, other than a claim secured only by a security interest in ***real property*** that is the debtor’s principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”



# Mobile Homes

- Loans on mobile homes that are considered personal property under state law are not subject to the anti-modification provision



# Short-term Loans

- Exception to anti-modification provision – § 1322(c)
- Short term loans, often balloon payment loans
- Mortgages having final payment due during life of chapter 13 plan
- May be modified



# Mortgage Secured by Principal Residence: Cure and Maintain

- For most mortgages secured by the debtor's principal residence, modification will not be an option
  - Except: stripping off totally unsecured junior mortgages
- Still, chapter 13 provides great benefits:
  - Stop foreclosure (automatic stay, immediate upon filing)
  - Cure arrearage through the chapter 13 plan
  - Maintain ongoing payments – either directly to the creditor or through chapter 13 plan (depends on local practice)



# Mortgage Secured by Principal Residence: Cure and Maintain

- Important: Debtor must be able to make regular periodic mortgage payments going forward, plus the chapter 13 plan payment!
- Alternative: Seek a loan modification while bankruptcy is pending

11 USC § 1322(b)(5) – covered in Module 4



# Chapter 13 Discharge

- Will be entered after plan payments are completed
  - Debtor must complete financial management course by an approved provider before final plan payment
- If debtor cannot complete the chapter 13 plan, consider:
  - Modification of the plan (by motion)
  - Hardship discharge
  - Conversion to chapter 7
  - Dismissal of the case (voluntary or by court) without discharge



# Chapter 13 Discharge

Debts discharged in chapter 13 but not chapter 7:

- Debts for willful and malicious injury to property (and in some cases to individuals)
- Certain civil fines and penalties, including some tax penalties
- Certain debts for which discharge was denied in a previous case



# Chapter 13 Discharge

- Debts incurred to pay nondischargeable tax debts
- Non-support debts arising from property settlements in divorce
- HOA debts incurred postpetition if the debtor has vacated the property

Debts not discharged in chapter 13:

- long-term debts, like home mortgages, that the debtor elects to cure and maintain through plan

**11 USC § 1328(a)**

# **Choosing the Type of Bankruptcy**

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# Factors favoring chapter 7:

- All of debtor's property may be claimed as fully exempt;
- Debtor not behind on debts secured by collateral the debtor wants to keep;
- Debtor has significant dischargeable unsecured debt;
- Debts may exceed the eligibility limits for chapter 13 (currently \$394,725 (4/1/16) for unsecured debts and \$1,184,200 (4/1/16) for secured debts)



# Factors favoring chapter 7:

- Debtor may not have any income in excess of necessary household expenses that could fund a chapter 13 plan;
- Debtor may wish to avoid a lien on secured property that would impair his or her exemption (note that this may also be done in chapter 13);
- Debtor may simply have an immediate need for a "fresh start"



# Factors favoring chapter 13:

- Debtor may wish to:
  - keep nonexempt assets;
  - stop a home foreclosure sale and cure a pre-petition default;
  - stop an auto repossession or compel turnover of property already repossessed, and possibly reduce the ongoing monthly payments or balance due on the secured debt
- Debtor may pay unsecured debts, either in full or percentage of the amount owed, over a 3- to 5-year period (no post-petition interest and late fees)



# Factors favoring chapter 13:

- Chapter 13 may protect a co-debtor on an obligation based on the co-debtor stay provided under § 1301
- Debtor may be able to file a chapter 13 case even though received a chapter 7 discharge within the past eight years
- Debtor may have excess disposable income that would warrant dismissal of a chapter 7 case under § 707(b) (debtor flunks the Means Test)



# Factors favoring chapter 13:

- Debtor may benefit by slightly broader discharge in chapter 13
- Chapter 13 may help debtors who want to pay their debts but lack the discipline to do it on their own
- Chapter 13 discharge, particularly if entered after completion of a 100% plan, may possibly have less negative impact on the debtor's credit rating

# **DEALING WITH PERSONAL PROPERTY SECURED CREDITORS**

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# Reaffirmation

- Debtor agrees to remove debt from discharge
  - Debtor remains personally liable – may be sued if property repossessed and deficiency
- To be enforceable, reaffirmation agreement:
  - must be signed and filed with court before discharge entered
  - court must find reaffirmation will not pose undue hardship
  - attorney may certify no undue hardship; otherwise court will hold a hearing
- Reaffirmation agreement may be canceled any time before entry of discharge order OR sixty days after agreement is filed with court, whichever occurs later. No reason is required.

**11 U.S.C. § 524(c)**



# Reaffirmation

- Usually NOT a good idea if:
  - Amount owed exceeds value of collateral and creditor refuses to reaffirm at lower amount
  - Debtor has defenses to owing debt
  - Debt is high-cost loan or contains unfavorable credit terms and creditor refuses to negotiate more reasonable terms
  - Debtor has no interest in keeping the collateral or has no ability to maintain payments
  - Debtor is behind on payments and creditor refuses to include as part of reaffirmation an affordable payment plan to cure the default



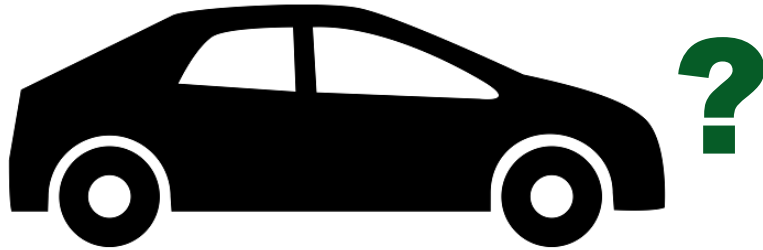


# Reaffirmation

- May be a good idea if:
  - Creditor gives something valuable in return, such as agreeing to let debtor get caught up in a manageable way, or reducing secured debt to value of property
  - Debtor wants to keep needed collateral, such as motor vehicle, and creditor or court will not permit debtor to keep it without reaffirming
- Some creditors will allow debtor to retain collateral and keep paying even if no reaffirmation agreement is signed
- It is generally never a good idea to reaffirm a credit card debt, even if credit card is secured or the creditor offers to keep the account open based on reaffirmation



# Should the debtor reaffirm...?



Maybe (most common;  
consider the risks and other  
options)



Probably not



No

# Reaffirmation Pros and Cons

- Improve FICO score?
- Credit Unions and membership privileges?
- Dragnet Clauses.
- Exposure risk.



# Undue hardship?

- If debtor's attorney negotiates reaffirmation, must sign certification stating that:
  - debtor has been fully advised about consequences of the reaffirmation agreement
  - agreement is voluntary act of a fully informed debtor, and
  - agreement does not impose an “undue hardship” on the debtor or the debtor's dependents. **11 U.S.C. § 524(c)(3)**
- If the debtor's attorney does not sign the reaffirmation agreement (and debt not secured by real property), court must approve the reaffirmation **11 U.S.C. § 524(c)(6)**



# Undue hardship?

- Debtor must sign a statement that debtor believes he/she can afford the payments, based on income and expenses listed in Schedules I and J
- If I and J show insufficient income, presumption of undue hardship, and debtor must explain how he/she will pay
- Court may disapprove the reaffirmation if presumption not rebutted



# Retain and Keep Paying (without reaffirmation)

- **For mortgage on debtor's principal residence**, option recognized by section 524(j)
  - creditor permitted to seek and accept payments rather than enforce *in rem* rights, without violating discharge injunction
- **For personal property secured loan**: option generally not available unless creditor allows it; but might not be in creditor's best interest to repossess the collateral
- If debtor later defaults and creditor repossesses collateral, debtor will not be on the hook for any deficiency

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re )  
 )  
ADMINISTRATIVE ORDER GRANTING ) Administrative Order  
RELIEF FROM DISCHARGE ) FLMB-2015-9  
INJUNCTION TO REFINANCE OR )  
MODIFY LIEN ON HOMESTEAD )  
PROPERTY, )  
\_\_\_\_\_ )

**ADMINISTRATIVE ORDER GRANTING RELIEF FROM  
DISCHARGE INJUNCTION TO ENTER INTO AGREEMENT  
TO REFINANCE OR MODIFY DEBT SECURED BY LIEN ON HOMESTEAD**

When a debtor or former debtor (the "Debtor") has received a discharge and later seeks to refinance or modify an unrefinanced debt secured by a lien on the Debtor's homestead property, the Bankruptcy Court for the Middle District of Florida finds that a secured creditor should not require individual judicial relief before the Debtor can negotiate and enter into a refinance or modification agreement. Accordingly, it is

**ORDERED:**

1. This order applies *only* when the Debtor initiates a request to refinance or to modify the debt secured by a lien on homestead property. This order does not authorize unsolicited attempts by any creditor to renegotiate debt that was not reaffirmed prior to a Debtor's discharge.
2. This order grants relief from the discharge injunction to a secured creditor for the purpose of negotiating and entering into a refinance or modification agreement with a Debtor.

3. If the Debtor enters into an agreement to refinance or to modify an existing debt secured by a lien on homestead property, the Debtor may become liable for the entire amount owed under the new (refinanced or modified) loan, notwithstanding the Debtor's having obtained a discharge of the debt owed under a prior agreement secured by a lien on the same property.

DATED: November 16, 2015



MICHAEL G. WILLIAMSON  
Chief United States Bankruptcy Judge



# Redemption

- Section 722 provides for a right of redemption – debtor may eliminate creditor's lien by paying value of collateral securing the lien
- Redemption right available only:
  - to individual debtors in chapter 7 cases
  - for dischargeable consumer debts secured by tangible personal property that has been either:
    - exempted by the debtor, or
    - abandoned by the trustee



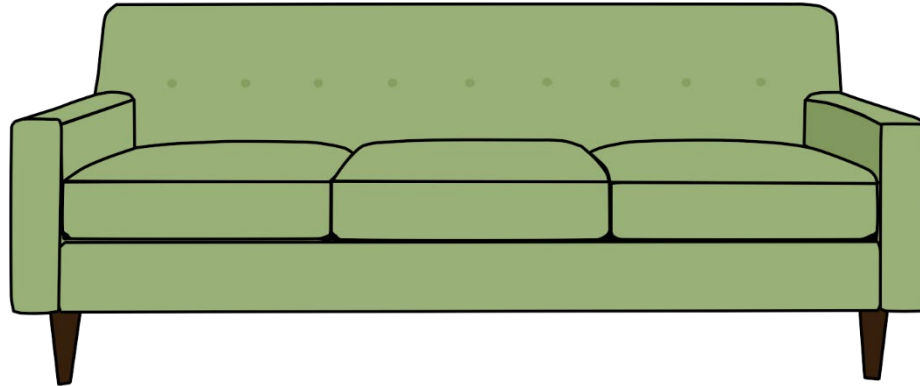


# Redemption

- Not available for real estate or intangible liquid assets
- Valuation should be based on replacement value given the property's age and condition at the time the value is determined
- HUGE potential benefit if the secured claim greatly exceeds the value of the property
- Debtor must be prepared to pay redemption amount in lump-sum payment (unless creditor agrees to installments)



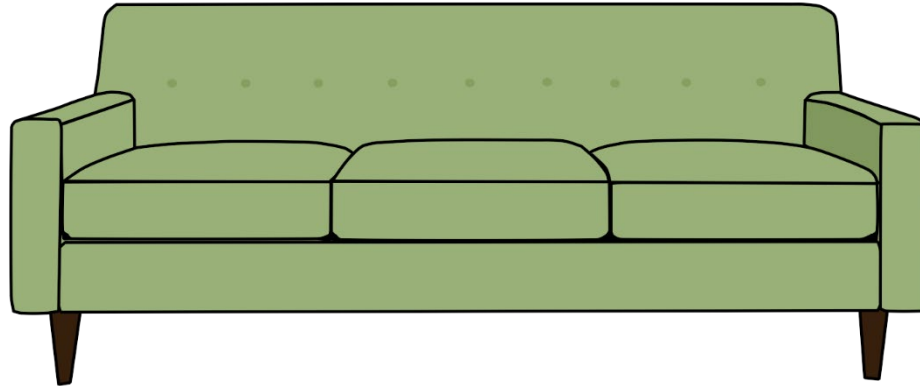
# Redemption: Example 1



- Couch was purchased on credit (loan secured by the couch)
- Balance owed on petition date = \$1,250
- Value of the couch = \$250



# Redemption: Example 1



- Creditor has a secured claim for \$250 and an unsecured claim for \$1,000
- Debtor may redeem the couch by paying \$250 to the creditor
- Debtor keeps the couch free and clear of the lien
- Creditor's unsecured claim for \$1,000 is discharged

# “722 Redemption Loans”

[Home](#)[Debtor](#)[Debtor Attorney](#)[Creditor](#)[Creditor Attorney](#)[Trustee](#)[Auto Dealer](#)

**Lower your car payment now!** In a chapter 7 bankruptcy, you have rights!

## Redeem

[Why Redeem?](#)

Keep your car and pay only what it's worth - NOT what you owe!

**OR**

## Replace

[Why Replace?](#)

Replace your expensive car and lower your payments.

We will explore your options with no cost or obligation

**[Apply Now](#)**

Take one minute to see how much you can save!



BBB Rating: **A+**  
as of 11/15/2013  
[Click for Review](#)

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# Assuming Lease on Personal Property

- Chapter 7 debtor may assume personal property lease if it is not assumed by trustee – common with car leases
- **Step 1:** Debtor must notify lessor in writing that intends to assume lease, which can be done on Statement of Intention
- **Step 2:** Lessor may say willing to allow assumption and may condition assumption on cure of any outstanding default
- **Step 3:** Debtor notifies the lessor in writing within 30 days after the first notice that the lease is assumed
  - debtor then assumes liability under lease and has right to retain property if payments are maintained
- Court review and approval of the lease assumption are not required

**11 U.S.C. § 365(p)**



# Secured Claims in Chapter 13

Treatment of secured claims:

- If debtor **does not wish to keep** the collateral, plan may provide for its surrender;
- If debtor **wishes to keep** the collateral, the plan may be confirmed if:
  - Secured creditor accepts the plan, OR
  - Plan provides for the creditor to retain its lien and receive the present value of its allowed secured claim during the plan

11 USC § 1325(a)(5) – *covered in Module 4*

# Statement of Intentions and Foreclosure Defense

- 11 U.S.C. § 521 Statement of Intentions; 11 U.S.C. § 1325.
- “Surrender” *In re: Metzler*, 530 B.R. 896 (Bankr. M.D.Fla.2015); *In re Failla*, 2016 WL 5750666 (11<sup>th</sup> Cir. Oct. 4, 2016).
- Prevent/revoke discharge in bankruptcy?  
Evidentiary foundation in state-court action?



# Modifying Secured Claims

- The plan may “modify the rights” of holders of secured claims, except:
  - Claims secured only by real property that is the debtor’s principal residence, and
  - Claims that may not be bifurcated based on the “hanging paragraph” of § 1325(a):
    - Purchase-money security interest in a motor vehicle for personal use, incurred with 910 days before filing;
    - Purchase-money security interest in any other thing of value, incurred within 1 year before filing





# Modifying Secured Claims

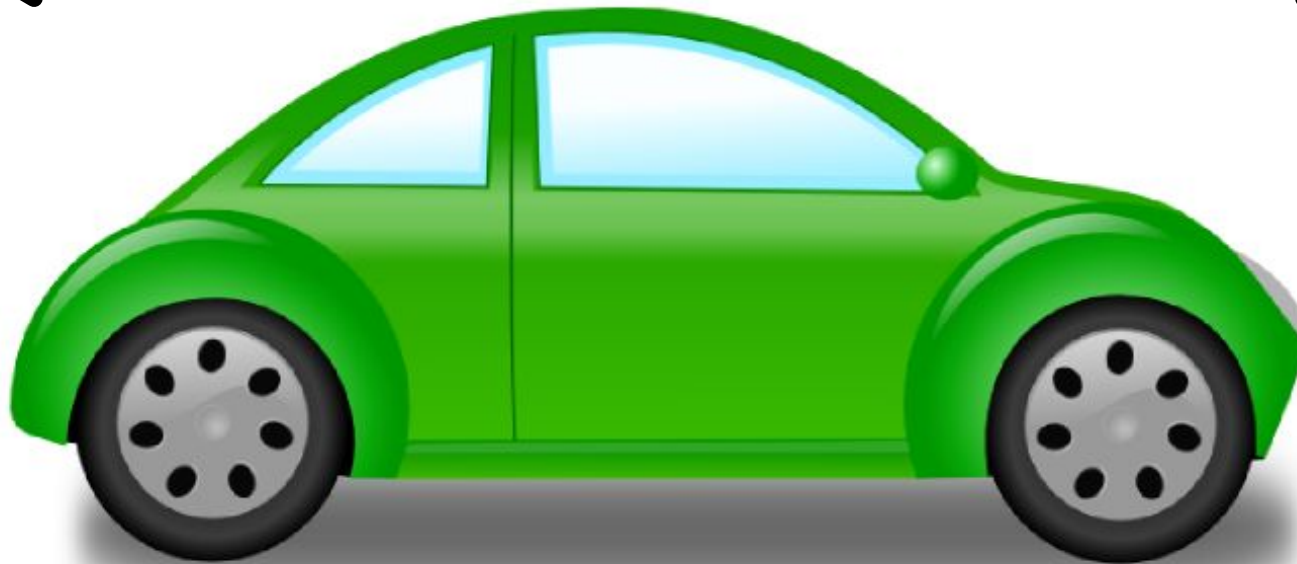
- For secured claims that may be modified, if the amount of the claim exceeds the value of the collateral, the claim will be “bifurcated” into a secured and unsecured claim;
  - Interest rate may be reduced to prime plus a margin for risk;
  - Repayment may be stretched out through the term of the plan

**11 U.S.C. §§ 506(a), 1322(b)(2); 1325(a)(5) – covered in Module 4**

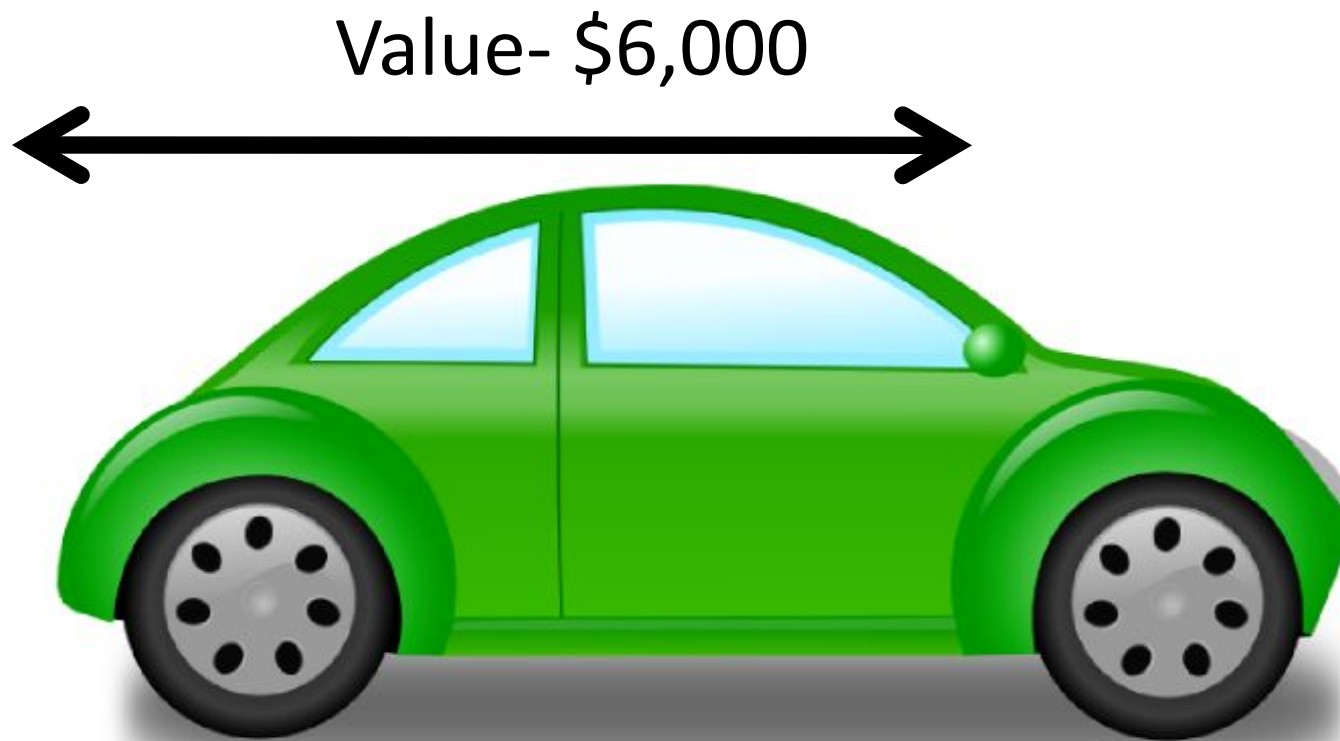
# Bifurcation of Secured Claims

Debt Owed – \$10,000

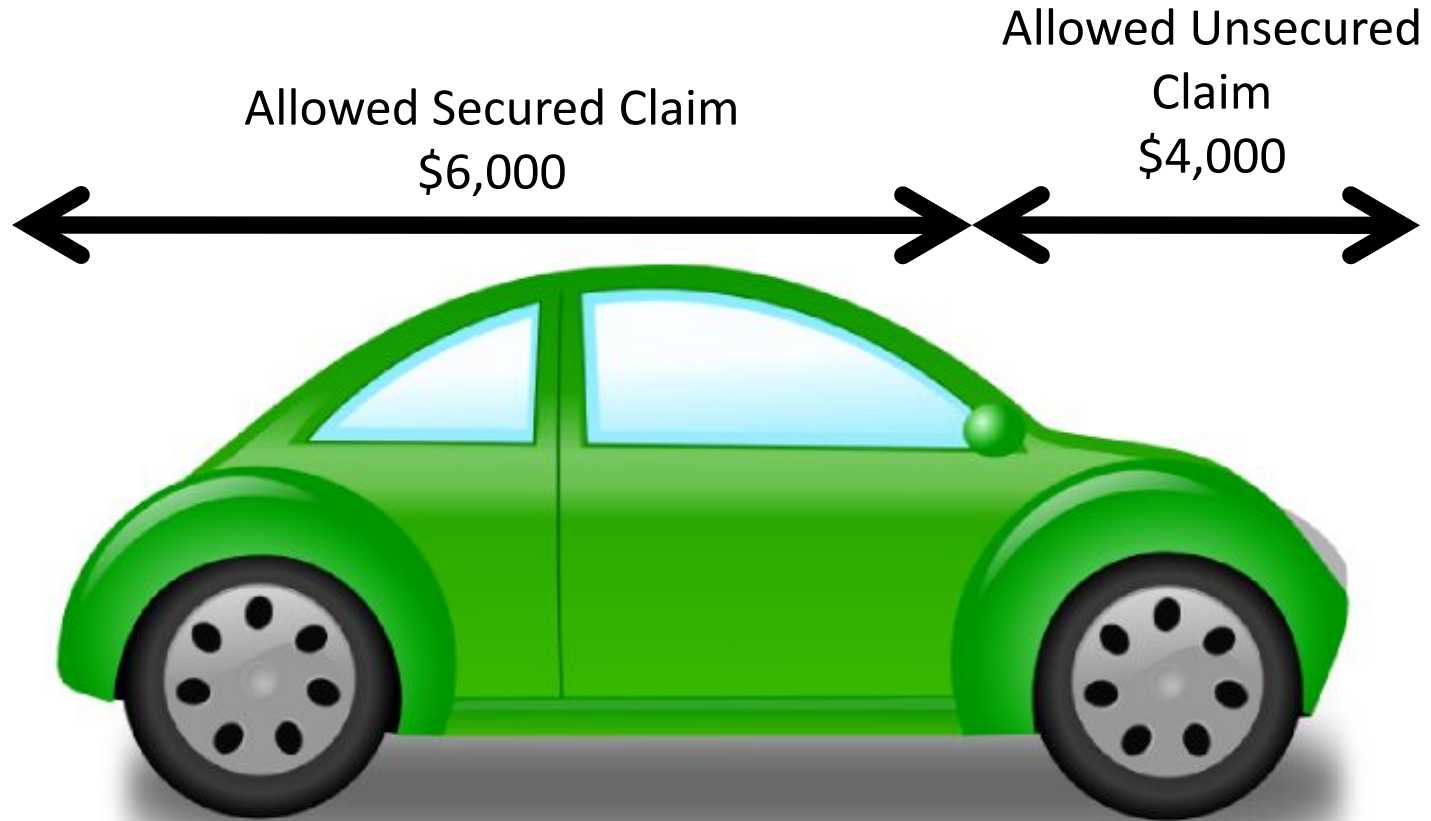
Contract Interest Rate – 15.6%



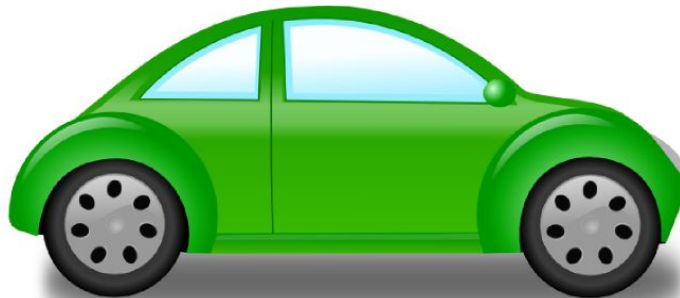
# Bifurcation of Secured Claim



# Bifurcation of Secured Claim

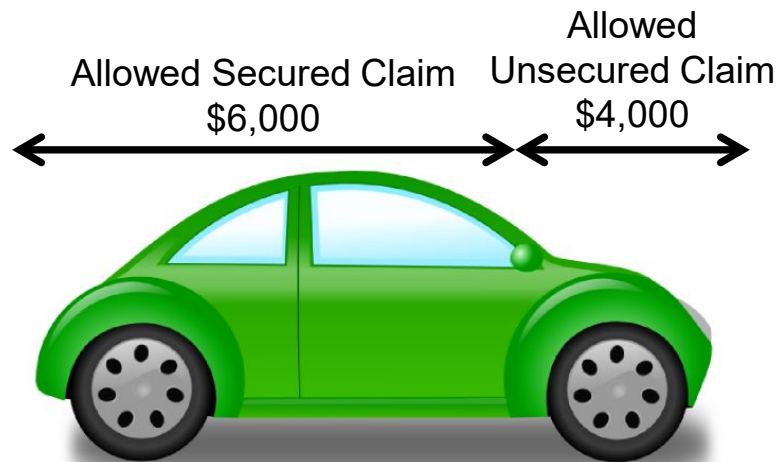


# Chapter 13 Plan



Section 1322(b)(2) – The plan may “modify the rights of holders of secured claims, ..., or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims”

# Ch. 13 Cramdown



Pay allowed secured claim (\$6,000) in full through plan

Pay 4.25% on allowed secured claim *Till v. SCS Credit Corp.*,  
541 U.S. 465 (2004) (must pay the “value” of secured claims  
plus interest at prime plus risk %)

Pay allowed unsecured claim (\$4,000) pro rata with other general  
unsecured creditors

# Ch. 13 Cramdown

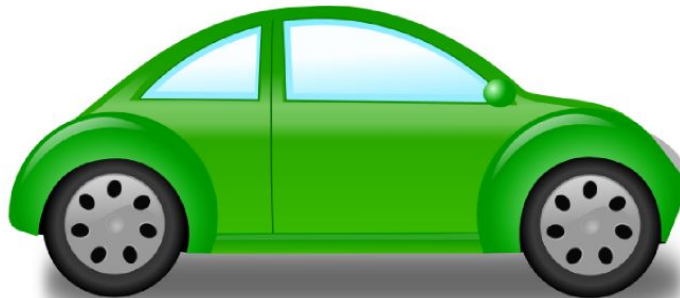


Hanging Paragraph (or “910” cars – 1 year other property)

Pay allowed secured claim (\$10,000) in full through plan

Pay 4.25% on allowed secured claim

# Ch. 7 Options



Surrender – Give up the car, owe nothing to creditor

Redeem – Pay creditor \$6,000, keep car free of lien

Reaffirm – Agree to pay creditor \$10,000(?) at 15.6%(?)

Ride-through(?) – Keep payments current, keep car but without personal liability



# **SAVING HOMES IN BANKRUPTCY**

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# Ch 7: Reaffirm a Home Mortgage?

- Usually not a good idea – option exists to retain and keep paying, § 524(j)
- **Benefits of NOT Reaffirming:**
  - No liability for a deficiency if later default and foreclosure
  - Debtor should still be able to apply for a loan mod if needed
- **Benefits of Reaffirming:**
  - Debtor may continue to receive mortgage statements
  - Payment information more likely to be reported on credit report, improving chances of refinancing later
  - Debtor may have better chance of getting a loan mod later (especially with FHA loans)



# Lien Avoidance

- Debtor may avoid “fixing of a lien” on interest of debtor in property to the extent lien impairs an exemption – § 522(f)
- This applies to:
  - **Judicial liens** on any exempt property, including home, vehicle, household goods , garnished wages, etc.
    - except liens for domestic support obligation
  - **Non-possessory, non-purchase money liens** on certain personal property, including:
    - household furnishings, household goods , wearing apparel, jewelry, appliances, books, animals, crops, or musical instruments held primarily for personal, family, or household use of the debtor or debtor’s dependents;
    - implements, professional books, or tools of the trade
    - professionally prescribed health aids



# Lien Avoidance

- Some math is required to determine if the lien can be avoided – if it “impairs an exemption”
- A lien shall be considered to impair an exemption to the extent that the sum of –
  - the lien;
  - all other liens on the property; and
  - the amount of the exemption that the debtor could claim if there were no liens on the property;
  - exceeds the value that the debtor’s interest in the property would have in the absence of any liens
- Courts have held that this formula is to be applied literally

**11 U.S.C. § 522(f)(2)**

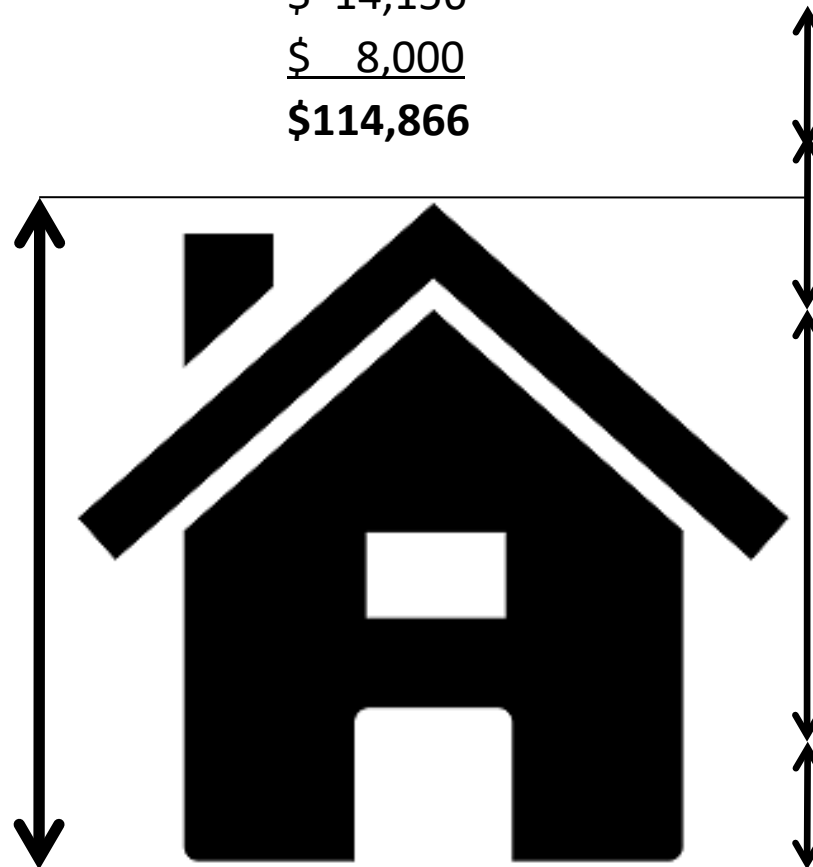


# Example

*In re Jochum*, 309 B.R. 327 (Bankr. E.D. Mo. 2004)

Homecomings First Deed of Trust	\$ 76,405
Concord Judicial Lien	\$ 16,305
Portfolio Judicial Lien	\$ 14,156
Homestead Exemption	<u>\$ 8,000</u>
<b>TOTAL</b>	<b>\$114,866</b>

Value of  
home  
\$100,000



Portfolio Judicial Lien  
\$ 14,156

Concord Judicial Lien  
\$ 16,305

Homecomings  
First Mortgage  
\$76,405

Homestead  
Exemption \$8,000



# Example

Homecomings First Deed of Trust	\$ 76,405
Concord Judicial Lien	\$ 16,305
Portfolio Judicial Lien	\$ 14,156
Homestead Exemption	<u>\$ 8,000</u>
<b>TOTAL</b>	<b>\$114,866</b>

## Portfolio Judicial Lien:

- Value debtor's interest in property without any liens is \$100,000.
- Total of all liens plus debtor's homestead exemption exceeds value of debtor's interest by amount of \$14,866.
- Amount of Portfolio's debt that is secured by its judicial lien (\$14,156) is less than \$14,866.
- Portfolio lien therefore impairs debtor's exemption and is void

# Example

Homecomings First Deed of Trust	\$ 76,405
Concord Judicial Lien	\$ 16,305
Portfolio Judicial Lien	\$ 14,156
Homestead Exemption	<u>\$ 8,000</u>
<b>TOTAL</b>	<b>\$114,866</b>

## Concord Judicial Lien:

- Total of all remaining liens plus debtor's homestead exemption exceeds value of the debtor's interest by amount of \$710.
- Debtor may avoid the judicial lien of Concord in the amount of \$710 and the lien remains in the amount of \$15,595.



# Lien Avoidance Process

- The lien avoidance procedure is generally initiated by the filing of a motion – **Bankruptcy Rule 4003(d)**
- Motions to avoid liens may be brought in both chapter 7 and chapter 13 cases
- These motions are rarely contested; usually only when there is a dispute over the value of the property or the debtor's claim of exemption
- No time limit in the rules, but best to initiate the proceeding soon after the case is filed
- Order avoiding the lien can be recorded in the appropriate real estate recording offices



# PRE-FILING CONSIDERATIONS

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# **Getting All the Necessary Facts**

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# Attorney Due Diligence

## Straight & Narrow

By G. THOMAS CURRAN JR.

### How Much Diligence Is Due?

#### Defining an Attorney's Duty to Perform a Pre-Petition Inquiry

With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), it is more important than ever for us, as debtors' attorneys, to acknowledge the duties that we owe to our clients before filing a petition for bankruptcy relief. An attorney's duties of full disclosure and candor to the court are essential to maintaining the integrity of the bankruptcy system. Moreover, with the addition of 11 U.S.C. § 526(a)(2) (along with other pre-existing Bankruptcy Code provisions), a debtor's attorney who fails to disclose information on a petition or pleading risks civil penalties, attorneys' fees and costs, attorney disciplinary measures<sup>1</sup> or even criminal charges.<sup>2</sup>

The Bankruptcy Code has always emphasized an attorney's duty to truthfully disclose all known assets, liabilities and financial affairs in the debtor's schedules and pleadings. At least as early as the Bankruptcy Reform Act of 1978,<sup>3</sup> a debtor's attorney who signed a petition or other pleading certified that the attorney performed a reasonable investigation into the financial affairs of his or her client to ensure that the pleading was well grounded in fact.<sup>4</sup>

However, BAPCPA extended this duty through the enactment of 11 U.S.C. § 526(a)(2) to apply to any person who qualifies as a "debt relief agency,"<sup>5</sup> which aims to prevent abusive practices by bankruptcy professionals, as well as to ensure that all of a debtor's financial information is taken into account in administering his or her estate.<sup>6</sup> Although most debtors' attorneys make it a habit to review online court records, official records, property appraiser's reports and other available information, provisions like 11 U.S.C. §§ 526(a)(2) and 707(b)(4)(D), as well as Federal Rule of Bankruptcy Procedure 9011, may require additional probing prior to filing a bankruptcy petition.

#### The "Reasonable Inquiry" Standard under 11 U.S.C. § 526(a)(2)

Section 526(a)(2) of the Bankruptcy Code provides the following:

1. Most debtors' fees regarding attorney conduct involve an attorney to be censured with the court. See, e.g., Model Rules of Prof'l Conduct R. 3.3.  
2. See 18 U.S.C. §§ 151-158.  
3. S. Rep. No. 95-989 (1978).  
4. See, e.g., 11 U.S.C. § 707(b)(4)(D).  
5. A "debt relief agency" includes any person who provides bankruptcy assistance to a consumer debtor for a fee, which generally includes attorneys. For a more complete discussion of whether attorneys are considered "debt relief agencies," see *Mancini, Delay & Misconduct: 11 U.S.C. §§ 526(a)(2), 707(b)(4)(D)*, 2010 WL 276,376-378 (2010).  
6. *Id.* at 236 n.3.

A debt relief agency shall not ... make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue or misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading.

The requirement that an attorney exercise reasonable care in determining the accuracy of the information contained in a debtor's petition and schedules is often referred to as the "reasonable inquiry" standard. Section 526(a)(2) makes the attorney or debt-relief agency liable to the client for erroneously omitting critical information without investigating the truth or falsity of the alleged facts. An attorney who fails to perform a reasonable inquiry can be subject to disgorgement of fees to the debtor and civil penalties, and can be required to pay the attorneys' fees and costs of either the debtor, the state or U.S. Trustee.<sup>7</sup>

#### In re Gutierrez: Application of a Traditional Negligence Standard

Since 2005, several courts have explored the scope of a debt-relief agency's duty to perform a reasonable inquiry under § 526. In *In re Gutierrez*, a debtor sought the full return of all fees paid to his attorney after alleging that the attorney failed to exercise reasonable care before filing his petition.<sup>8</sup> The debtor first met with the attorney on March 13, 2006. The attorney prepared the debtor's petition, schedules and statements, which disclosed a home owned by the debtor. After their first meeting, but before filing the petition, the debtor re-claimed his interest in the home to his nonfiling spouse and recorded the deed. The debtor met with the attorney to file the petition almost two months after their first meeting, but the attorney did not ask whether any information had changed or become inaccurate since their last meeting, so the transfer was not disclosed.

The U.S. Bankruptcy Court for the Northern District of California held that the attorney did not violate 11 U.S.C. § 526(a)(2) by failing to ask whether the debtor's circumstances had changed prior to filing.<sup>9</sup> The court applied a negligence standard, reasoning that the debtor would not have

told the attorney about the transfer even if the attorney had asked.<sup>10</sup> The debtor had more than one opportunity to tell the attorney about the transfer and still failed to do so. As a result, the debtor was not able to prove causation, a crucial element to any negligence claim.<sup>11</sup>

#### Comparing § 526(a)(2) to Rule 9011

Other courts have compared the reasonable-inquiry standard under § 526(a)(2) to the one set forth in Bankruptcy Rule 9011.<sup>12</sup> Rule 9011 similarly requires an attorney to perform an "inquiry reasonable under the circumstances" before signing or filing any petition or pleading. A party that violates Rule 9011 is subject to a fairly broad range of sanctions, including monetary and non-monetary sanctions, as well as attorneys' fees and costs.<sup>13</sup>

For example, in *In re Garrard*, a slip opinion from the U.S. Bankruptcy Court for the Northern District of Alabama, the court applied the Rule 9011 definition of "reasonable inquiry" to a violation of 11 U.S.C. § 526(a)(2).<sup>14</sup> In this case, an attorney's duty to perform a reasonable inquiry requires five things:

- (1) to explain the requirement of full, complete, accurate, and honest disclosure of all information required of a debtor; (2) to ask probing and pertinent questions designed to elicit [such disclosure]; (3) to check the debtor's responses in the petition and Schedules to assure they are internally and externally consistent; (4) to demand of the debtor full, complete, accurate, and honest disclosure ... before the attorney signs the petition; and (5) to seek relief from the court in the event that the attorney learns that he or she may have been misled by a debtor.<sup>15</sup>

If an attorney fails to meet one of these requirements, he or she has breached the duty to perform a reasonable inquiry. In other words, an attorney cannot turn a blind eye to potential inconsistencies in the debtor's petition and absolve himself or herself from liability. He or she must take an active role in the debtor's case to ensure that the documents are complete, accurate and honest.

Courts in the First Circuit have implemented a similar five-factor test to evaluate violations of 11 U.S.C. § 707.<sup>16</sup> Like the test in *Garrard*, the First Circuit requires an attorney to advise the debtor of the importance of full disclosure; check for internal consistency throughout the petition, schedules, and statements; and promptly correct information that he or she discovers to be inaccurate. However, in *In re Withrow*, the court also required the attorney to employ "external verification tools," such as title records, court records, lien searches and tax transcripts, as long as the tools

that were used were not overly costly or time-consuming for the attorney.<sup>17</sup>

The courts in *Gutierrez* and *Garrard* agreed that a negligence standard should apply to violations of § 526. *Gutierrez* applied the typical "but-for" test to address the issue of causation, which prompted the court to ask whether a more detailed inquiry by the attorney would have revealed the undisclosed information. *Garrard*, on the other hand, defined a "breach." Comparing an offending attorney's conduct to that of a reasonably competent attorney measures whether the attorney breached his duty of reasonable care. Based on the language of the statute and the prevailing case law, a court should only find that a violation of § 526 exists after it fully analyzes the claim under a traditional negligence standard. Although no court has explicitly stated this, it can be inferred from its application.

#### The "Reasonable Investigation" Standard under 11 U.S.C. § 707

The "reasonable inquiry" standard is often compared to the "reasonable investigation" standard under 11 U.S.C.

17 *Id.*

continued on page 74



#### CREDIT ABUSE RESISTANCE EDUCATION

Founded in 2002, the Credit Abuse Resistance Education (CARE) program seeks to educate high school and college students on the responsible use of credit and other fundamentals of financial literacy, as well as the potential consequences of poor money management and credit card abuse.

## Get Involved!

Visit [care4yourfuture.org](http://care4yourfuture.org)  
to sign up to be a CARE volunteer.

## Straight & Narrow: How Much Diligence Is Due? Pre-petition Inquiry

from page 25

§ 707(b)(4)(D).<sup>18</sup> Under § 707(b)(4)(D), an attorney who signs a petition certifies that he or she has no knowledge that the information contained in the client's petition is incorrect after performing an inquiry. Unlike § 526(a)(2), violations of § 707 usually result in the dismissal of the debtor's case. However, similar to § 526(c), if a debtor's attorney violates § 707(b), the court may also assess civil penalties and award attorneys' fees and costs.<sup>19</sup>

The Ninth Circuit noted this comparison in *In re Kayne*.<sup>20</sup> In *Kayne*, a debtor told her attorney prior to filing that she had filed a lawsuit against a third party to recover money that was owed under a promissory note. To make matters worse, the debtor provided the attorney with a binder of documents that included a copy of a settlement agreement on the note and a list of payments received by the debtor, which the attorney did not review. As a result, the attorney did not disclose the note on the Schedule B and failed to list payments received as income on the Schedule I. The attorney believed that the payoff on the note was approximately \$7,000 (an amount that would have been protected by the debtor's exemptions), and he explained this to the chapter 7 panel trustee at the meeting of creditors. After reviewing the settlement agreement, however, the trustee discovered that there was actually \$61,250 owed on the note. The attorney admitted that he should have conducted a more thorough investigation before filing the petition.

The Ninth Circuit Bankruptcy Appellate Panel held that the debtor's attorney did not conduct a reasonable investigation into the facts of the case prior to filing the petition.<sup>21</sup> The court applied the same "reasonable inquiry" standard to both violations of Rule 9011 and § 707(b)(4)(D). It reasoned that the "reasonable inquiry" standard is an objective one wherein the attorney's conduct should be compared to that of "a competent attorney admitted to practice before the involved court."<sup>22</sup> Because the attorney did not ask pertinent and probing questions or otherwise gather adequate information, the court imposed \$20,000 in sanctions.

Other courts in the Ninth Circuit have looked favorably on the analysis in *Kayne*. In *In re Seave*, the U.S. Bankruptcy Court for the District of Nevada applied *Kayne*'s reasoning in holding that an attorney violated § 707(b)(4)(D) when he failed to investigate the dischargeability of a debt that arose from a judgment for fraud.<sup>23</sup> Even though the debtor's attorney filed the debtor's petition on an "emergency" basis to stop a garnishment, the court did not excuse him from compliance with § 707(b)(4)(D).<sup>24</sup> The attorney quickly reviewed the documents that the debtor provided to him prior to filing and made the incorrect determination that the debt underlying the garnishment would be dischargeable. The debtor did

not have a copy of the judgment on the debt and therefore did not provide it to the attorney.

The court reasoned that if the attorney had reviewed the records on the court's PACER website and read the judgment prior to filing, he would have discovered that the debt was incurred due to the debtor's fraud upon the court and that the debt would be nondischargeable. The court concluded that an attorney cannot rely on the information that his or her client provides if it is clear that the information is "incomplete or inconsistent, or raises a 'red flag.'"<sup>25</sup> The existence of a judgment against the debtor should have alerted the attorney to the fact that a further inquiry was necessary. After that discovery, the attorney had an obligation to take an active role in the debtor's case and thoroughly review the judgment.

**If a debtor fails to provide certain requested documents or cannot explain inconsistencies in his schedules, the attorney can wait to file the case, refuse to file altogether, or refuse to represent the debtor.**

### Conclusion

Although various courts have different ways of defining "reasonable inquiry," they are generally aligned when determining what constitutes a violation. The standard is an objective one: An attorney cannot defend himself or herself by claiming that he or she was subjectively ignorant to the murky facts of the debtor's case. Allowing such a defense would promote purposeful ignorance and result in many unwelcome surprises for unsuspecting debtors. Although not every circuit has specifically defined "reasonable inquiry" as it applies to § 526, the current trend suggests that an attorney should apply the Rule 9011 standard in the absence of such a definition.

As debtors' attorneys, we should always review relevant court records, online title and lien searches, tax transcripts, and other readily available documents. We have a clearly defined duty to ask probing questions that elicit honest and accurate answers, resolve internal and external inconsistencies by conducting a cost-effective investigation, and verify information provided by clients by requesting pertinent documents. If a debtor fails to provide certain requested documents or cannot explain inconsistencies in his schedules, the attorney can wait to file the case, refuse to file altogether, or refuse to represent the debtor. A brief and effective investigation before filing a petition can help prevent the potential costs of a violation of § 526 or Rule 9011. Even more importantly, it can facilitate the successful administration of a debtor's case. **abl**

25 *Id.*

<sup>18</sup> The "reasonable investigation" language actually derives from § 707(b)(2)(B) under statute, 11 U.S.C. § 707(b)(2)(B), which provides that an attorney is a signatory certifies that he or she "performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written notice."

<sup>19</sup> 11 U.S.C. § 707(b)(4)(D) and (B).

<sup>20</sup> 433 B.R. 572 (B.A.P. 9th Cir. 2013).

<sup>21</sup> *Id.* at 580.

<sup>22</sup> *Id.* at 582 (quoting *Smith v. City of Oakland (In re Brooks-Hamilton)*, 329 B.R. 270, 283 (B.A.P. 9th Cir. 2005)).

<sup>23</sup> *In re Seave*, 460 B.R. 158 (Bankr. D. Nev. 2013).

<sup>24</sup> *Id.* at 272.



# Interviewing the Debtor

- Client is important source of information (not the only source)
- Use the initial client meeting to:
  - Build rapport
  - Talk about the client's goals and priorities
  - Help inform the client about what bankruptcy can and cannot do
- Explain the importance of full and complete disclosure
  - Consequences of failing to disclose – may not get the discharge; bankruptcy crimes may result in prosecution
  - Remind client of attorney-client privilege – “Now is the time to tell me, so that I can help you understand your options.”
  - Debts not listed may not be discharged and property not disclosed may be lost



# Interviewing the Debtor

- Key questions to ask during the first meeting:
  - What types of debt are causing the most trouble?
  - How and when were the debts incurred and are they secured?
  - What significant assets does the client have?
  - What is the debtor's monthly income and what type of income is it (employment, public benefits, Social Security, and so forth)? Does debtor expect any changes?
  - What does the debtor estimate his or her monthly expenses to be? Does debtor expect any changes?
  - How imminent is creditor action which may limit the client's options?
  - Has the debtor filed bankruptcy before and, if so, when and what type of case?
  - Has the debtor moved from one state to another within the preceding two and a half years?

# Protecting domestic violence victims and law enforcement

- Section 107(c) permits the court to protect an individual from disclosure of information that would create an undue risk of unlawful injury.
- Exclude address and file motion with the petition requesting exclusion of certain identifying information.





# Counseling the Judgment-Proof Debtor

- If client's income and assets are exempt under state or federal law, the property cannot be attached even if creditor gets a judgment
  - Social Security benefits are exempt from attachment (other than for child support, alimony, tax debts, student loans, and public benefits overpayments)
- But being judgment-proof does not protect debtor from being sued or receiving collection calls





# Counseling the Judgment-Proof Debtor

- Bankruptcy may provide peace of mind
  - or you could recommend sending the creditor a “stop contact” letter under the FDCPA, 15 U.S.C. § 1692c(c)
- If client is likely to have other (garnishable) income in the future, bankruptcy may be worthwhile
  - If the debtor may incur more debt, waiting to file may be the better choice

# Should I use a questionnaire?

**Complete All Questions.** If you and your spouse are not living together, and there is no possibility that your spouse will file bankruptcy along with you, you don't have to answer the questions about your spouse.

**1. Name and Residence Information:**

A. Your full name: \_\_\_\_\_

Your spouse's full name: \_\_\_\_\_

B. Your Social Security Number: \_\_\_\_\_

Your spouse's Social Security Number: \_\_\_\_\_

C. Your date of birth and age: \_\_\_\_\_

Your spouse's date of birth and age: \_\_\_\_\_

D. List any other names used by you or your spouse (including maiden name), or other ways you have signed your names to papers and checks during the last eight years:

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E. Current Address: \_\_\_\_\_

(Street)

(City)

(County)

(Zip Code)

F. Telephone Number: \_\_\_\_\_

G. List all addresses you have had in the last three years, the dates when you lived there, and the name you used while living there. If you and your spouse are filing bankruptcy together, list addresses for each for the last three years (include street, town, and zip code).

Addresses	Date Moved In	Date Moved Out	Name Used
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_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. **Prior Bankruptcy:** Have you or your spouse ever been involved before in a bankruptcy (chapter 7, 11, 12, or 13)?  
YES \_\_\_ NO \_\_\_. If YES, bring *all* papers from the case(s) to our office.

What Chapter?	Date Case Filed	Did You Get a Discharge?	If Yes, List Date of Discharge	If Dismissed, List Date and Reason Why Dismissed
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_____	_____	_____	_____	_____
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# Why you shouldn't rely just on a questionnaire

**Lawyer:** Have you made sales of property, mortgages, gifts, or transfers of any substantial property or cash within the last four years?

**Client:** No.

**Lawyer:** So, just to be clear, you haven't transferred anything valuable to anyone else?

**Client:** Anything?

**Lawyer:** Right, like a car, or something you inherited, or –

**Client:** Oh, a car! I thought you meant property, like land. Well, I did have a car that I put in my son's name. It's always been his car, but I helped him get the loan. Does that have to go into the bankruptcy?



# Explain that nothing “stays out” of the bankruptcy

- Debtors often have the impression that they can pick and choose what “goes in” the bankruptcy
- They might say, “I want to keep my car loan out of the bankruptcy. I’m current on the loan. Is that ok?”
- The response:
  - “No. Everything – every debt and every asset – must be listed in the bankruptcy.”
  - “You can keep paying secured debts, so the bankruptcy might not have much of an effect, but we have to disclose it.”



# Other Sources of Information

Provide client with list of documents to provide (see Document Checklist, Appendix A to Module 2), including:

- Credit reports from Equifax, Experian and Transunion (client to bring or give authorization for you to pull)
- Pay stubs (last 60 days before filing will have to be provided to bankruptcy court)
- Debtor's federal tax returns for past 2 years
- If client owes back taxes, obtain tax transcripts for each year at issue
- Bank statements for past 3 months
- Domestic court orders (divorce decree, child support order)
- Copy of client's lease (if client is a tenant)
- All bills and collection letters from all debts (including utilities)
- Copies of any papers from current or past lawsuits



# Other Sources of Information

- Prior bankruptcy filings: conduct a PACER search
- Student loan info: National Student Loan Data System (NSLDS)
- Home or any real property:
  - Conduct a title search to identify all mortgages and judgment liens
  - Look up home value on county tax assessor website, zillow.com, eppraisal.com; consider getting an appraisal if value is in question
- Cars:
  - Get VIN number and make, model, year, mileage
  - Find value through Kelly Blue Book ([www.kbb.com](http://www.kbb.com)), the NADA Used Car Guide ([www.nadaguides.com](http://www.nadaguides.com)), or other sources such as [www.carprices.com](http://www.carprices.com) or [www.edmunds.com](http://www.edmunds.com)

# Timing Considerations

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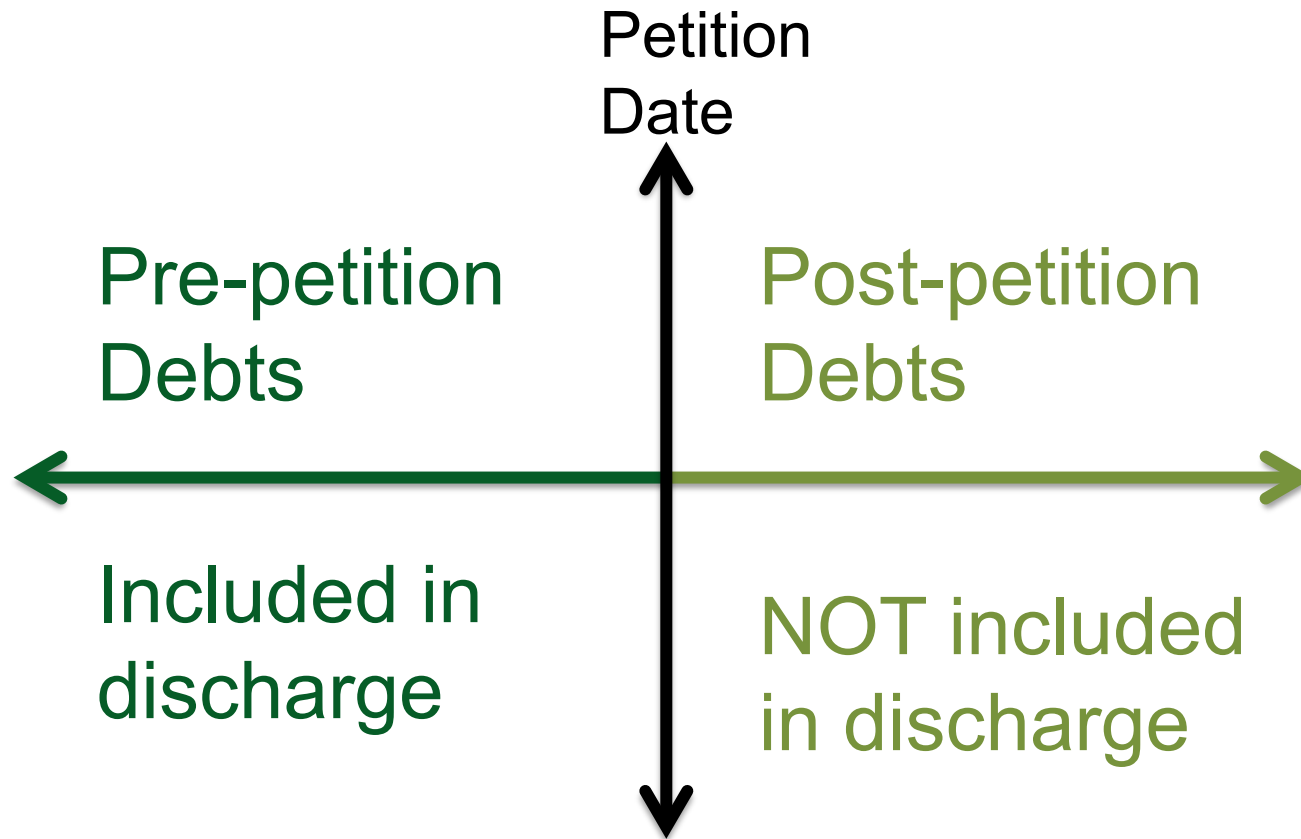
# Reasons to wait: Has the debt peaked?







# Has the debt peaked?





# Reasons to wait: Is the debtor “judgment-proof”?

- If debtor is unemployed or has only protected income (for example, Social Security benefits and most pensions), there is no rush to file
- Debtor may still incur additional debt, especially if expenses exceed monthly income or client has no health insurance
- Debts incurred after the bankruptcy filing will not be discharged
  - a debtor may not obtain another chapter 7 discharge for **eight years** after receiving a chapter 7 discharge (although a chapter 13 filing may be possible)



# Other reasons to wait



- Tax debts that may become dischargeable
- Different state exemptions may apply if debtor has moved recently
- Ability to use nonexempt assets prior to filing
- Dismissal of one or more prior bankruptcy case(s) within past year (resulting in a limit on the automatic stay)



# Other reasons to wait

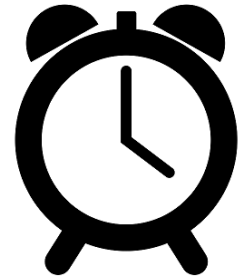


- Gift or transfer of property within past 2 years (or longer, depending on state fraudulent transfer statute)
- Debtor's "CMI" will be lower, resulting in safe harbor (debtor's income has gone down)

\*If you advise client to wait, make sure to explain that the debtor should not incur debts she has no intention to pay – may be declared nondischargeable!



# Other reasons to wait



- Consider waiting if debtor has within past **90 days**:
  - made payments to an unsecured creditor totaling more than \$600 that would be preference under section 547
- Consider waiting if debtor has within past **1 year**:
  - made payments to insider totaling more than \$600 that would be preference under section 547
- Consider waiting if debtor has within past **2 years** (or longer under state statutes):
  - transferred property when debtor was insolvent and did not receive reasonably equivalent value for the transfer
  - transferred property with intent to hinder, delay, or defraud a creditor

**11 U.S.C. §§ 544, 547 and 548**



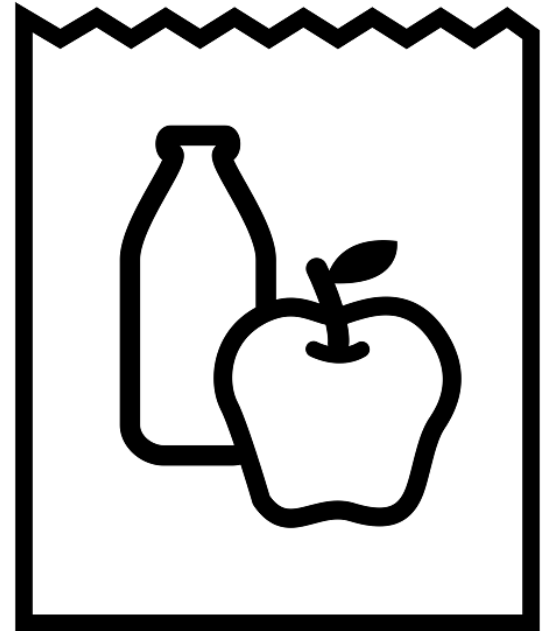
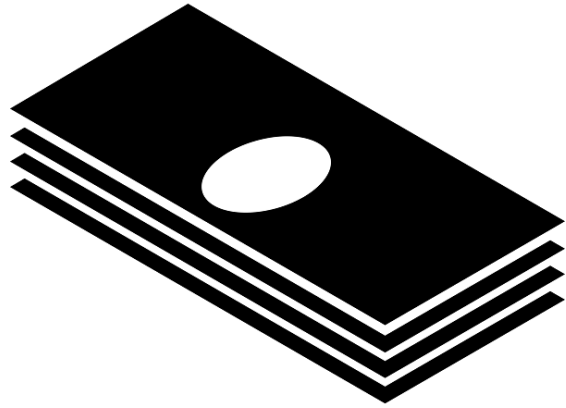
# Reasons to file quickly



- Stop a foreclosure
- Stop a car repossession
- Stop a garnishment (and possibly get back funds garnished within past 90 days)
- Avoid loss of redemption rights and expiration of statute of limitations
- CMI will be higher if you wait, creating a Means Test problem (debtor's income is going up)



# Exemption Planning



# **Counseling and Bankruptcy Filing Fees**

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# Mandatory Credit Counseling

- Pre-Filing Briefing – debtor must obtain within 180 days before filing
  - Briefing may be provided in-person, by telephone or over the internet
- “Approved” agencies can found at: [www.justice.gov/ust](http://www.justice.gov/ust)
- Most approved agencies charge between \$10-\$40 for the pre-filing briefing
- Approved agencies must provide briefing and necessary certificate without considering ability to pay
- Debtor’s statement of compliance with requirement is in Part 5 of Petition; certificate from approved agency is either attached to petition or filed with court within 14 days after petition filed

**11 U.S.C. § 109(h), § 521(b)**



# Waiver of counseling – limited!

- Waiver motion may be granted if debtor is
  - disabled,
  - incapacitated, or
  - on active military duty in combat zone
- Incapacity and disability narrowly defined:
  - incapacity – “...incapable of realizing and making rational decisions with respect to his financial responsibilities”
  - disability – “...debtor is so physically impaired as to be unable, after reasonable effort, to participate in ... briefing”
- Risky - if denied, case will be dismissed!

**11 U.S.C. § 109(h)(3)**



# Deferral of counseling

- Deferral based on “**exigent circumstances**”
- Certification
  - Check box in Part 5 on Petition certifying that debtor requested counseling from approved agency, but was unable to obtain services during the 7-day period beginning on date debtor made request
  - Describe exigent circumstances meriting waiver on separate sheet attached to petition
- Debtor must still obtain counseling within **30 days** of petition date
  - May be extended an additional 15 days

**11 U.S.C. § 109(h)(3)**



# Costs of Bankruptcy Filing

- Chapter 7 filing fee – \$335
- Chapter 13 filing fee – \$310
- Approx. \$50 - \$100 for pre-filing briefing and financial education course
  - these fees may be waived for indigent clients; some pro bono programs have a standing arrangement with counseling agency
- Attorneys fees if debtor not represented pro bono



# Filing fee waiver – chapter 7 only

- Chapter 7 filing fee may be waived:
  - Income test: must be below 150% poverty line
    - Non-cash governmental assistance not counted
  - Inability to pay test: debtor must not be able to pay filing fee even in installments
    - Court to consider totality of circumstances
- File waiver application, Official Form 103B
  - At initial filing
  - After installment request (for balance), or
  - After conversion from chapter 13 to 7 (for balance)

**28 U.S.C. § 1930(f)(1); Bankruptcy Rule 1006(c)**



# Payment in installments

- Filing fee in both chapter 7 and 13 cases may be paid in up to four installments over a period of 120 days (or up to 180 days with court permission)
- Petition may be accompanied by an application signed by the debtor stating that the debtor is unable to pay the filing fee except in installments
- The form for this application is Official Form 103A
- Routinely granted by courts

**Bankruptcy Rule 1006(b)**

# **Application of the Means Test**

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# The Means Test

- Bankruptcy judge can dismiss chapter 7 case if filing is an abuse of bankruptcy system
- “Means test” was added in 2005 to make it more difficult for wealthy consumers to file a chapter 7 bankruptcy; creates a presumption that the filing was abusive if the debtor fails the means test
- Most debtors represented by pro bono attorneys are exempt from the means test:
  - Consumers with household income below state **median family income** are protected by a “safe harbor” and not subject to the means test

11 U.S.C. § 707(b)





# Does the Safe Harbor Apply?

- **Step 1:** Calculate the debtor's "Current Monthly Income"
- Current Monthly Income =
- Average gross income for the six months ending with the last day of the calendar month before filing
  - Include wages, salary, commissions, and amounts paid to debtor on regular basis for household expenses of debtor or debtor's dependents
  - But DO NOT include Social Security benefits

11 U.S.C. § 101(10A) (definition of CMI)



# Means test: CMI Example

## Example: Planned Filing Date September 4th

<u>Month</u>	<u>Gross monthly income</u> (exclude SS benefits)
March	\$1,000
April	\$1,000
May	\$1,000
June	\$2,000
July	\$2,000
Aug.	\$2,000
Sept.	<del>\$2,000</del> (don't include month of filing)
Total	$\$9,000/6 = \$1,500$



# Means Test: Safe Harbor

- **Step 2:** Find the annual median income for debtor's household size in this state

Example:

Debtor's CMI is \$1,500 per month; \$18,000 annualized

Median family income for a household of 1 in State X = \$41,226

- **Step 3:** Is CMI less than or equal to state median figure?

$$\$18,000 < \$41,226$$

.... safe harbor applies!



# Means Test: Above-Median Debtors

- Above-median debtors subject to means test formula and must also fill out Official Form 22A-2
- Allowed expenses are deducted from CMI:
  - Debtor's actual expenses for certain things:
    - payments on secured debts
    - child support
    - income tax payments
    - charitable contributions
  - Certain standardized expenses from IRS collection guidelines for others, [www.justice.gov/ust](http://www.justice.gov/ust) , examples below based on household of 1:
    - \$583 for food, clothing, household expenses
    - \$508 for non-mortgage housing expenses (utilities, etc.)
- $\text{CMI} - \text{allowed expenses} = \underline{\text{disposable income}}$



# Timing: income tax refunds

- The right to receive an income tax refund is an asset, and thus property of the bankruptcy estate
- Trustee may try to go after the amount of the refund that has been earned as of the petition date (dividing total refund by 12, multiply by number of months prior to filing)
- Can the debtor fully exempt the expected refund?
- If not, it might be better to wait until debtor can receive the money and spend it before filing on ordinary expenses and exempt property



# Income taxes: Can you discharge them?

Taxes owed for a particular tax year may be discharged if **ALL** three of the following conditions apply:

**1) Three-Year “Due Date” Rule: A return for the tax year in question was last due more than three years before the bankruptcy filing date. 11 U.S.C. § 507(a)(8)(A)(i)**

- Date is usually April 15 of year following year in question (unless debtor obtained an extension to file the return or due date was extended by IRS based on natural disaster, etc.)
- Example: return for 2013 was last due April 15, 2014

**2) Two-Year “Filing Date” Rule: A return for the tax year in question was filed more than two years before the bankruptcy filing date. 11 U.S.C. § 523(a)(1)(B)(ii) and § 1328(a)(2)**



# Income taxes: Can you discharge them?

**3) 240-Day “Assessment” Rule: The tax was assessed more than 240 days before the bankruptcy filing date. 11 U.S.C. § 507(a)(8)(A)(ii)**

- Certain events may extend this 240-day period:
  - Any time during which an offer in compromise with respect to the tax was pending or in effect, plus 30 days, is not counted towards the 240-day period.
  - Any time during which collection of the tax was stayed by a prior bankruptcy case or a request for an IRS due-process hearing, plus 90 days, is also not counted towards the 240-day period (and this 90-day tolling period also applies to the three-year rule).
- The assessment date is typically noted on the IRS tax transcript. If an amended tax return is filed, a new 240-day period begins for any additional taxes assessed.



# Income taxes: Can you discharge them?

- Finally, taxes are still not dischargeable (even if you pass the 3-prong test) if:
  - **Fraudulent Return.** The debtor filed a fraudulent return for the year in question. **11 U.S.C. § 523(a)(1)(C)** and **§ 1328(a)(2)**
  - **Willful Tax Evasion.** The debtor willfully attempted to defeat or evade the tax. **11 U.S.C. § 523(a)(1)(C)** and **§ 1328(a)(2)**
- Even if dischargeable, are they secured?? Check for a tax lien!
- Are they a priority debt? (If so, they must be fully paid in the plan if debtor is filing under chapter 13)

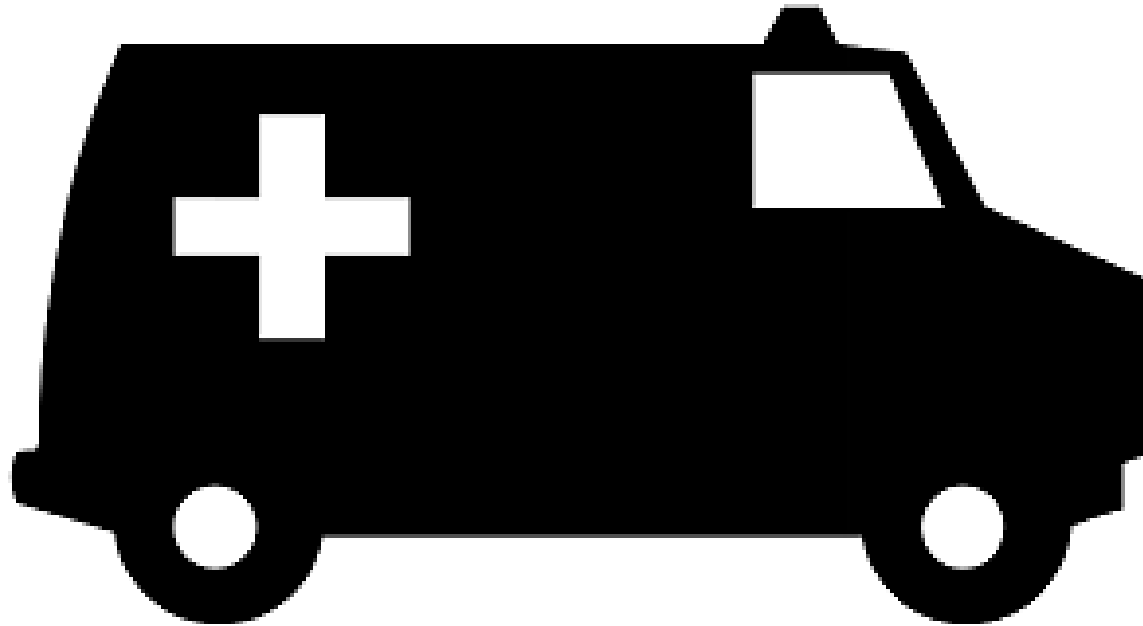


# **PREPARING THE BANKRUPTCY SCHEDULES**

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# Emergency Filing



Sometimes a client comes to you on the eve of foreclosure, garnishment, or repossession, and you may have to file quickly



# Emergency Filing



- Debtor can initiate case with a “skeletal filing,” including:
  - ☐ Voluntary Petition
  - ☐ Statement of Social Security number
  - ☐ Initial statement about prepetition eviction, if applicable
  - ☐ Creditor matrix (mailing list)
  - ☐ Filing fee (or request for waiver/motion to pay in installments)
- Even in an emergency, ask client **the basic questions** first, so you can advise client about whether bankruptcy filing is in the client’s best interest (and check for prior filings)

**Bankruptcy Rule 1007(c)**

# Within 14 Days of Filing

- ☐ Credit counseling certificate (if not filed with petition)
- ☐ Schedules, summaries, and declaration
- ☐ Statement of financial affairs
- ☐ Statement of current monthly income and Ch. 13 calculation of commitment period
- ☐ Ch. 7 means test calculation and Ch. 13 calculation of disposable income (if above-median debtor)

## Within 14 Days of Filing

- ☐ Disclosure of attorney fees paid or promised
- ☐ Payment advices (received by debtor from employer within 60 days of petition)
- ☐ Chapter 13 plan

## Within 30 days of filing:

- ☐ Statement of Intention (ch. 7)

# Automatic Dismissal

- Section 521(i)(1) provides that case is to be “automatically dismissed” if debtor does not file information required by § 521(a)(1) within 45 days of the petition
- Section 521(i)(2) provides that in such circumstances case is to be dismissed on request of a party in interest within 5 days of the request
- If the debtor, within 45 days of the filing, requests additional time, court may allow up to 45 additional days for the debtor to file required documents

# Getting the Case Filed

- CM/ECF
- Computer Programs

# Tips on Preparing Bankruptcy Forms

- Basic Principles
  - Complete
  - Accurate
  - Current
- Individual and Joint Cases
  - “Debtor 1” and “Debtor 2”
- Amendments to forms
  - ☐ “Check if this is an amended filing”



**UNITED STATES BANKRUPTCY COURT  
REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES  
Voluntary Chapter 7 Case**

- ☐ **Filing Fee of \$245.** If the fee is to be paid in installments or the debtor requests a waiver of the fee, the debtor must be an individual and must file a signed application for court approval. Official Form 103A or 103B and Fed.R.Bankr.P. 1006(b), (c).
- ☐ **Administrative fee of \$75 and trustee surcharge of \$15.** If the debtor is an individual and the court grants the debtor's request, these fees are payable in installments or may be waived.
- ☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).
- ☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 707(a)(3). Official Form 101 contains spaces for the certification.
- ☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).
- ☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable; **Section 109(b)(3) certification or § 109(b)(4) request**, if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(b)(3) certification or the § 109(b)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).
- ☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement of Your Current Monthly Income** (Official Form 122A). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedules of assets and liabilities** (Official Forms 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedules of Your Income and Your Expenses** (Schedules I and J of Official Form 106). If the debtor is an individual, Schedules I and J of Official Form 106 must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement of financial affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement of Intention for Individuals Filing Under Chapter 7** (Official Form 108). Required ONLY if the debtor is an individual and the schedules of assets and liabilities contain debts secured by property of the estate or personal property subject to an unexpired lease. Must be filed within 30 days or by the date set for the Section 341 meeting of creditors, whichever is earlier. 11 U.S.C. §§ 362(b) and 521(a)(2).
- ☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030). Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).
- ☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Required if the debtor is an individual, unless the course provider has notified the court that the debtor has completed the course. Must be filed within 60 days of the first date set for the meeting of creditors. 11 U.S.C. § 727(a)(11) and Fed.R.Bankr.P. 1007(b)(7), (c).

**REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES  
Voluntary Chapter 11 Case**

- ☐ **Filing fee of \$1,167.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).
- ☐ **Administrative fee of \$550.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.
- ☐ **United States Trustee quarterly fee.** The debtor, or trustee if one is appointed, is required also to pay a fee to the United States trustee at the conclusion of each calendar quarter until the case is dismissed or converted to another chapter. The calculation of the amount to be paid is set out in 28 U.S.C. § 1930(a)(6). As authorized by 28 U.S.C. § 1930(a)(7), the quarterly fee is paid to the clerk of court in chapter 11 cases in Alabama and North Carolina.
- ☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201); **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).
- ☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1112(e). Official Form 101 contains spaces for the certification.
- ☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement About Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).
- ☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable; **Section 109(b)(3) certification or § 109(b)(4) request**, if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(b)(3) certification or the § 109(b)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).
- ☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement of Your Current Monthly Income** (Official Form 122B). Required if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders** (Official Form 104) or **Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders** (Official Form 204). Must be filed WITH the petition. Fed.R.Bankr.P. 1007(d).
- ☐ **Names and addresses of equity security holders of the debtor.** Must be filed with the petition or within 14 days, unless the court orders otherwise. Fed.R.Bankr.P. 1007(a)(3).
- ☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedules I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Copies of all payment advices or other evidence of payment** received by debtor from any employer within 60 days before the filing of the petition. Required if the debtor is an individual. Must be filed WITH the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Required if the debtor is represented by an attorney. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).
- ☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Required if the debtor is an individual and § 1141(d)(3) applies, unless the course provider has notified the court that the debtor has completed the course. Must be filed no later than the date of the last payment under the plan or the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(3) and Fed.R.Bankr.P. 1007(b)(7), (c).
- ☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1), if applicable.** Required if the debtor is an individual and has claimed exemptions under state or local law as described in § 522(b)(3) in excess of \$160,375\*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1141(d)(5)(B). 11 U.S.C. § 1141(d)(5)(C) and Fed.R.Bankr.P. 1007(b)(8), (c).

\* Amount subject to adjustment on 4/01/19, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

**REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES**  
**Chapter 12 Case**

- ☐ **Filing Fee of \$200.** If the fee is to be paid in installments, the debtor must be an individual and must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).
- ☐ **Administrative fee of \$75.** If the debtor is an individual and the court grants the debtor's request, this fee is payable in installments.
- ☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101) or **Voluntary Petition for Non-Individuals Filing for Bankruptcy** (Official Form 201). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).
- ☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the court in a timely manner. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii). Official Form 101 contains spaces for the certification.
- ☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement of Your Social Security Numbers** (Official Form 121). Required if the debtor is an individual. Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).
- ☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable; **Section 109(h)(3) certification or § 109(b)(4) request**, if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(b)(3) certification or the § 109(b)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).
- ☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Schedules of Assets and Liabilities** (Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106 or 206). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedules of Current Income and Expenditures.** If the debtor is an individual, Schedule I and J of Official Form 106 must be used for this purpose. Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement of Financial Affairs** (Official Form 107 or 207). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Copies of all payment advices** or other evidence of payment received by the debtor from any employer within 60 days before the filing of the petition if the debtor is an individual. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).
- ☐ **Chapter 12 Plan.** Must be filed within 90 days. 11 U.S.C. § 1221.
- ☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1)**, if applicable. Required if the debtor is an individual and has claimed exemptions under state or local law as described in §522(b)(3) in excess of \$160,375\*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1228(b). 11 U.S.C. § 1228(f) and Fed.R.Bankr.P. 1007(b)(8), (c).

\* Amount subject to adjustment on 4/01/19, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

**REQUIRED LISTS, SCHEDULES, STATEMENTS, AND FEES**  
**Chapter 13 Case**

- ☐ **Filing fee of \$235.** If the fee is to be paid in installments, the debtor must file a signed application for court approval. Official Form 103A and Fed.R.Bankr.P. 1006(b).
- ☐ **Administrative fee of \$75.** If the court grants the debtor's request, this fee is payable in installments.
- ☐ **Voluntary Petition for Individuals Filing for Bankruptcy** (Official Form 101). **Names and addresses of all creditors** of the debtor. Must be filed WITH the petition. Fed.R.Bankr.P. 1007(a)(1).
- ☐ **Notice to Individual Debtor with Primarily Consumer Debts** under 11 U.S.C. § 342(b) (Director's Form 2010), if applicable. Required if the debtor is an individual with primarily consumer debts. The notice must be GIVEN to the debtor before the petition is filed. Certification that the notice has been given must be FILED with the petition or within 15 days. 11 U.S.C. §§ 342(b), 521(a)(1)(B)(iii), 1307(c)(9). Official Form 101 contains spaces for the certification.
- ☐ **Bankruptcy Petition Preparer's Notice, Declaration, and Signature** (Official Form 119). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement of Social Security Number** (Official Form 121). Must be submitted WITH the petition. Fed.R.Bankr.P. 1007(f).
- ☐ **Credit Counseling Requirement** (Official Form 101); **Certificate of Credit Counseling and Debt Repayment Plan**, if applicable; **Section 109(h)(3) certification or § 109(b)(4) request**, if applicable. If applicable, the Certificate of Credit Counseling and Debt Repayment Plan must be filed with the petition or within 14 days. If applicable, the § 109(b)(3) certification or the § 109(b)(4) request must be filed WITH the petition. Fed.R.Bankr.P. 1007(b)(3), (c).
- ☐ **Statement disclosing compensation paid or to be paid to a "bankruptcy petition preparer"** (Director's Form 2800). Required if a "bankruptcy petition preparer" prepares the petition. Must be submitted WITH the petition. 11 U.S.C. § 110(b)(2).
- ☐ **Statement of Your Current Monthly Income** (Official Form 122C). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007.
- ☐ **Schedules of Assets and Liabilities** (Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedule of Executory Contracts and Unexpired Leases** (Schedule G of Official Form 106). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Schedules of Current Income and Expenditures** (Schedules I and J of Official Form 106). Must be filed with the petition or within 14 days. 11 U.S.C. § 521(1) and Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Statement of Financial Affairs** (Official Form 107). Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Copies of all payment advices or other evidence of payment** received by the debtor from any employer within 60 days before the filing of the petition. Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 1007(b), (c).
- ☐ **Chapter 13 Plan.** Must be filed with the petition or within 14 days. Fed.R.Bankr.P. 3015.
- ☐ **Statement disclosing compensation paid or to be paid to the attorney** for the debtor (Director's Form 2030), if applicable. Must be filed within 14 days or any other date set by the court. 11 U.S.C. § 329 and Fed.R.Bankr.P. 2016(b).
- ☐ **Certification About a Financial Management Course** (Official Form 423), if applicable. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b), unless the course provider has notified the court that the debtor has completed the course. 11 U.S.C. § 1328(g)(1) and Fed.R.Bankr.P. 1007(b)(7), (c).
- ☐ **Statement concerning pending proceedings of the kind described in § 522(q)(1)**, if applicable. Required if the debtor has claimed exemptions under state or local law as described in §522(b)(3) in excess of \$160,375\*. Must be filed no later than the date of the last payment made under the plan or the date of the filing of a motion for a discharge under § 1328(b). 11 U.S.C. § 1328(h) and Fed.R.Bankr.P. 1007(b)(8), (c).

\* Amount subject to adjustment on 4/01/19, and every three years thereafter with respect to cases commenced on or after the date of adjustment.

# **Voluntary Petition**

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# Name

## 1. Your full name

Write the name that is on your government-issued picture identification (for example, your driver's license or passport).

Bring your picture identification to your meeting with the trustee.

Lisa

First name

Sandra

Middle name

Reyes

Last name

Suffix (Sr., Jr., II, III)

## 2. All other names you have used in the last 8 years

Include your married or maiden names.

Lisa

First name

Sandra

Middle name

Medrano

Last name

# Social Security Number

3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)

XXX - XX - 4 3 8 7

OR

**9** XX - XX -

# Address

## 5. Where you live

485	Mulberry Ave.
Number	Street

Louisville	KY	40214
City	State	ZIP Code
Jefferson		
County		

**If your mailing address is different from the one above, fill it in here.** Note that the court will send any notices to you at this mailing address.

Number	Street
--------	--------

P.O. Box
----------

City	State	ZIP Code
------	-------	----------

# Venue

6. Why you are choosing *this district* to file for bankruptcy

Check one:

☒ Over the last 180 days before filing this petition, I have lived in this district longer than in any other district.

☐ I have another reason. Explain.  
(See 28 U.S.C. § 1408.)

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# Filing Fee

8. How you will pay the fee
- ☐ **I will pay the entire fee when I file my petition.** Please check with the clerk's office in your local court for more details about how you may pay. Typically, if you are paying the fee yourself, you may pay with cash, cashier's check, or money order. If your attorney is submitting your payment on your behalf, your attorney may pay with a credit card or check with a pre-printed address.
  - ☐ **I need to pay the fee in installments.** If you choose this option, sign and attach the *Application for Individuals to Pay Your Filing Fee in Installments* (Official Form 103A).
  - ☒ **I request that my fee be waived** (You may request this option only if you are filing for Chapter 7. By law, a judge may, but is not required to, waive your fee, and may do so only if your income is less than 150% of the official poverty line that applies to your family size and you are unable to pay the fee in installments). If you choose this option, you must fill out the *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B) and file it with your petition.



# Prior Bankruptcy Cases

9. Have you filed for bankruptcy within the last 8 years?

☒ No

☐ Yes.

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

District \_\_\_\_\_ When \_\_\_\_\_ Case number \_\_\_\_\_  
MM / DD / YYYY

# Evictions

11. Do you rent your residence?

☐ No. Go to line 12.

☒ Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence?

☒ No. Go to line 12.

☐ Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it with this bankruptcy petition.

# Credit Counseling

## 15. Tell the court whether you have received briefing about credit counseling.

The law requires that you receive a briefing about credit counseling before you file for bankruptcy. You must truthfully check one of the following choices. If you cannot do so, you are not eligible to file.

If you file anyway, the court can dismiss your case, you will lose whatever filing fee you paid, and your creditors can begin collection activities again.

## About Debtor 1:

*You must check one:*

- ☒ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, and I received a certificate of completion.**  
Attach a copy of the certificate and the payment plan, if any, that you developed with the agency.
- ☐ **I received a briefing from an approved credit counseling agency within the 180 days before I filed this bankruptcy petition, but I do not have a certificate of completion.**  
Within 14 days after you file this bankruptcy petition, you **MUST** file a copy of the certificate and payment plan, if any.
- ☐ **I certify that I asked for credit counseling services from an approved agency, but was unable to obtain those services during the 7 days after I made my request, and exigent circumstances merit a 30-day temporary waiver of the requirement.**

To ask for a 30-day temporary waiver of the requirement, attach a separate sheet explaining what efforts you made to obtain the briefing, why you were unable to obtain it before you filed for bankruptcy, and what exigent circumstances required you to file this case.

Your case may be dismissed if the court is dissatisfied with your reasons for not receiving a briefing before you filed for bankruptcy.

If the court is satisfied with your reasons, you must still receive a briefing within 30 days after you file. You must file a certificate from the approved agency, along with a copy of the payment plan you developed, if any. If you do not do so, your case may be dismissed.

Any extension of the 30-day deadline is granted only for cause and is limited to a maximum of 15 days.

- ☐ **I am not required to receive a briefing about credit counseling because of:**
  - ☐ **Incapacity.** I have a mental illness or a mental deficiency that makes me incapable of realizing or making rational decisions about finances.
  - ☐ **Disability.** My physical disability causes me to be unable to participate in a briefing in person, by phone, or through the internet, even after I reasonably tried to do so.
  - ☐ **Active duty.** I am currently on active military duty in a military combat zone.

If you believe you are not required to receive a briefing about credit counseling, you must file a motion for waiver of credit counseling with the court.

# Type of Debts

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as “incurred by an individual primarily for a personal, family, or household purpose.”

☐ No. Go to line 16b.

☒ Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.

☐ No. Go to line 16c.

☐ Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

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# Other Information

- Sole proprietor businesses
- Hazardous property
- Estimate as to available assets
- Estimates of assets and liabilities

# Attorney Signature

**For your attorney, if you are represented by one**

**If you are not represented by an attorney, you do not need to file this page.**

I, the attorney for the debtor(s) named in this petition, declare that I have informed the debtor(s) about eligibility to proceed under Chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each chapter for which the person is eligible. I also certify that I have delivered to the debtor(s) the notice required by 11 U.S.C. § 342(b) and, in a case in which § 707(b)(4)(D) applies, certify that I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect.

**x**

\_\_\_\_\_  
Signature of Attorney for Debtor

Date

12 04 2015

MM / DD / YYYY

Dawn Clarke

\_\_\_\_\_  
Printed name

Law Office of Dawn Clarke, P.C.

\_\_\_\_\_  
Firm name

843 North 7th Street

\_\_\_\_\_  
Number Street

Louisville

KY

40203

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
ZIP Code

# Mailing Matrix

Anne Gordon, M.D.  
145 N. Central Ave.  
Louisville, KY 40203

AS & S Communications  
P.O. Box 4466  
Lone Tree, CO 80124

BankCard Choice  
222 Credit Card Lane  
Wilmington, DE 19899

Blackstone Rental Properties, Inc.  
444 Commerce Way  
Lexington, KY 40506

BuyHereNow Auto Sales, Inc.  
234 Executive Park  
Louisville, KY 40203

# Filing Fee Waiver

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# Average Monthly Net Income

Fill in your family's average monthly income.

Include your spouse's income if your spouse is living with you, even if your spouse is not filing.

Do not include your spouse's income if you are separated and your spouse is not filing with you.

Add your income and your spouse's income. Include the value (if known) of any non-cash governmental assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies.

If you have already filled out *Schedule I: Your Income*, see line 10 of that schedule.

Subtract any non-cash governmental assistance that you included above.

**Your family's average monthly net income**

That person's average monthly net income (take-home pay)

You ..... \$ 2,007.32

Your spouse ... + \$

Subtotal..... \$ 2,007.32

— \$ 626.00

Total..... \$ 1,381.32

# Additional Circumstances

5. **Tell the court why you are unable to pay the filing fee in installments within 120 days.** If you have some additional circumstances that cause you to not be able to pay your filing fee in installments, explain them.

My income is not enough to cover my expenses. The EITC and tax refund I hope to get is needed for car repairs; clothes for my children, and other necessary expenses.

# **Schedule A/B – Real and Personal property**

---



# Commonly Missed Assets

- Tax refunds (when?)
- Alimony or support arrearages
- Security deposits
- Deposits in dormant savings accounts
- Pledged goods at pawnbrokers
- Any possible legal claims (slip and fall, car accident, employment discrimination), even if no lawsuit has been filed
- Cash value in whole life insurance policies
- Pension plans
- Burial plots
- Inherited real estate/heir property
- Cars being driven by someone else
- Voidable preferences (payments to creditors past 90 days)

# Real Property

1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?

- ☒ No. Go to Part 2.  
☐ Yes. Where is the property?

1.1. \_\_\_\_\_  
Street address, if available, or other description

\_\_\_\_\_

\_\_\_\_\_  
City State ZIP Code

\_\_\_\_\_  
County

**What is the property?** Check all that apply.

- ☐ Single-family home  
☐ Duplex or multi-unit building  
☐ Condominium or cooperative  
☐ Manufactured or mobile home  
☐ Land  
☐ Investment property  
☐ Timeshare  
☐ Other \_\_\_\_\_

**Who has an interest in the property?** Check one.

- ☐ Debtor 1 only  
☐ Debtor 2 only  
☐ Debtor 1 and Debtor 2 only  
☐ At least one of the debtors and another

**Other information you wish to add about this item, such as local property identification number:** \_\_\_\_\_

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

**Current value of the entire property?** **Current value of the portion you own?**

\$ \_\_\_\_\_ \$ \_\_\_\_\_

**Describe the nature of your ownership interest (such as fee simple, tenancy by the entireties, or a life estate), if known.**

\_\_\_\_\_  
☐ **Check if this is community property**  
(see instructions)

# Vehicles

**Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not?** Include any vehicles you own that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases*.

## 3. Cars, vans, trucks, tractors, sport utility vehicles, motorcycles

☐ No

☒ Yes

3.1. Make: Ford  
Model: Focus ZX4  
Year: 2006  
Approximate mileage: 134,500

Other information:

Needs new tires and brakes

**Who has an interest in the property?** Check one.

☒ Debtor 1 only

☐ Debtor 2 only

☐ Debtor 1 and Debtor 2 only

☐ At least one of the debtors and another

☐ Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

**Current value of the entire property?**

\$ 1,600.00

**Current value of the portion you own?**

\$ 1,600.00

# Valuing Property

Sofa and loveseat, \$300

TV, ten years old, 36"  
\$100

Lawnmower, \$75

Assorted casual  
clothing, \$200



# ***But See “Replacement Value”***

## **11 U.S.C. § 506(a)(2)**

- If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the **replacement value** of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, **replacement value** *shall mean* the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined



# Household Goods

## 6. Household goods and furnishings

*Examples:* Major appliances, furniture, linens, china, kitchenware

☐

No

☒

Yes. Describe. ....

Washer, dryer, living room and 2 bedroom sets, misc. household goods - no item worth more than \$575

1,200.00

\$ \_\_\_\_\_

## 7. Electronics

*Examples:* Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

☐

No

☒

Yes. Describe. ....

Television, computer and printer (4 years old), stereo, cell phone - - no item worth more than \$575

700.00

\$ \_\_\_\_\_

# Deposits of Money

## 17. Deposits of money

*Examples:* Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

☐

No

☒

Yes.....

Institution name:

17.1. Checking account:	First Kentucky Bank	\$ 143.14
17.2. Checking account:		\$
17.3. Savings account:		\$
17.4. Savings account:		\$
17.5. Certificates of deposit:		\$
17.6. Other financial account:	SNAP EBT account	\$ 121.35

# Tax Refunds

## 28. Tax refunds owed to you

☐

No

☒

Yes. Give specific information about them, including whether you already filed the returns and the tax years. ....

2015 Earned Income Tax Credit - \$4,735; 2015 Federal tax refund - \$185; 2015 State tax refund - \$50 (estimated as returns not filed)

Federal:

\$ 4,920.00

State:

\$ 50.00

Local:

\$ 0.00

# Claims Against Others

## 33. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment

*Examples: Accidents, employment disputes, insurance claims, or rights to sue*

☐ No

☒ Yes. Describe each claim..... KY Consumer Protection Act claim against Easy Credit Co. (unliquidated) \$ 2,000.00

## 34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims

☐ No

☒ Yes. Describe each claim..... Garnished wages held by debtor's employer subject to lien avoidance \$ 635.00

# **Schedule C – Claim of Exemptions**

---

# Exemptions

1. Which set of exemptions are you claiming? Check one only, even if your spouse is filing with you.

- ☐ You are claiming state and federal nonbankruptcy exemptions. 11 U.S.C. § 522(b)(3)
- ☒ You are claiming federal exemptions. 11 U.S.C. § 522(b)(2)

2. For any property you list on *Schedule A/B* that you claim as exempt, fill in the information below.

Brief description of the property and line on <i>Schedule A/B</i> that lists this property	Current value of the portion you own  Copy the value from <i>Schedule A/B</i>	Amount of the exemption you claim  <i>Check only one box for each exemption.</i>	Specific laws that allow exemption
Brief description: <u>Ford Focus</u>  Line from <i>Schedule A/B</i> : <u>3.1</u>	\$ <u>1,600.00</u>	<input checked="" type="checkbox"/> \$ <u>3,675.00</u>  <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	<u>11 U.S.C. § 522(d)(2)</u> _____ _____
Brief description: <u>Household goods</u>  Line from <i>Schedule A/B</i> : <u>6</u>	\$ <u>1,200.00</u>	<input checked="" type="checkbox"/> \$ <u>1,200.00</u>  <input type="checkbox"/> 100% of fair market value, up to any applicable statutory limit	<u>11 U.S.C. § 522(d)(3)</u> _____ _____

# **Schedule D – Secured Claims**

---

# Secured Claims

2. **List all secured claims.** If a creditor has more than one secured claim, list the creditor separately for each claim. If more than one creditor has a particular claim, list the other creditors in Part 2. As much as possible, list the claims in alphabetical order according to the creditor's name.

*Column A*  
**Amount of claim**  
Do not deduct the  
value of collateral.

*Column B*  
**Value of collateral  
that supports this  
claim**

*Column C*  
**Unsecured  
portion**  
If any

2.1

BuyHereNow Auto Sales, Inc.

**Describe the property that secures the claim:**

\$ 2,348.78

\$ 635.00

\$ 1,713.78

Creditor's Name

234 Executive Park

Number

Street

Wages held by debtor's employer

Louisville KY 40203

City

State

ZIP Code

**As of the date you file, the claim is:** Check all that apply.

- ☐ Contingent  
☐ Unliquidated  
☒ Disputed

**Who owes the debt?** Check one.

- ☒ Debtor 1 only  
☐ Debtor 2 only  
☐ Debtor 1 and Debtor 2 only  
☐ At least one of the debtors and another

☐ Check if this claim relates to a  
community debt

Date debt was incurred Jan. 2009

**Nature of lien.** Check all that apply.

- ☐ An agreement you made (such as mortgage or secured  
car loan)  
☐ Statutory lien (such as tax lien, mechanic's lien)  
☒ Judgment lien from a lawsuit  
☐ Other (including a right to offset) \_\_\_\_\_

Last 4 digits of account number 4 5 4 4



# **Schedule E/F – Priority and Unsecured Claims**

---

# Priority Unsecured Claims

**2. List all of your priority unsecured claims.** If a creditor has more than one priority unsecured claim, list the creditor separately for each claim. For each claim listed, identify what type of claim it is. If a claim has both priority and nonpriority amounts, list that claim here and show both priority and nonpriority amounts. As much as possible, list the claims in alphabetical order according to the creditor's name. If you have more than two priority unsecured claims, fill out the Continuation Page of Part 1. If more than one creditor holds a particular claim, list the other creditors in Part 3.

(For an explanation of each type of claim, see the instructions for this form in the instruction booklet.)

2.1

Internal Revenue Service

Priority Creditor's Name

P.O. Box 931000

Number

Street

Loiusville

KY

40293-1000

City

State

ZIP Code

**Who incurred the debt?** Check one.

☐ Debtor 1 only

☐ Debtor 2 only

☐ Debtor 1 and Debtor 2 only

☒ At least one of the debtors and another

☐ Check if this claim is for a community debt

**Is the claim subject to offset?**

☒ No

☐ Yes

Last 4 digits of account number 7 4 5 9

When was the debt incurred? 2013; 2011

**As of the date you file, the claim is:** Check all that apply.

☐ Contingent

☐ Unliquidated

☐ Disputed

**Type of PRIORITY unsecured claim:**

☐ Domestic support obligations

☒ Taxes and certain other debts you owe the government

☐ Claims for death or personal injury while you were intoxicated

☐ Other. Specify \_\_\_\_\_

Total claim	Priority amount	Nonpriority amount
\$ 845.00	\$ 609.00	\$ 236.00



# Commonly Missed Debts

- Debts of others that client cosigned
- Deficiencies from automobile repossession
- Rent-to-own contract damages
- Lease termination damages
- Student loans
- Public benefits overpayments
- Payday loans
- Utility bills
- Loans on retirement funds
- Campground and timeshare contracts
- Parking tickets and traffic fines
- Criminal restitution debts

# Nonpriority Unsecured Claims

4.3

Corvus DebtBuyers Capital Corp.

Nonpriority Creditor's Name

257 South Main St., Suite 400

Number Street

Greenville

SC

29615

City

State

ZIP Code

**Who incurred the debt?** Check one.

☒ Debtor 1 only

☐ Debtor 2 only

☐ Debtor 1 and Debtor 2 only

☐ At least one of the debtors and another

☐ Check if this claim is for a community debt

**Is the claim subject to offset?**

☒ No

☐ Yes

Last 4 digits of account number \_\_\_\_\_

\$ 5,242.19

When was the debt incurred? 2010

**As of the date you file, the claim is:** Check all that apply.

☐ Contingent

☐ Unliquidated

☒ Disputed

**Type of NONPRIORITY unsecured claim:**

☐ Student loans

☐ Obligations arising out of a separation agreement or divorce that you did not report as priority claims

☐ Debts to pension or profit-sharing plans, and other similar debts

☒ Other. Specify Credit card purchases (First Express Card)

# Additional Creditors

5. Use this page only if you have others to be notified about your bankruptcy, for a debt that you already listed in Parts 1 or 2. For example, if a collection agency is trying to collect from you for a debt you owe to someone else, list the original creditor in Parts 1 or 2, then list the collection agency here. Similarly, if you have more than one creditor for any of the debts that you listed in Parts 1 or 2, list the additional creditors here. If you do not have additional persons to be notified for any debts in Parts 1 or 2, do not fill out or submit this page.

Debt Collectors Inc.

Name

435 Dunning St.

Number

Street

Syracuse

NY

13202

City

State

ZIP Code

First Express Card

Name

P.O. Box 34760

Number

Street

Salt Lake City

84101

City

State

ZIP Code

On which entry in Part 1 or Part 2 did you list the original creditor?

Line 4.2 of (Check one): ☐ Part 1: Creditors with Priority Unsecured Claims

☒ Part 2: Creditors with Nonpriority Unsecured Claims

Last 4 digits of account number 3 8 9 7

On which entry in Part 1 or Part 2 did you list the original creditor?

Line 4.3 of (Check one): ☐ Part 1: Creditors with Priority Unsecured Claims

☒ Part 2: Creditors with Nonpriority Unsecured  
Claims

Last 4 digits of account number 6 6 6 4

# **Schedule G – Executory Contracts and Unexpired Leases**

---

# Executory Contracts and Unexpired Leases

Person or company with whom you have the contract or lease

State what the contract or lease is for

2.1

AS & S Communications

Name

P.O. Box 4466

Cell phone and internet service contract

Number Street

Lone Tree

CO

80124

City State ZIP Code

2.2

Blackstone Rental Properties, Inc.

Name

444 Commerce Way

Oral month-to-month lease for debtor's residence; monthly payments of \$950.00 (debtor's share is \$475.00).

Number Street

Lexington

KY

40506

City State ZIP Code

2.3

U-Store Rental

Name

1576 Main St.

Lease of self-service storage facility; monthly payments of \$30.00.

Number Street

Frankfort

KY

40601

City State ZIP Code

# **Schedule H – Codebtors**

---



# Codebtors

3. In Column 1, list all of your codebtors. Do not include your spouse as a codebtor if your spouse is filing with you. List the person shown in line 2 again as a codebtor only if that person is a guarantor or cosigner. Make sure you have listed the creditor on *Schedule D* (Official Form 106D), *Schedule E/F* (Official Form 106E/F), or *Schedule G* (Official Form 106G). Use *Schedule D*, *Schedule E/F*, or *Schedule G* to fill out Column 2.

Column 1: Your codebtor

Column 2: The creditor to whom you owe the debt

Check all schedules that apply:

3.1

John Medrano

Name

76 Ophelia Ln.

Number Street

Lafayette LA 70506

City State ZIP Code

☐ Schedule D, line \_\_\_\_\_

☒ Schedule E/F, line 2.1

☐ Schedule G, line \_\_\_\_\_

3.2

Katherine Reyes

Name

485 Mulberry Ave.

Number Street

Louisville KY 40214

City State ZIP Code

☒ Schedule D, line 2.2

☐ Schedule E/F, line \_\_\_\_\_

☒ Schedule G, line 2.2

# **Schedule I – Income**

---

# Other Income Regularly Received

## 8. List all other income regularly received:

### 8a. Net income from rental property and from operating a business, profession, or farm

Attach a statement for each property and business showing gross receipts, ordinary and necessary business expenses, and the total monthly net income.

8a. \$ 0.00

### 8b. Interest and dividends

8b. \$ 0.00

### 8c. Family support payments that you, a non-filing spouse, or a dependent regularly receive

Include alimony, spousal support, child support, maintenance, divorce settlement, and property settlement.

8c. \$ 150.00

### 8d. Unemployment compensation

8d. \$ 0.00

### 8e. Social Security

8e. \$ 0.00

### 8f. Other government assistance that you regularly receive

Include cash assistance and the value (if known) of any non-cash assistance that you receive, such as food stamps (benefits under the Supplemental Nutrition Assistance Program) or housing subsidies.

\$ 626.00

Specify: SNAP benefits (\$241); Child care assistance (\$385)

8f.

### 8g. Pension or retirement income

8g. \$ 0.00

### 8h. Other monthly income. Specify:

8h. + \$ 0.00

## 9. Add all other income. Add lines 8a + 8b + 8c + 8d + 8e + 8f + 8g + 8h.

9. \$ 776.00

## 10. Calculate monthly income. Add line 7 + line 9.

Add the entries in line 10 for Debtor 1 and Debtor 2 or non-filing spouse.

10. \$ 2,007.32

+

# Amended Filing/Supplement

Check if this is:

- ☐ An amended filing
- ☐ A supplement showing post-petition chapter 13 income as of the following date:

\_\_\_\_\_  
MM / DD / YYYY

# **Schedule J – Expenses**

---

# Dependents

## 2. Do you have dependents?

Do not list Debtor 1 and Debtor 2.

Do not state the dependents' names.

☐ No

☒ Yes. Fill out this information for each dependent.....

**Dependent's relationship to Debtor 1 or Debtor 2**

**Dependent's age**

**Does dependent live with you?**

Daughter

9

☐ No

☒ Yes

Son

7

☐ No

☒ Yes

☐ No

☐ Yes

# Expenses

7. Food and housekeeping supplies	7.	\$	375.00
8. Childcare and children's education costs	8.	\$	575.00
9. Clothing, laundry, and dry cleaning	9.	\$	65.00
10. Personal care products and services	10.	\$	20.00
11. Medical and dental expenses	11.	\$	45.00
12. <b>Transportation.</b> Include gas, maintenance, bus or train fare. Do not include car payments.	12.	\$	100.00
13. <b>Entertainment, clubs, recreation, newspapers, magazines, and books</b>	13.	\$	25.00
14. <b>Charitable contributions and religious donations</b>	14.	\$	15.00
15. <b>Insurance.</b> Do not include insurance deducted from your pay or included in lines 4 or 20.			
15a. Life insurance	15a.	\$	0.00
15b. Health insurance	15b.	\$	81.00
15c. Vehicle insurance	15c.	\$	78.00
15d. Other insurance. Specify: _____	15d.	\$	0.00

# Statement of Financial Affairs

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# Other Income

5. **Did you receive any other income during this year or the two previous calendar years?**

Include income regardless of whether that income is taxable. Examples of *other income* are alim and other public benefit payments; pensions; rental income; interest; dividends; money collected winnings. If you are filing a joint case and you have income that you received together, list it only

List each source and the gross income from each source separately. Do not include income that

☐ No

☒ Yes. Fill in the details.

Debtor 1		
	Sources of income Describe below.	Gross income from each source (before deductions and exclusions)
From January 1 of current year until the date you filed for bankruptcy:	SNAP benefits	\$ 2,651.00
	Childcare assistance	\$ 4,235.00
	Child support	\$ 1,650.00
For last calendar year: (January 1 to December 31, <u>2014</u> ) YYYY	SNAP benefits	\$ 2,432.00
	Childcare assistance	\$ 3,845.00
	Child support	\$ 1,500.00
For the calendar year before that: (January 1 to December 31, <u>2013</u> ) YYYY	SNAP benefits	\$ 2,834.00
	TANF	\$ 1,692.00
	Childcare assistance	\$ 2,117.00

# Payments Before Bankruptcy

☒ Yes. Debtor 1 or Debtor 2 or both have primarily consumer debts.

During the 90 days before you filed for bankruptcy, did you pay any creditor a total of \$600 or more?

☐ No. Go to line 7.

☒ Yes. List below each creditor to whom you paid a total of \$600 or more and the total amount you paid that creditor. Do not include payments for domestic support obligations, such as child support and alimony. Also, do not include payments to an attorney for this bankruptcy case.

	Dates of payment	Total amount paid	Amount you still owe	Was this payment for...
BuyHereNow Auto Sales	12/1;11/15	\$ 635.00	\$ 1,713.78	<input type="checkbox"/> Mortgage
Creditor's Name				<input type="checkbox"/> Car
234 Executive Park	11/1;10/15			<input type="checkbox"/> Credit card
Number Street				<input type="checkbox"/> Loan repayment
	10/1; 9/15			<input type="checkbox"/> Suppliers or vendors
				<input checked="" type="checkbox"/> Other Garnishment
Louisville KY 40203				
City State ZIP Code				

# Legal Actions

Part 4: Identify Legal Actions, Repossessions, and Foreclosures

9. Within 1 year before you filed for bankruptcy, were you a party in any lawsuit, court action, or administrative proceeding?

List all such matters, including personal injury cases, small claims actions, divorces, collection suits, paternity actions, support or custody modifications, and contract disputes.

- ☐ No
- ☒ Yes. Fill in the details.

	Nature of the case	Court or agency	Status of the case
Case title <u>BuyHereNow Auto Sales</u> <u>v. Reyes</u>	Debt collection	<u>Kentucky District Court</u> Court Name <u>422 W. Jefferson St</u> Number Street <u>Louisville KY 40202</u> City State ZIP Code	<input checked="" type="checkbox"/> Pending <input type="checkbox"/> On appeal <input type="checkbox"/> Concluded
Case number <u>14-27734-TS</u>			

# Other Transfers

18. Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?

Include both outright transfers and transfers made as security (such as the granting of a security interest or mortgage on your property).

Do not include gifts and transfers that you have already listed on this statement.

☐ No

☒ Yes. Fill in the details.

BuyHereNow Auto Sales

Person Who Received Transfer

234 Executive Park Park

Number Street

Louisville KY 40203

City State ZIP Code

Person's relationship to you \_\_\_\_\_

Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made
2006 Dodge Neon	Repossession and subsequent sale by creditor for unknown amount	Jan. 2014

# Statement of Intention

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# Statement of Intention

- In chapter 7 cases the debtor must prepare and file a statement of intention (Official Form 108) regarding property securing debts and leased personal property
- The statement must be filed and served on the trustee and all creditors named in the statement:
  - within 30 days after the petition date, or
  - on or before the date of the meeting of creditors, whichever is earlier
- The court may extend the deadline for cause

**11 U.S.C. § 521(a)(2); Bankruptcy Rule 1007(b)(2)**



# Statement of Intention

- Debtor must perform stated intention within 30 days after first date set for meeting of creditors
  - Failure to timely perform may result in termination of the automatic stay as to the personal property subject to the statement
- **Secured debt:** Retain or Surrender?
  - If retaining, debtor will:
    - Reaffirm the debt;
    - Redeem the property;
    - Exempt the property and avoid lien; or
    - “Other”: e.g., “retain and pay” (home mortgage, if current).
- **Leased personal property:** Assume the lease?
  - Creditor may condition assumption on curing any pre-petition default

11 U.S.C. §§ 362(h); 521(a)(2)(B); 521(a)(6)

# Statement of Intention

## Part 1: List Your Creditors Who Hold Secured Claims

1. For any creditors that you listed in Part 1 of *Schedule D: Creditors Who Hold Claims Secured by Property* (Official Form 106D), fill in the information below.

Identify the creditor and the property that is collateral	What do you intend to do with the property that secures a debt?	Did you claim the property as exempt on Schedule C?
Creditor's name: BuyHereNow Auto Sales, Inc. Description of property securing debt: \$635 garnished wages	<input type="checkbox"/> Surrender the property. <input type="checkbox"/> Retain the property and redeem it. <input type="checkbox"/> Retain the property and enter into a <i>Reaffirmation Agreement</i> . <input checked="" type="checkbox"/> Retain the property and [explain]: _____ avoid the lien	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes
Creditor's name: Jack's Good-Deal Auto Co. Description of property securing debt: Ford Focus ZX4	<input type="checkbox"/> Surrender the property. <input type="checkbox"/> Retain the property and redeem it. <input type="checkbox"/> Retain the property and enter into a <i>Reaffirmation Agreement</i> . <input checked="" type="checkbox"/> Retain the property and [explain]: _____ continue making payments	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes



**GETTING TO DISCHARGE**

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# **Document Requirements**

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# From Filing to Discharge

- Completing and amending schedules and required forms
- Representing the debtor at the meeting of creditors
- Complying with document production requirements
- Dealing with secured debt
- Satisfying the financial education course requirement
- Obtaining and enforcing the discharge



# File Outstanding Documents

- Initial required documents that were not filed with the petition must be filed within 14 days after the petition date
  - Use a checklist and calendar/tickler system
  - Send a letter to the debtor reminding of any additional information needed
  - Set an appointment to go over the final documents
- If additional time is needed, file a motion for extension of time – courts will often grant an additional 7 to 14 days for cause shown

**Bankruptcy Rule 1007(c)**



# Counseling Certification

- **Pre-bankruptcy counseling certification:** if not filed with the petition, it must be filed within 14 days
- **Deferral of counseling:** In rare case where debtor has requested deferral based on exigent circumstances, attorney must verify whether motion was granted or whether court will require a hearing:
  - If the request is granted, debtor must complete briefing within 30 days after the petition date
  - The court may, for cause, extend this period by giving the debtor an additional 15 days **11 U.S.C. § 109(h)(3)(B)**
  - The certification from an approved agency will need to be filed once the briefing has been completed



# Filing Fee Issues

- **Request for waiver:** Follow up to find out whether the motion was granted
  - Prepare debtor if hearing is required by the court
  - If waiver request is denied, the court will usually set a schedule for payment in installments
- **Request to pay in installments:** Follow up to make sure the debtor understands when payments are due and how they must be made:
  - Remind debtor that failure will result in dismissal of the case!
  - Most courts will not take personal checks or credit cards from the debtor – they require payment by cash, money order, or a cashier's check



# Amendments to Schedules

- Debtors often forget things or make mistakes in the original schedules
- Bankruptcy Rule 1009 provides that the debtor may amend the initial papers as a matter of course at any time before the case is closed
- Simply file the amended document verified by the debtor
- Additional \$30 filing fee amendment adding creditors (unless filing fee waived)



# Providing Tax Returns

- **Tax returns to trustee:** at least 7 days before the date first set for meeting of creditors, debtor must provide to the trustee a copy of most recent federal income tax return
  - return should be for tax year ending immediately before commencement of case and for which a return was filed
  - no need to provide tax return if debtor was not required under applicable law to file a return for most recent tax year (See IRS Form 9542)
  - debtor may give the trustee a written statement that such tax documentation does not exist
  - debtor is given option to provide copy of return or transcript of the return

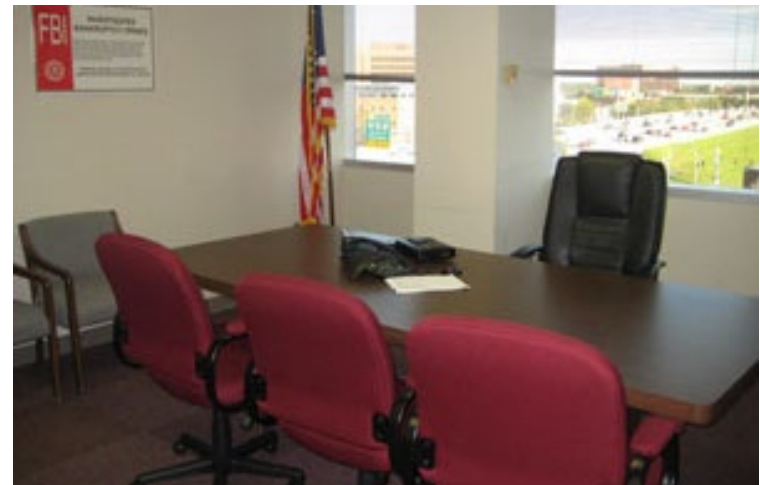
**11 U.S.C. § 521(e)(2)(A)(i); Bankruptcy Rule 4002(b)(3)**



# Meeting of Creditors

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# Meeting of Creditors





# Preparing for the Meeting

- Send the debtor a letter right away informing them of location, date and time of the meeting and reminding them of what they will need to bring
- Explain what to expect:
  - The trustee will ask questions under oath
  - Meeting is tape recorded
  - Trustee is checking to see if all the information filed is accurate and complete
- If joint case, both debtors must attend
- Usually no creditors attend the meeting



# Typical Questions at the Meeting

- “Have you read and do you understand the Bankruptcy Information Sheet?”
- “Here is a copy of your petition. Is that your signature on the petition?”
- “Did you disclose all of your assets and all of your debts?”
- “Have you transferred any property in the last 2 years?”
- “Are you working?”
- “Do you have the right to sue anyone? From a slip and fall in the grocery store, car accident, employment discrimination, etc.?”
- “How much do you think your house is worth? Based on what?”



# Document Production

Debtor must bring the following to the meeting:

- Picture ID (such as a driver's license or state-issued photo ID)
- Proof of debtor's Social Security number, or written statement that documentation does not exist
- Unless trustee or U. S. trustee instructs otherwise, statements for each of the debtor's depository and investment accounts (such as checking, savings, money market, mutual fund, and brokerage accounts) for time period that includes petition date
- Proof of current income such as most recent pay stub
- Documentation of any additional expenses claimed on Official Form 22 under the means test, when required by section 707(b)(2)(A) or (B)

**Bankruptcy Rule 4002(b)**



# Completing the Financial Management Course

- To get discharge debtor must submit proof of completion of “instructional course concerning personal financial management” - **11 U.S.C. § 727(a)(11) and § 1328(g)**
  - approved providers at [www.justice.gov/ust](http://www.justice.gov/ust)
  - debtor must take the course after the petition is filed
- Debtor must file Form 423 (certification of completion), unless course provider has filed notification with the court already – **Bankruptcy Rule 1007(b)(7)**
- Deadline to file certification or:
  - in chapter 7: 60 days after first scheduled meeting of creditors
  - in chapter 13: before final plan payment or motion for hardship discharge

# **Obtaining and Defending the Discharge**

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# Obtaining the Discharge

- Once debtor files all of required documents and attends meeting of creditors, getting discharge is pretty simple
- In chapter 7 case, it is usually entered shortly after deadline for creditors to object to entry of discharge, which is 60 days after first date set for meeting of creditors
- Court may hold a discharge hearing, but most elect not to
  - discharge hearing may be held if debtor indicates intent to reaffirm personal property
- Court ordinarily will close the case shortly after discharge is entered





# Discharge of Student Loans

- Usually, student loans are not dischargeable
- Debtor may be able to discharge student loan debts if can show undue hardship – courts weigh three factors:
  - do the student loans prevent the debtor from maintaining a “minimal” standard of living?
  - is the hardship likely to continue for a “significant portion” of the repayment period?
  - has debtor made a good-faith effort to repay the loans (and to maximize income and limit expenses)?
- Debtor must file an adversary proceeding to have the student loans discharged
  - No deadline for doing this, so a closed case may be reopened for this purpose



# Enforcing the Discharge

- Debtor should be advised to contact you (or seek legal advice) if there are any attempts to collect discharged debts
- Debtor should be advised about section 525 prohibition on discrimination by:
  - government agencies
  - private employers
  - student loan lenders
- Violators of the § 524(a) discharge injunction may be held in contempt of court
  - actual damages, attorney's fees and possibly punitive damages may be awarded
  - if case closed, motion to reopen should be filed to enforce the discharge (a reopening fee should not be charged in this instance)



# Clearing up Credit Reports

- Advise debtor to check credit reports 60-90 days after discharge to make sure creditors are properly reporting information about discharged debts as required by the Fair Credit Reporting Act (FCRA)
  - **15 U.S.C. §§ 1681-1681x**
- All debts discharged in the bankruptcy case should show a zero balance and be noted as having been included in the bankruptcy
- Debtor may request reports at [www.annualcreditreport.com](http://www.annualcreditreport.com) (one free report per year)
- If incorrect information is shown, debtor should notify both furnishers (creditors) and credit bureaus of the errors
  - If the error is not corrected, debtor may have a claim under the Fair Credit Reporting Act

# Bankruptcy Basics Video

- [http://www.flmb.uscourts.gov/videos/bk\\_basics\\_video.htm](http://www.flmb.uscourts.gov/videos/bk_basics_video.htm)
- English, Spanish and Creole.
- Need Windows Media Player and best viewed via Internet Explorer.



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## LATEST ANNOUNCEMENTS &amp; NEWS FROM THE COURT

**Updated Negative Notice List**

The Court has updated its Negative Notice List, posted on the Court's external website. The update addresses negative notice in adversary proceedings. Because negative notice is required in adversary proceedings, the term "permissive" was removed from the title of the list as well. The adversary se...

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