





AGENDA

- Counseling the Consumer Debtor and Preparing to File
- The Means Test
- Debt Relief Agencies
- Additional Documentation Requirements
- Exemptions
- The Automatic Stay
- Lien Avoidance
- Redemption and Reaffirmation
- Proofs of Claim
- Limits on Discharge for Repeat Filers
- Nondischargeable debts
- Secured Property
- Chapter Choice
- Debtor Education




1. COUNSELING THE CONSUMER DEBTOR AND PREPARING TO FILE

- The initial interview
- Filing requirements
- Timing of the filing
- Credit counseling
- Notice to creditors
- Filing fees
- Additional documentation requirements
- Preparing the filing



Initial Client Interview


- ❑ Establish trust with the client and impress the need for full disclosure
- ❑ Advise the client of available options after discussing the following considerations:
 - What are the types of debts causing problems for the client?
 - How and when were the debts incurred?
 - Does the client have significant nonexempt assets?
 - How much available income does the client have that is not committed to necessary expenses?
 - How imminent are creditor collection actions?
 - What efforts has the client made to resolve secured debt problems through loss-mitigation options?
 - Does the client have non-bankruptcy defenses and counterclaims to creditor-collection actions?



Initial Client Interview


Discuss the pros and cons of filing bankruptcy with the client

- ❑ Advantages of Bankruptcy :
 - Discharge of most debts and an opportunity for a fresh start
 - Automatic stay of most creditor actions (including repossessions, garnishments, foreclosures, utility shut-offs and evictions)
 - Lien avoidance or modification of certain secured debts
 - Opportunity to repay some or all debts with affordable payments
 - Opportunity to assert claims and defenses to creditor claims
- ❑ Disadvantages of Bankruptcy
 - Possible loss of nonexempt property
 - Possible loss of secured collateral
 - Impact on credit rating
 - Concern over stigma and moral obligation to pay debts
 - Concern about possible discrimination based on bankruptcy filing



Factors Affecting the Timing of a Bankruptcy Case

- ❑ It may be advisable for the debtor to wait before filing bankruptcy if "judgment proof"
- ❑ The debtor may have had a prior discharge preventing a new discharge
- ❑ The debtor may have had a prior case dismissed, barring refiling or limiting the automatic stay
- ❑ Filing may be delayed for reasons related to the dischargeability of certain debts, such as credit card and tax debts
- ❑ Immediate filing may be needed in order to invoke the automatic stay to stop a foreclosure sale or wage attachment
- ❑ Certain transfers occurring within 90 days of the bankruptcy filing ("preferences"), or if occurring within one or two years of the filing, may be avoided by the trustee or possibly the debtor
- ❑ The timing of the bankruptcy may affect exemptions that the debtor is entitled to claim based on the location of the debtor's domicile, or the commission of certain fraudulent transfers or bad acts



Filing and Document Production Requirements

To initiate a voluntary bankruptcy case, the debtor must file:

- Voluntary Petition (Official Form 1)
- Counseling certificate or waiver request
- Mailing matrix listing names and addresses for all creditors (courts generally permit this to be filed within 24 – 48 hours of filing petition)
- If the filing fee is not paid in full, an application to pay fee in installments (Official Form 3A) or for fee waiver in chapter 7 (Official Form 3B)



Credit Counseling

- Individual debtor must receive a “briefing” from an approved credit counseling agency **within 180 days** of filing - §109(h)
- Debtor must file with petition - §521(b) :
 - certificate from approved agency, and
 - copy of debt repayment plan, “if developed”
- May be an individual or group briefing either in-person, via telephone or Internet



Credit Counseling

- The court clerk is required to maintain a list of all approved counseling agencies (also available on U.S. Trustee’s website)
- Counseling must be offered by approved agencies without regard to ability to pay
 - No formal guidance issued yet from the U.S. Trustee
- An approved agency that willfully or negligently fails to comply with any requirement in the Code may be sued for actual damages, costs and attorney’s fees - §111(g)(2)



Waiver of Counseling

- ❑ Waiver motion may be granted if debtor is
 - disabled,
 - incapacitated, or
 - on active military duty in combat zone
- ❑ Narrow definitions:
 - 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"



Deferral of Counseling

- ❑ Voluntary Petition (Official Form 1) contains a box that the debtor may check if requesting a "waiver" based on "**exigent circumstances**"
- ❑ To be eligible, the debtor must file a "certification:"
 - Describing the exigent circumstances that merit a waiver; and
 - Stating that the debtor requested counseling from an approved agency, but was unable to obtain services during the five-day period beginning on the date that the debtor made the request



Deferral of Counseling (cont.)

- ❑ Granting of exigent-circumstances waiver provides only deferral as debtor must still obtain counseling within **30 days** of the petition date
- ❑ Court may, for cause, extend this period by an additional 15 days



Centralizing Notice: Notices From The Debtor
§342(c)

- ❑ Notices “required by this title” must be sent to the address supplied by creditor:
 - In at least two communications containing a “correspondence” address
 - Containing the debtor’s current account number
 - Within 90 days before filing (or the 90-day period before any such communication was prohibited)
- ❑ A notice adding a creditor must contain full tax ID



Centralizing Notice: Notices From The Court
§342(e) and (f)

- ❑ The creditor can file and serve the debtor with a notice of address to be used in a particular case (Ch. 7 or 13 individual debtor only)
- ❑ An entity may file with *any* bankruptcy court a “system-wide” notice of address, to be used by *all* (or specified) courts for notices in chapter 7 and 13 cases in those courts



Effect of Improper Notice
§342(g)

- ❑ Any noncompliant notice is not effective until “brought to the attention of” the creditor
- ❑ A creditor who designates an entity to be responsible for the receipt of bankruptcy notices and who establishes *reasonable procedures* for delivering notices to that entity is not “on notice” of a bankruptcy until such receipt



Effect of Improper Notice (cont.)

A creditor who violates the stay is not liable for a *monetary penalty* unless the act occurred after *effective* notice



Filing Fees/Costs

- The chapter 7 filing fee is now \$299 (\$274 for chapter 13)
- \$100 for credit counseling and education
- Increase in attorney fees
- New pressures on *pro bono* programs



Filing Fee Waivers

- Chapter 7 filing fees may be waived –
 - 28 U.S.C. §1930(f)(1)
- The debtor's income must be below 150% of the poverty line, and
- The debtor must be unable to pay the filing fee in installments ("totality of circumstances")
 - One court has used IRS guidelines as a "starting point" to determine if expenses are reasonable



Filing Fee Waivers (cont.)

- Application Form B3B may be filed:
 - at initial filing
 - after an installment request (for balance), or
 - after a conversion from chapter 13 to 7 (for balance)
- Payment of attorney's fees does not preclude the waiver request



Documentation Requirements

If Not Filed With The Petition, The Debtor Must File Within 15 Days Of Petition, Unless The Court Orders Otherwise:

- Summary of Schedules, Statistical Summary of Certain Liabilities, Schedules A through J, and an Unsworn Declaration under Penalty of Perjury (Official Form 6);
- Statement of Financial Affairs (Official Form 7)
- Statement of Intention (Official Form 8) - a copy shall also be served on the trustee and the creditors named in the statement
- If the debtor has primarily consumer debts, a Statement of Current Monthly Income and Means Test Calculation in chapter 7 cases (Official Form B22A) or a Statement of Current Monthly Income and Disposable Income Calculation in chapter 13 cases (Official Form B22C)
- Statement of Social Security Number (Official Form 21)
- Debtor's plan in a chapter 13 case (check local rules on whether the required form must be used)



Additional documents due within 15 days of the petition


- Certificate by attorney that §342(b)(1) notice was provided to the debtor (satisfied by completing Exhibit B on Petition)
- Copies of "payment advices" received by the debtor within 60 days of petition from employer (if none received, the debtor should file a statement indicating reason)
 - All but the last four digits of the debtor's social security number on payment advices should be redacted
- Statement of "Monthly Net Income" and how it was calculated (satisfied by completing of Schedule J)
- Statement disclosing any increases in income or expenditures reasonably anticipated by the debtor in the 12 months after the petition is filed (satisfied by completing of Schedules I and J)
- Record of the debtor's interest in education IRA or qualified state tuition program (satisfied by listing such interests in Item 11 on Schedule B)



Tips on Preparing the Bankruptcy Schedules


All forms and schedules filed with the court must be:

- ❑ **COMPLETE**
 - full disclosure is required of all assets, liabilities and other financial information
 - when appropriate, list "not applicable" or "none" rather than leaving a blank
 - when in doubt, list it!
- ❑ **ACCURATE**
 - provide correct and adequate property descriptions
 - convey information as clearly as possible
 - supplement answers given with notes indicated by asterisks
- ❑ **CURRENT**
 - update all documents before filing
 - promptly make corrections through amendments




Gathering The Necessary Information

- ❑ Impress upon the client the need for full and accurate information
- ❑ Have the client fill out a detailed questionnaire before the interview
- ❑ Provide the client with a list of documents to bring to the interview
- ❑ Request that the client obtain a credit report or give authorization to request a report
- ❑ Conduct a PACER search for prior bankruptcy filings
- ❑ May need title search to determine liens on real property
- ❑ Review the petition and schedules carefully with the client at signing



Sources Of Valuation

- ❑ **Household goods and furnishings**
 - garage sales
 - classified ads
 - ebay sales
- ❑ **Real property**
 - appraisal or broker's price opinion (BPO)
 - tax assessment
 - purchase price if recent sale
 - Internet valuation services
- ❑ **Motor vehicles and mobile homes**
 - Kelley Blue Book: www.kbb.com
 - NADA Used Car Guide: www.nada.com
 - classified ads



Frequently Missed Information

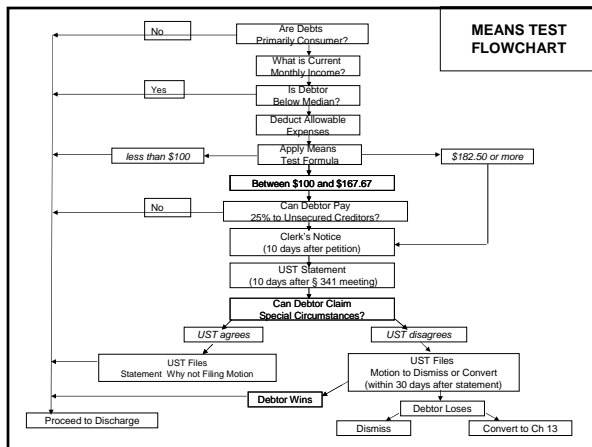
- **Property**
 - Tax refunds
 - Alimony or support arrearages
 - Security deposits
 - Deposits in dormant savings accounts
 - Pledged goods at pawnbrokers
 - Personal injury or other claims
 - Cash value in whole life insurance policies
 - Pension plans
- **Liabilities**
 - Debts of others that client cosigned
 - Deficiencies from auto repossessions
 - Rent-to-own contract damages
 - Lease termination damages
 - Student loans
 - Public benefit overpayments



2. THE MEANS TEST

- “Current Monthly Income” (CMI)
- Safe harbor for below-median-income debtors
- Exemption for certain disabled veterans
- Deductions for allowable expenses
- Means Test calculations
- Effect of the Means Test
- Dismissal for “Abuse”





What is Current Monthly Income?

- ❑ The monthly average of all income (taxable or not) received by the debtor during the six-month period ending on the last day of the calendar month before the bankruptcy was filed - defined in new §101(10A)
 - Example - if the case was filed on July 10, the current monthly income will be the total income received by the debtor for the period from January 1 through June 30 divided by six
- ❑ Does not include payments under the Social Security Act.
 - e.g., Supplemental Security Income (SSI) and other disability benefits; public assistance (TANF) and foster care benefits; unemployment benefits; and benefits to families under certain social services block grants

>>>



What is Current Monthly Income? (cont.)

- ❑ Does not include payments to victims of war crimes, crimes against humanity and acts of terrorism
- ❑ Includes amounts paid by others to the debtor on “regular basis” for household expenses of the debtor or the debtor's dependents
- ❑ If a married debtor files alone, the non-debtor spouse's income is not included as current monthly income



What is Current Monthly Income? (cont.)

- ❑ But non-debtor spouse's income is considered for the median “safe harbor” test unless the debtor files a statement under oath that separated



Is Debtor Below Median?

- ❑ The debtor is protected by a “second safe harbor,” and therefore not subject to the means test if:
 - The debtor’s current monthly income multiplied by 12 is equal to or less than the highest “median family income” for the debtor’s state based on the debtor’s “household” size
- ❑ Census Bureau median “family” income figures are used (or “one-earner” figures if the debtor is in a one-person household).



Is Debtor Below Median? (cont.)

- ❑ But §707(b)(7) applies the safe harbor test by referencing “household” size
 - The Census Bureau defines a household as consisting of all the people who occupy a housing unit regardless of their relationship
 - If a household has more than four members, the highest median income for a family of four is used, plus \$525 per month for each additional member



Is Debtor Below Median? (cont.)

- ❑ The Census Bureau currently calculates and reports state median income by family size only after each decennial census and not as part of the annual surveys



Is Debtor Below Median? (cont.)

- ❑ The definition of “median family income” in §707(k) provides that if no Census Bureau figures are available for the year in which a case is filed:
 - Use the most recent figures and adjust by the percentage change in the Consumer Price Index for All Urban Consumers “during the period of years occurring after such most recent year and before such current year”



Disabled Veterans Exemption

Safe harbor from the means test is applicable for debtors who are disabled veterans (as defined in 38 U.S.C. §3741(1)), if their “indebtedness occurred primarily” during a period when they were on active duty or “performing a homeland defense activity”



Deductions For Allowable Expenses

- ❑ IRS National Standards: Food, Clothing, And Other Items
- ❑ IRS Local Standards: Housing And Utilities
- ❑ IRS Local Standards: Transportation
 - Operating Expense : use IRS Standard – Allowable Living Expenses for Transportation: Operating Costs & Public Transportation Costs (given as “no car”, “one car” and “two cars”)
 - Ownership Expense: use IRS Standard – Allowable Living Expenses for Transportation: Ownership Costs, First Car and Second Car (if any).
- ❑ Actual Expenses for IRS Categories of Other Necessary Expenses



Deductions for Allowable Expenses (cont.)

□ IRS list is non-exclusive and includes:

- Federal, State and Local Taxes
- Involuntary Payroll Deductions (retirement contributions, union dues, uniform costs, etc.)
- Life Insurance
- Health Care Expenses (not covered by insurance)
- Court-Ordered Payments (alimony, child support, etc.)
- Employment Education
- Internet Service, Cell Phone and similar expenses
- Child Care
- Expenses to Operate Business or Produce Income (e.g., accounting and legal fees)



Deductions for Allowable Expenses (cont.)

□ Additional Actual Expenses under 11 U.S.C. §707(B)

- Health Insurance, Disability Insurance and Health Savings Account Expenses
- Expenses to Maintain Safety from Domestic Violence
- Expenses for Care and Support of Elderly, Chronically Ill or Disabled Household Member or of Debtor's Immediate Family
- Additional Expenses over IRS Standard for Home Energy Costs
- Additional Food and Clothing Expense (up to 5% over IRS Standard)
- Chapter 13 Administrative Expenses (up to 10% of projected plan payments)
- Education Expenses for Dependent Children under 18 (not to exceed \$125 per month)
- Continued Charitable Contributions



Deductions for Allowable Expenses (cont.)

□ Payments On Account Of Secured Debts

calculated as follows:

- Total of all amounts "scheduled as contractually due" to secured creditors for the 60 months following date of the petition; plus
- Additional payments to secured creditors, such as adequate protection and cure payments, needed to be paid under the chapter 13 plan to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of debtor and debtor's dependents
- The total is then divided by 60 to determine the monthly expense

□ Actual Expenses for Payment of Priority Claims

- priority child support and alimony claims, etc.

□ Chapter 13 Administrative Expenses

- projected plan payment x current multiplier




Means Test Calculation

Step 1: Current Monthly Income


Step 2: Subtract Allowable Expenses

Step 3: Multiply net monthly amount by 60




Means Test Calculation (cont.)

- The debtor "flunks" the means test (presumption of abuse exists), if this amount exceeds:
 - \$6,000 or 25% of non-priority unsecured debt, whichever is greater; or
 - \$10,000
- No abuse if debtor's monthly income after expenses is **less than \$100/month** ($\$6,000 \div 60$)
- Abuse presumed if debtor's monthly income after expenses is **greater than \$166.67/month** ($\$10,000 \div 60$)
- If debtor's monthly income after expenses is between \$100 and \$166.67, there is no abuse if this amount times 60 is less than 25% of debtor's non-priority unsecured claims
 - Abuse is presumed if the debtor's income after expenses is \$100 and the debtor has non-priority unsecureds of \$24,000 or less
 - Abuse is presumed if the debtor's income after expenses is \$166.67 and the debtor has non-priority unsecureds of \$40,000 or less



Means Test Calculation (cont.)

Since the formula compares income after expenses with unsecured debts, debtors with higher amounts of unsecured debt are more likely to pass the means test and are permitted to obtain a chapter 7 discharge



Means Test: Example

A debtor with CMI of \$5,000, allowed expenses of \$4,890, and unsecured debts of \$20,000 would flunk the means test and abuse will be presumed:

CMI:	\$5,000
Minus Expenses	\$4,890
Equals	\$110
x 60	\$6,600

\$6,600 is greater than \$5,000 (25% of \$20,000)



Means Test: Example

The same debtor, even with \$50 more in monthly income after expenses, would pass the means test with a higher amount of unsecured debts (\$40,000):

CMI:	\$5,000
Minus Expenses	\$4,840
Equals	\$160
x 60	\$9,600

\$9,600 is less than \$10,000 (25% of \$40,000)



Dismissal for "Abuse"

- ❑ **Creditors** may file dismissal motions under:
 - The general **abuse** provisions in §707(b)(1), and the **means test** under §707(b)(2)
 - if the debtor's income is *above* the state **median family income**



Dismissal for “Abuse”

- ❑ “Substantial abuse” in former §707(b) has been replaced with simply “**abuse**”
 - No longer presumption in favor of granting discharge to the debtor
- ❑ If there is no presumption under the means test, the court is to consider:
 - whether the “debtor filed the petition in **bad faith**” or
 - “**totality of the circumstances** ... of [the] debtor’s financial situation demonstrates abuse”



Effect of the Means Test

Presumption of abuse under the means test - will many debtors be affected?

- ❑ Abuse under §707(b) still applies only to debtors with primarily consumer debts
- ❑ 75-85% of the debtors are below the state-median income and fall within the safe harbor from the means test
- ❑ Less than 10% of the debtors will fail the means test. Debtors failing the means test may be able to prove special circumstances.



3. DEBT-RELIEF AGENCIES

- ❑ Definitions
- ❑ Attorney vs. Debt-Relief Agency
- ❑ Requirements and Restrictions on Debt-Relief Agencies
- ❑ Attorney Certification & Liability



Definitions in Section 101

□ “(12A) ‘debt relief agency’ means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy-petition preparer under section 110, but does not include—

- (B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;”



Definitions in Section 101

□ “(3) ‘assisted person’ means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000;”

□ “(4A) ‘bankruptcy assistance’ means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;”



Attorney vs. Debt Relief Agency

- Legal services and *pro bono* programs that are nonprofit organizations are not “debt relief agencies”
- Attorneys arguably are not “debt relief agencies” when handling *pro bono* cases
- Legal services and *pro bono* debtor-assistance clinics that provide document preparation assistance free of charge are not “petition preparers”



Requirements and Restrictions for Debt Relief Agencies

- DRAs provide bankruptcy assistance to persons with primarily consumer debts and nonexempt assets <\$150K
- DRAs cannot make false, misleading statements
- Cannot advise debtors to incur more debt (**§526(a)(4)**)
- Must execute the written contract within five days of first providing bankruptcy assistance



Requirements and Restrictions for Debt Relief Agencies (cont.)

- DRAs must disclose costs and written notice of rights and obligations
- Must provide disclosures of the nature of the services.
- Disclose: You do not need an attorney to file, or you can get help from petition preparer
- Disclose: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code."



Requirements and Restrictions for Debt-Relief Agencies (cont.)

Sec. 528(b)(2): An advertisement, directed to the general public, indicating that the debt-relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure or inability to pay any consumer debt shall:


- (A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and
- (B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement



**Attorney Certification
§707(b)(4)(C)**


The signature of an attorney on a **petition, pleading, or written motion** shall constitute a certification that the attorney has—

- (i) performed a **reasonable investigation** into the circumstances that gave rise to the petition, pleading, or written motion; and (ii) determined that the petition, pleading, or written motion--
- (I) is well-grounded in fact; and (II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1)



**Attorney Certification
§707(b)(4)(D)**

The signature of an attorney on the petition shall constitute a certification that the attorney has **no knowledge after an inquiry** that the information in the schedules filed with such petition is incorrect



Attorney Certification (cont.)

American Bar Association Business Law Section report concerning attorney certification provisions in Section 707(b)(4).
For full 38-page report, see
www.abanet.org/genpractice/reasonableinquiry.pdf



Reasonable Investigation

On the “reasonable investigation” requirement, the report recommends:

- ❑ “Reasonable investigation” should be governed by case law interpreting “reasonable inquiry” as standard under Rule 9011.
- ❑ Section 707(b)(4) should be limited to the pre-filing conduct of attorneys.
- ❑ Attorneys should be able to rely on case law that allows time constraints to be taken into account.
- ❑ Reasonableness of the inquiry should not be analyzed with the benefit of hindsight.



Reasonable Investigation

- ❑ Attorneys should verify information supplied by the debtor if it can be accomplished with reasonable expenditure of time and expense and if, in the attorney’s professional judgment, the information provided by the client is inconsistent or contains other indications of inaccuracy.
- ❑ Attorneys should be able to rely on documents provided by third parties in the scope of their employment, including tax returns, credit and title reports, child support enforcement agency statements or information from the debtor’s pre-petition credit-counseling agency.



Limits of Attorney Liability

- ❑ No fees and costs can be assessed under new §707(b)(4)(A) against attorneys representing debtors below the median
- ❑ New attorney liability provisions in §707(b) do not apply in chapter 13 cases
- ❑ Legal services attorneys who provide representation free of charge are not “debt relief agencies”



4. OTHER DOCUMENTATION REQUIREMENTS

- Tax returns to trustee and creditors
- At the §341 meeting
- Consequences of failure to comply
- Filing post-petition tax returns with the court
- Tax returns in chapter 13
- Evidence of post-petition debtor education



Providing Tax Records To Trustee And Creditors Section 521(e)(2)(A)

The debtor must provide tax records to the trustee at least seven days before the first date set for the §341 meeting:

- A copy of the tax return (or transcript) for the most recent tax year ending immediately before the filing of the petition
- Such a return (or transcript) must also be provided to a creditor if the creditor makes a request at least 15 days before the first date set for the §341 meeting



At the §341 Meeting

Unless the trustee instructs otherwise, or a written statement that the documentation does not exist:

- A picture ID or other personal-identifying information that establishes debtor's identity
- Evidence of social-security number
- Evidence of current income such as the most recent payment advice
- All bank statements (checking, savings, and money-market accounts, mutual funds, brokerage accounts, etc.) for the time period that includes the filing date of the petition
- Documentation of monthly expenses claimed by the debtor when required by §707(b)(2)(A) or (B)



Consequences Of Failure To Comply With Document Requirements

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



Filing Tax Returns Or Transcripts With Court

Section 521(f)(1)-(3)

At the request of the court, trustee or a creditor, the debtor must file:

- A federal tax return (or transcript) for the tax year ending during the time the case is pending (at same time filed with IRS)
- Any Federal tax returns (or transcripts) that had not been filed with the IRS before commencement of the case but were subsequently filed for a tax year ending within 3 years of the petition (at same time filed with IRS)
- A copy of any amendments to such returns



Filing Of Tax Returns With Taxing Authorities In Chapter 13 Cases

Section 1308(a)

A debtor must file with the taxing authorities by the day before the first date set for the §341 meeting:

- Tax returns (state and Federal) are required to be filed for tax periods ending within four years of the chapter 13 petition
- If the returns are not filed by the deadline, the trustee may hold the §341 meeting open for a period of up to 120 days or, for a return that was not past due on the petition date, until the latest automatic extension date
- Section 1307(e) provides new grounds for dismissal or conversion of a chapter 13 case if the debtor does not file the returns as required by §1308



Judicial Conference “Interim Guidelines” on Privacy

To gain access to tax information filed with the court, the U.S. Trustee, panel trustee or creditor must file a motion stating:

- ❑ A description of the movant’s status in the case
- ❑ A description of the specific tax information sought
- ❑ A statement indicating information cannot be obtained from any other sources
- ❑ A statement showing a demonstrated need for tax information



AMERICAN
BANKRUPTCY
INSTITUTE

5. EXEMPTIONS

- ❑ Generally
- ❑ Which exemptions apply
- ❑ Homestead exemption limits
 - Limits on protection of exempt property
 - Debtor recovery of exempt property from trustee



AMERICAN
BANKRUPTCY
INSTITUTE

Exemptions

- ❑ The Bankruptcy Code permits property to be exempted from property of the estate.
- ❑ Property must be identified specifically
- ❑ A debtor may claim exemptions under state (and federal non-bankruptcy law) or under federal law, if the state is not opted out:
 - Federal exemptions listed in §522(d).
 - If the election is available in a joint case, spouses must make the same election.
 - If state law exemption is elected, the debtor may also exempt
 - Tenancy by entirety property, if exempt under state law; and
 - Retirement funds, if exempt from taxation



AMERICAN
BANKRUPTCY
INSTITUTE

Which Exemptions Apply? §522(b)(3)(A)

- State where the debtor domiciled for 730 days before filing
- If not in a single state, domicile for the longer portion of 180 days preceding the 730-day period
- Federal exemptions apply if the debtor is ineligible for other state's exemptions



Homestead Limitations §522(o), (p) and (q)

- Fraudulent conversions
- \$125,000 cap on interest acquired within 1215 days before filing of petition
- \$125,000 cap on homestead based on certain criminal and wrongful conduct
 - Any civil remedy under RICO
 - Any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another in preceding 5 years



Protection of Exempt Property:

- Is not liable for pre-petition debts subsequent to discharge, except:
 - Debts for taxes, domestic support obligations;
 - Debts secured by liens not avoided during the bankruptcy



Debtor May Exempt Property Recovered by the Trustee:

- If the debtor could have exempted the property under §522(b) and
 - The transfer was involuntary and the debtor did not conceal property; or
 - The debtor could have avoided transfer under §522(f)(1)(B) (non-purchase money security interest)



6. THE AUTOMATIC STAY

- Scope of the stay
- Exceptions to the stay
- After an *In Rem* order in a prior case
- If the debtor is not eligible to be a debtor or has been prohibited from refiling by court order
- Stay in landlord/tenant cases
- Duration of the Stay
- The Stay in cases of repeat filers
- Relief from the Stay
- Violations of the Stay



Scope Of The Stay

Upon filing a petition, a stay goes into effect that prohibits most efforts to collect debt or enforce liens. The stay is applicable to:

- Commencement or continuation of judicial or other proceedings to collect pre-petition claims
- Efforts to create, perfect or enforce liens on property of the estate or of the debtor, if relating to a pre-petition claim
- Efforts to take possession of or assume control of property of the estate
- Enforcement against the debtor or property of the estate of a pre-petition judgment
- Any act to collect pre-petition claim
- Set off of pre-petition debts



Exceptions To The Stay

Section 362(b) contains 27 exceptions to the stay, 10 of which were added by BAPCPA

- Criminal actions or proceedings
- Enforcement of domestic support obligations – property of the estate still protected in most instances
- Perfection of liens that relate back to a time prior to the filing of the petition
- Enforcement of police or regulatory powers – includes enforcement of judgments, except money judgments
- Certain tax determinations and proceedings – audits, notices of deficiency, assessments



The Stay After *In Rem* Order In Prior Case

§§362(b)(20) and 362(d)(4)

Automatic stay is not applicable as to enforcement of real property lien if:

- In rem* order relating to property has been entered in a prior case, and
- if the order is properly recorded, the stay does not apply as to the property in later cases filed within two years after date of the *in rem* order



In Rem Order May Be Granted If Creditor Proves:

- filing of petition was part of a scheme to hinder, delay, and defraud creditors **and**
- the scheme involved either:
 - a transfer of full or partial interests in property without the approval of a secured creditor or the bankruptcy court, or
 - multiple bankruptcy filings involving the same property



- ❑ Courts may consider the “intent to hinder, delay or defraud a creditor” language found in §727(a)(2), but note conjunction “and”
- ❑ Unauthorized transfer of property or multiple bankruptcy filings must be part of a scheme
 - No *in rem* order if there is an innocent transfer of property, such as court ordered transfer of property to a debtor in a domestic court proceeding



- ❑ “Multiple” means *in rem* order should not be entered in the first case involving the property



- ❑ Section 362(d)(4) does not limit the scope of the *in rem* order to a secured creditor who moved for the order or the debtor in whose case it was entered
 - The court should be free to place limitations on the order’s scope
- ❑ The debtor in a later case may move for relief from the *in rem* order based on changed circumstances or another good cause



Filing In Violation of §109(g) or Prior Court Order

§362(b)(21)

The stay is not applicable as to enforcement of a real property lien if the debtor files a case:

- when the debtor is ineligible to be a debtor under §109(g), or
- is in violation of a prior court order prohibiting the debtor from being a debtor in another case



- In joint case, provision applies only if both debtors are ineligible under §109(g)
- co-debtor stay under §1301 still applies
- impact on current practice may be limited because not often clear that §109(g) applicable



Automatic Stay Exceptions Related To Residential Tenant Evictions

§362(b)(22) - Pre-petition Judgment for Possession

- Residential property eviction against a debtor is not stayed by §362(a)(3) if the lessor obtained judgment for possession prior to petition
- Under §362(l)(1), the debtor may obtain a stay for the period of 30 days if the debtor certifies on petition that:
 - The debtor has the right to cure a monetary default under applicable non-bankruptcy law, and
 - The debtor, or adult dependent of the debtor, has deposited with the clerk all rent due 30 days after the petition



- ❑ The debtor may obtain a stay beyond 30 days if he/she files, within 30 days after petition, certification under §362(l)(2) that the monetary default has been completely cured
- ❑ If the lessor files an objection to the debtor's certifications, the court shall hold a hearing within 10 days to determine if the certifications are true
- ❑ If no certifications are filed and the debtor notes judgment on petition, the clerk must "immediately" serve on the debtor and lessor a certified copy of the docket indicating the applicability of the stay exception



Illegal Use of Controlled Substances or Endangerment to Property

§362(b)(23)

Exception from stay under §362(a)(3) if a lessor files and serves on the debtor certification under penalty of perjury that:

- ❑ Eviction based on illegal use of controlled substances or endangerment to the property has been commenced against the debtor, or
- ❑ Debtor has, within 30 days before certification, either endangered the property or illegally used or allowed to be used controlled substances at the property



- ❑ §362(m) gives the debtor 15 days to file and serve on the lessor an objection to truth or legal sufficiency of the lessor's certification
- ❑ Hearing on debtor's objection must be held within 10 days of the filing of the objection
- ❑ The debtor may demonstrate a situation that gave rise to the lessor's certification either did not exist or has been remedied
- ❑ Provision does not state when the cure must occur, so presumably the debtor may remedy alleged improper activity at any time prior to hearing



- ❑ If the debtor files an objection and the court grants it, the stay exception does not go into effect and the automatic stay under §362(a)(3) will continue to apply
- ❑ If there is no objection to the lessor's certification being filed, or if the court rules against the debtor:
 - The clerk must "immediately" serve on the lessor and debtor a certified copy of the docket indicating a failure to object or the court's order



Both New Stay Exceptions Limited To Proceedings Stayed Under §362(a)(3):

- ❑ Proceedings to obtain possession of the property of the estate or of property from the estate, or to exercise control over property of the estate
- ❑ If the lessor obtained judgment for possession that includes money judgment against a debtor for back rent owed or property damages, the lessor must still seek relief from stay under §362(a)(6) to enforce a money judgment against the debtor
- ❑ Stay under §362(a)(1) also still applies barring recovery of pre-petition claim against a debtor, including further proceedings necessary to enforce a judgment for possession



Duration Of The Stay

- ❑ Property of the estate – until no longer property of the estate; e.g., exemption or abandonment.
- ❑ Any other act, until earliest of:
 - Case is closed;
 - Case is dismissed; or
 - Discharge is granted or denied



Prior Dismissed Case Within Year Of Filing

§362(c)(3)

Automatic stay expires 30 days after petition date in individual chapter 7, 11, or 13 case

Stay terminates only "with respect to the debtor"

Stay terminates only "with respect to any action taken"

Stay continues to apply in later case as to property of the estate (other than property securing debt of debtor)

Provision does not apply if a prior case was dismissed under §707(b) and a new case was filed under chapter other than chapter 7



AMERICAN
BANKRUPTCY
INSTITUTE

Co-Debtor Stay Still Applicable

New stay provisions do not amend §1301;

No mention of co-debtor stay in §362(c)(3) or (c)(4)

- Unless there is a compelling reason to file joint case, it may be advisable for one spouse of the debtor couple to file an individual case, especially if the chapter 13 case was filed to cure a default on a joint mortgage
- Does not prevent co-debtor stay from arising if prior dismissed case was a joint case and second case was filed by only one spouse



AMERICAN
BANKRUPTCY
INSTITUTE

Court May Extend Stay As To All Or Some Creditors, Subject To Conditions Court May Impose, If:

- Motion filed by party-in-interest before 30 day period expires
- Movant must demonstrate a case has been filed in good faith as to creditors to be stayed
- Debtor may need to rebut presumption case filed in bad faith



AMERICAN
BANKRUPTCY
INSTITUTE

Presumption Shall Exist That Case Not Filed In Good Faith If Following Circumstances Apply As To All Creditors:

- More than one prior case by the debtor under chapter 7, 11, or 13 was pending in the year before petition
- No substantial change in the debtor's financial or personal circumstances
- Not some other reason that case will be successfully concluded with a discharge or a confirmed plan that will be fully performed



Presumption (cont.)

Debtor failed in prior dismissed case to:

- File required documents without substantial excuse
 - Debtor's inadvertence or negligence is not such an excuse, but
 - negligence of the debtor's attorney can be a substantial excuse
- Provide adequate protection as ordered by the court; or
- comply with the terms of a **confirmed** plan




Presumption Shall Exist As To Creditor Who Sought Relief In Prior Case, If:

- such a request was still pending when the case was dismissed or
- was resolved by terminating, conditioning, or limiting the stay



**No Presumption Case Filed
In Bad Faith, If:**

- A prior case was dismissed because the debtor entered into a debt repayment plan - §362(i)
- No requirement that debt repayment plan be proposed or negotiated by an approved nonprofit budgeting and credit counseling agency
- No requirement that debt repayment plan be successfully completed




**Two or More Dismissed Cases Within
Year of Filing**

§362(c)(4)


Automatic stay does not go into effect upon the filing of any case

- Does not apply to a "case refiled under §707(b)"
 - Probably means stay limitation does not apply in a case filed under chapter 11 or 13 following prior chapter 7 dismissal under §707(b)
 - In counting whether two or more prior dismissed cases should also mean that any prior dismissed case within year filed under chapter 11, 12, or 13 following chapter 7 dismissal under §707(b) should not be considered
- Stay exception even as to property of debtor's estate



**Court May Impose Stay As To All Or Some
Creditors, Subject To Conditions Court May
Impose, If:**

- A motion is filed by a party in interest within 30 days after petition
- Movant must demonstrate a case has been filed in good faith as to the creditors to be stayed
- The debtor may need to rebut presumption case filed in bad faith based on circumstances similar to those for one prior dismissed case



Relief From The Stay

- Court may terminate, annul, modify or condition the stay
- Cause, including lack of adequate protection
 - Illustrative, not exhaustive
 - Bad faith has been held to be a cause for relief from automatic stay.
 - Adequate protection is illustrated in §361 and may consist of:
 - Periodic payments;
 - Additional or replacement liens;
 - Any other relief (other than an administrative expense claim) that would grant the creditor the indubitable equivalent of its lien; or
 - Insurance is often a component of adequate protection
- Lack of equity and property is not necessary for effective reorganization
- Burden of proof
 - Equity – burden is on the party requesting relief
 - All other issues – burden is on the party opposing relief



Damages For Violation Of Stay

- Violation must be willful – done intentionally with knowledge of the filing
- Authorizes award of actual damages, including attorneys' fees
- In “appropriate” circumstances, can include punitive damages; had been interpreted to require “egregious” violation
 - No punitive damages if the creditor acted in good faith belief that §362(h) was applicable.
 - May not be assessed if notice not in accordance with §342



7. LIEN AVOIDANCE

- Types of liens
- Formula
- Avoiding liens in aid of exemptions
- Procedure
- Avoiding liens on secured property
- Avoiding liens in chapter 13



Lien Avoidance Under §522(f)

Debtor may avoid “fixing of a lien” on interest of the debtor in property to the extent the lien impairs an exemption.

- ❑ Permits debtor to avoid a lien that impairs exemption that would have been available to the debtor but for the exemption.
- ❑ If the lien existed when the debtor acquired the property or was created contemporaneously with acquisition, it may not be avoided.



TYPES OF LIENS SUBJECT TO AVOIDANCE

- ❑ Judicial liens, except liens that secure domestic support obligations
 - Judicial lien is defined in §101(36) as one obtained by judgment, levy, sequestration, or other legal or equitable process or proceeding
- ❑ Non-possessory, non-purchase money, security interest in certain personal property
 - Listed in §522(f)(1)(B) and includes household goods and furnishings, wearing apparel, jewelry, tools of the trade and health aids.
 - If household goods, must be included in definition contained in §522(f)(4)(A) and not excluded by (B)
 - Anomalies in definition and exclusion
- ❑ If claim has been refinanced, lien may lose its purchase-money character
- ❑ Section 522(f)(3) limits avoidance power to \$5,000 in cases involving implements and tools of the trade when state law:
 - Provides unlimited exemption
 - Prohibits lien avoidance



Lien Avoidance Formula

- ❑ 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



Example

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

Homecomings First Deed of Trust	\$ 76,405.00
Concord Judicial Lien	\$ 16,305.00
Portfolio Judicial Lien	\$ 14,156.00
Homestead Exemption	\$ <u>8,000.00</u>
TOTAL	\$114,866.00

Portfolio Judicial Lien:

- Value of debtor's interest in property without lien is \$100,000.00.
- Total exceeds value of the debtor's interest by amount of \$14,866.00.
- Amount of portfolio's debt that is secured by its judicial lien (\$14,156.00) is less than \$14,866.00.
- Portfolio lien therefore impairs debtor's exemption and is void



Concord Judicial Lien

Homecomings First Deed of Trust	\$ 76,405.00
Concord Judicial Lien	\$ 16,305.00
Homestead Exemption	\$ <u>8,000.00</u>
TOTAL	\$100,710.00

- Value of debtor's interest in property without liens is \$100,000.00
- Total exceeds value of the debtor's interest by amount of \$710.00
- Debtor may avoid the judicial lien of Concord in the amount of \$710.00 and the lien remains in the amount of \$15,595.00



Lien Avoidance Under §522(h)

Debtor may also avoid liens in aid of exemptions --
§522(h)

- Property must be exemptible under §522(g)(1)
(transfer must have been involuntary)
- Transfer must be avoidable by trustee
- Trustee must not have attempted to avoid lien



Procedure For Lien Avoidance

- ❑ Initiated by motion
- ❑ No time limit for filing
 - May even be done on reopening of case, but may be subject to equitable defenses



Lien Avoidance Under §506(d)

- ❑ Provides that the lien is void to the extent that it secures a claim which is not an allowed secured claim, unless
 - Claim was disallowed only under §502(b)(5) or (e); or
 - Claim is not allowed secured claim due only to failure to file
- ❑ Does not permit strip-off (or stripdown) of secured claims in chapter 7 proceedings



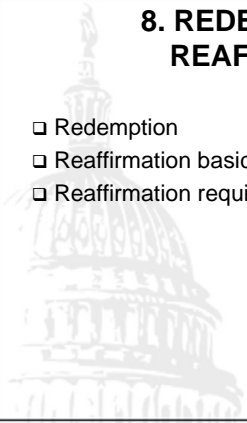

Lien Avoidance In Chapter 13

- ❑ Generally, claims secured solely by security interest in real property that serves as the debtor's residence are not subject to bifurcation
- ❑ Exception: Junior mortgages that are totally unsecured because the value of the real property is exceeded by senior liens



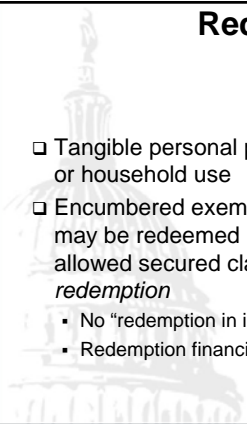

8. REDEMPTION AND REAFFIRMATION

- Redemption
- Reaffirmation basics
- Reaffirmation requirements



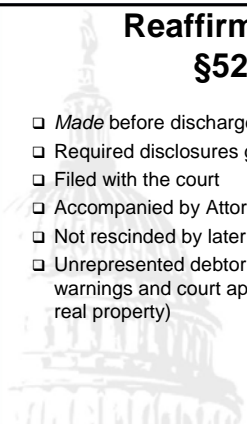

Redemption
§722

- Tangible personal property for personal, family or household use
- Encumbered exempt or abandoned property may be redeemed by paying the amount of the allowed secured claim *in full at the time of redemption*
 - No "redemption in installments"
 - Redemption financing available



Reaffirmation Basics:
§524(c) & (d)

- Made before discharge
- Required disclosures given
- Filed with the court
- Accompanied by Attorney Declaration
- Not rescinded by later of discharge or 60 days after filing
- Unrepresented debtor must attend hearing and receive warnings and court approval of agreement (exception for real property)



Reaffirmation: Beyond the Basics

Significant additional requirements after BAPCPA:
§524(k)

- Detailed financial disclosures
- Agreement form specified
- Attorney certification
- Debtor's statement in support
- Motion for court approval
- Order



Reaffirmation: Beyond the Basics

Debtor attorney declaration (§524(k)(5)) that agreement is:

- knowing and voluntary,
- not an undue hardship on the debtor or debtor's dependents or, if hardship is presumed, that it is the attorney's opinion that the debtor can make the payments;
- and that the debtor has been advised of the legal effect and consequences of the agreement and default thereof



Reaffirmation: Beyond the Basics

Presumption of undue hardship if the debtor does not have sufficient funds: §524(m)

Exemption for credit unions


Creditor giving disclosures or accepting payments in good faith is protected:

§524(l)


Form Reaffirmation Agreement:

http://www.uscourts.gov/rules/revised_forms.html

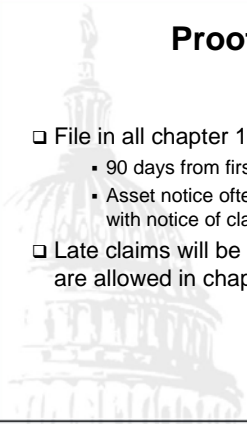




9. PROOFS OF CLAIM




AMERICAN
BANKRUPTCY
INSTITUTE

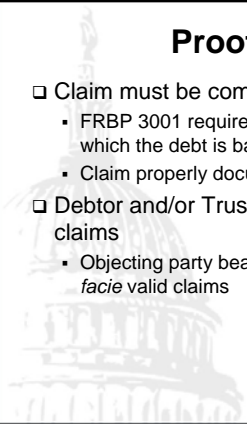


Proofs of Claim

- ❑ File in all chapter 13 and asset 7 cases
 - 90 days from first date set for 341 meeting
 - Asset notice often comes late in a chapter 7 case with notice of claim deadline
- ❑ Late claims will be disallowed in chapter 13 but are allowed in chapter 7




AMERICAN
BANKRUPTCY
INSTITUTE



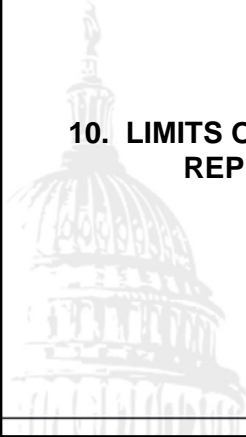
Proofs of Claim

- ❑ Claim must be complete and documented
 - FRBP 3001 requires attachment of writings upon which the debt is based
 - Claim properly documented is *prima facie* valid
- ❑ Debtor and/or Trustee can object to allowance of claims
 - Objecting party bears the burden of proof on *prima facie* valid claims



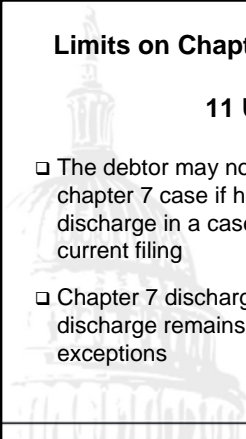
AMERICAN
BANKRUPTCY
INSTITUTE

10. LIMITS ON DISCHARGE FOR REPEAT FILERS



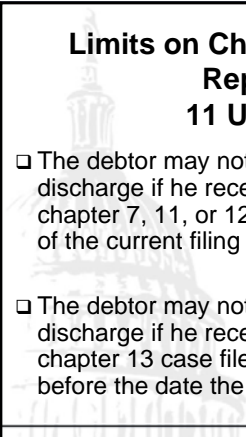
Limits on Chapter 7 Discharge: Repeat Filers 11 U.S.C. §727

- The debtor may not receive a discharge in a chapter 7 case if he received a chapter 7 or 11 discharge in a case filed *within eight years* of the current filing
- Chapter 7 discharge after a previous chapter 13 discharge remains at six years with some exceptions




Limits on Chapter 13 Discharge: Repeat Filers 11 U.S.C. §1328

- The debtor may not receive a chapter 13 discharge if he received a discharge in a chapter 7, 11, or 12 case filed *within four years* of the current filing
- The debtor may not receive a chapter 13 discharge if he received a discharge in a chapter 13 case filed within the two years before the date the current case was filed




Refile Anyway?

- ❑ Filing another bankruptcy within the specified times only limits the ability to obtain a discharge
- ❑ Re-filing will still give the debtor the protection of the automatic stay
- ❑ Debtors re-filing within the same year can still petition for imposition of the stay




11. NONDISCHARGEABLE DEBTS



Non-Dischargeable Debts §523(a)

- ❑ Debts *not* dischargeable in chapter 7:
 - Certain taxes
 - Unlisted debts
 - Most debts for domestic support obligations
 - Most fines and penalties owed to government agencies;
 - Most 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 incurred to pay taxes which cannot be discharged; and
 - Debts the debtor has formally agreed to repay by entering into a reaffirmation agreement.
- ❑ Most are now also not dischargeable in chapter 13: §1328



Non-Dischargeable Debts §523(a)

- Debts *potentially* not dischargeable in chapter 7:
 - Debts incurred through certain types of fraud;
 - Debts incurred while acting in a fiduciary capacity; and
 - Debts for willful and malicious injury to another or property of another
- Timely adversary proceeding must be filed: §523(c)(1)
- Most are now also not dischargeable in chapter 13: §1328



Dischargeability of Debts in Chapter 13

Elimination of chapter 13 "superdischarge" for:

- Debts incurred by fraud, as provided under §523(a)(2) and (a)(4)
- Presumption of fraud:
 - Luxury goods - \$500 within 90 days pre-petition
 - Cash advances - \$750 within 70 days pre-petition

Interim Rule 4007(c) provides that same time limits applicable in chapter 13 cases

- Complaint objecting to dischargeability in chapter 13 case must be filed
- No later than 60 days after the first date set for meeting of creditors



Dischargeability of Debts in Chapter 13 (cont.)

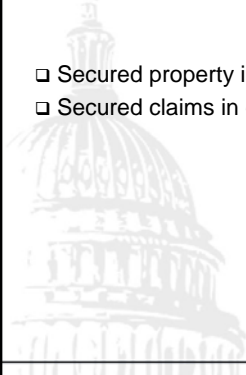
New §1328(a)(4) creates chapter 13 nondischargeability for:

- award of restitution or damages in a civil action against debtor
- based on willful or malicious injury by debtor
- that caused personal injury or death of an individual



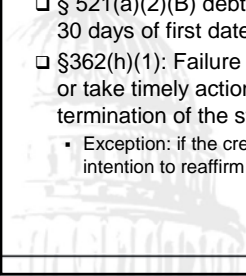
12. SECURED PROPERTY

- ❑ Secured property in chapter 7
- ❑ Secured claims in chapter 13



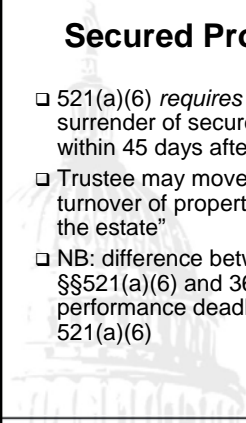
Secured Property – Chapter 7

- ❑ §521(a)(2)(A) requires a *statement of intention* with respect to “the retention or surrender of property” within 30 days of filing
- ❑ § 521(a)(2)(B) debtor *must perform intention* within 30 days of first date set for 341 meeting
- ❑ §362(h)(1): Failure to file a statement of intention or take timely action on the statement results in termination of the stay
 - Exception: if the creditor refuses the debtor’s stated intention to reaffirm on original terms §362(h)(1)(B)



Secured Property – Chapter 7

- ❑ 521(a)(6) *requires* reaffirmation, redemption or surrender of secured (pmsi) personal property within 45 days after the 341 meeting of creditors
- ❑ Trustee may move within 45-day period for turnover of property of “consequential value to the estate”
- ❑ NB: difference between 45-day period in §§521(a)(6) and 362(h); difference in performance deadlines in §§521(a)(2)(B) vs. 521(a)(6)



Secured Claims - Chapter 13

The Plan as proposed:

- May modify the rights of creditors holding secured personal property claims (e.g. interest rate): §1322(b)(2)
- May cure defaults within a reasonable time: §1322(b)(5)
- May not modify long term loans on real property: §1322(c)
- May not require a lien be released unless the claim is paid in full or until discharge: §1325(a)(5)



Secured Claims - Chapter 13

The Plan, to be confirmed:


- Must pay the "value" of secured claims plus interest at prime plus risk %: §1325(a)(5)(B)(ii) and *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004)
- Must pay allowed secured claims in equal monthly payments in an amount to adequately protect claimant during the plan: §1325(a)(5)(B)
- May not "strip down" a claim for a vehicle purchased for the debtor's personal use if purchased within 910 days of filing: §1325(a)(hanging)
- May not "strip down" a claim for other secured personal property "of value" purchased within one year of filing: §1325(a)(hanging)




Secured Claims - Chapter 13

- Co-debtor stay unchanged by BAPCPA: §1301
- Adequate protection payments for amounts due on secured claims after the petition date must commence by the 30th day after filing: §1326(a)(1)(C)

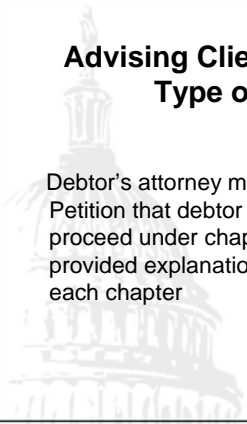




13. CHAPTER CHOICE




AMERICAN
BANKRUPTCY
INSTITUTE

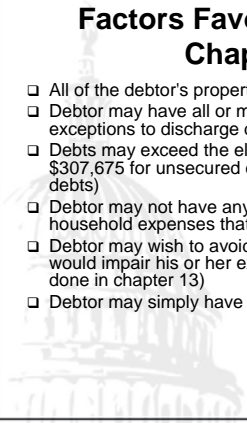


Advising Client on Choosing the Type of Bankruptcy

Debtor's attorney must certify on Exhibit B of Petition that debtor has been advised that may proceed under chapter 7, 11, 12 or 13, and been provided explanation of the relief available under each chapter




AMERICAN
BANKRUPTCY
INSTITUTE



Factors Favoring The Filing Of Chapter 7 Case

- All of the debtor's property may be claimed as fully exempt
- Debtor may have all or mostly unsecured debts and the exceptions to discharge do not apply
- Debts may exceed the eligibility limits for chapter 13 (currently \$307,675 for unsecured debts and \$922,975 for secured debts)
- 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"



AMERICAN
BANKRUPTCY
INSTITUTE

Factors Favoring The Filing Of Chapter 13 Case

- Chapter 13 may be the only way for a debtor to stop a home-foreclosure sale and cure a pre-petition default
- Debtor may 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 late charges and interest paid on unsecured debts, except if nonexempt property exists)
- Chapter 13 may protect a co-debtor on an obligation based on the 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 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



Bankruptcy Timeline ("routine" consumer chapter 7 case)

Within 180 days of petition filing date	Debtor receives credit counseling briefing from approved agency - §109(h)
Case initiated by filing Petition, counseling certificate (or waiver request), mailing matrix; Filing fee paid or waiver/ installment application filed	Order for relief entered; Panel trustee appointed; 341 meeting date set
15 days after petition filed	Balance of schedules, CMI and means test statement, payment advices (received within 60 days pre-petition) due - Rule 1007(c)
At least 7 days before first date set for 341 meeting <small>Note: copy to be provided to creditor if request made at least 15 days before first date set for 341 meeting</small>	Tax return or transcript to be provided to trustee for most recent tax year ending immediately before petition date for which a return was filed - Rule 4002(b)

Bankruptcy Timeline (cont.)

30 days (approximately) after petition date	Section 341 meeting held; Debtor to bring recent bank statement, picture ID, proof of current income, and proof of Social Security number - Rule 4002(b)
45 days after petition date	Deadline for filing all documents required by §521(a)(1), or motion for extension of time (up to 45 days), to avoid automatic case dismissal
Within 30 days after first date set for 341 meeting (45 days if PMSI on personal property)	Debtor must perform intention as provided on Statement of Intention - §521(a)(2) and (a)(6)
30 days after conclusion of 341 meeting	Deadline for objections to claim of exemptions - Rule 4003(b)

Bankruptcy Timeline (cont.)

45 days after first date set for 341 meeting	Deadline for filing certification of financial education course completion - Rule 1007(c)
60 days after first date set for 341 meeting	Deadline for objection to debtor's discharge - Rule 4004(a); Deadline for objections to dischargeability of particular debt - Rule 4007(c)
Three - four months (approximately) after petition filed	Report of no distribution filed by trustee; Discharge entered; Case closed

14. DEBTOR EDUCATION



Debtor Education

- To receive a discharge in chapter 7 or 13 case, the debtor must complete an approved instructional course concerning financial management
- Official Form 23 must be filed:
 - within **45 days** after the first date set for §341 meeting in chapter 7
 - no later than last payment under plan or filing of motion for hardship discharge in chapter 13



Debtor Education

- ❑ Course may be taken in-person, by phone or Internet
- ❑ If a fee is charged, the course must be provided without regard to ability to pay
- ❑ U.S. Trustee approval: course shall include written information and instruction on:
 - budget development,
 - money management,
 - wise use of credit, and
 - consumer information



AMERICAN
BANKRUPTCY
INSTITUTE
