

UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF WEST VIRGINIA

Bankruptcy Information and Forms for Debtors Filing Without an Attorney

In this Packet You Will Find:

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**UNREPRESENTED DEBTOR
PACKET**

Prepared for use by the United States Bankruptcy Court for the Northern District of West Virginia

Last Updated: October 2019

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INTRODUCTION

This Guide is Intended to Assist Unrepresented Debtors in Bankruptcy:

This guide is intended to assist you as an unrepresented person filing for bankruptcy. Its purpose is to provide a broad-base overview of the chapter 7 and chapter 13 bankruptcy process and provide answers to some questions that unrepresented debtors frequently ask the bankruptcy clerk's office.

You are responsible for knowing and following the procedures that govern bankruptcy processes. Although the staff of the clerk's office can provide you with general information concerning court rules, procedures, and what forms to file, the bankruptcy clerk's office staff cannot provide you with legal advice, interpret and apply court rules to your individual case, or otherwise participate in any action.

Are You Sure that You Cannot Afford an Attorney?

Self-representation carries certain responsibilities and risks. Often unrepresented debtors do not reap the full benefits of a bankruptcy filing because they do not know their pre-petition legal rights, what they are missing in bankruptcy process, and are uninformed regarding their post-discharge rights.

The primary reason unrepresented debtors tell bankruptcy clerk's office staff that they have chosen not to hire an attorney is because they cannot afford one. They say that if they could afford an attorney, they probably would not be filing for bankruptcy.

While an attorney filing a chapter 7 petition will request pre-payment of attorney's fees, many attorneys offer free initial consultations. Even if you elect not to hire an attorney to file a chapter 7 case, you should at least make an appointment to speak to the attorney regarding your case and possible payment terms. You may be surprised . . . bankruptcy attorneys are professionals that make a living representing individuals who cannot afford to pay their debts.

If you are contemplating filing a chapter 13 bankruptcy petition without an attorney, historically, your chances of being successful are probably less than 5%. Chapter 13 cases are generally more expensive and last longer than chapter 7 cases; however, in nearly all cases, the attorney is paid from funds that would otherwise be paid to your creditors and this District allows chapter 13 cases to be filed without the contemporaneous payment of the chapter 13 filing fee.

The point is, you don't know unless you ask. Make the appointment to speak with an attorney before you file and ensure that you are not being penny wise and pound foolish.

WHAT TO EXPECT IN CHAPTER 7

Chapter 7 relief is available to individuals. If you are contemplating filing a chapter 7 case for a business entity (not a sole proprietorship) you must hire an attorney to file the case. Business entities cannot be unrepresented in federal court.

In chapter 7, a private person, known as the "chapter 7 trustee" is appointed to take possession of, and liquidate non-exempt equity in your "bankruptcy estate," which generally consists of all your interests in property as of the day you file bankruptcy. State law determines what portion of your property you get to keep from your pre-petition creditors. In West Virginia, the general bankruptcy exemption statute is W. Va. Code § 38-10-4. If you have "property of the estate" that is not exempt and that is not fully encumbered by liens the chapter 7 trustee may liquidate that property and distribute the proceeds to your pre-petition creditors that file proofs of claim in your bankruptcy case. If all of your property is exempt or encumbered by liens, the chapter 7 trustee may designate your case as being a "no-asset case," with no distribution to creditors. If that happens, you may keep all the property you currently have, which is "abandoned" as property of the bankruptcy case when your chapter 7 case closes. The chapter 7 trustee typically makes an asset determination after examining you and your financial affairs at your meeting of creditors.

Role of the Bankruptcy Clerk's Office:

The bankruptcy clerk's office is responsible for the general administration of bankruptcy cases. Any documents filed with the court must be submitted to the Bankruptcy Clerk's Office, P.O. Box 70, Wheeling, WV. 26003. If you are unrepresented and anticipate having an active case, you may request electronic filing privileges after filing your case by calling 304-233-1655 for details.

Role of the Presiding Bankruptcy Judge:

The bankruptcy judge assigned to your case is responsible for making decisions that impact your case. In most "no-asset cases" the presiding bankruptcy judge will only sign your chapter 7 discharge order. Otherwise, the presiding bankruptcy judge is only typically involved if a legal controversy arises in your case that needs resolution, or when the Bankruptcy Code requires the presiding bankruptcy judge to make specific determinations, such as if you sign a reaffirmation agreement without an attorney.

Role of the Chapter 7 Trustee:

The chapter 7 trustee is charged with the liquidation of all non-exempt assets constituting the property of your bankruptcy estate for the benefit of your pre-petition creditors. Typically, after examining you and your financial affairs at your meeting of creditors, the chapter 7 trustee will evaluate whether such non-exempt assets exist. The below example demonstrates the general asset calculation performed by a chapter 7 trustee:

Example 1:

20,000	Vehicle Value
-17,000	Lien on Vehicle
-2,400	Exemption: W. Va. Code § 38-10-4(b)
-2,000	Estimated Costs of Sale
\$0	Non-Exempt Equity

Example 2:

20,000	Vehicle Value
-12,000	Lien on Vehicle
-2,400	Exemption § 38-10-4(b)
-2,000	Estimated Costs of Sale
\$3,600	Non-Exempt Equity

In the above examples, the chapter 7 trustee may elect not to administer the vehicle in Example 1 and elect to sell the vehicle in Example 2. If you own a vehicle that fits better under Example 2 and you want to keep it, you may want to: (1) ascertain if other exemptions are available to you (such as any “wild card” exemption), (2) to speak to the chapter 7 trustee about purchasing your non-exempt equity, or (3) think about filing a chapter 13 case.

Life of a “No-Asset” Chapter 7 Case:

The steps discussed below relate only to a typical chapter 7 case where the chapter 7 trustee declares that you have no non-exempt asset to administer for the benefit of your pre-bankruptcy petition creditors. Of course, every case is unique.

Up to 180 days before filing

- Make an appointment to speak with an attorney before choosing to proceed without one
- Obtain your most recent tax returns and bank statements and hold them for when the chapter 7 trustee requests to review them
- Take the required pre-petition credit counseling course and obtain a certificate
- Obtain a credit report to better list your creditors and their addresses
- Gather and complete required forms and schedules
 - Credit Counseling Certificate
 - Petition
 - Schedules A/B, C, D, E/F, G, H, I, and J. Complete Schedule J-2 only if it applies to you.
 - Summary of Schedules and Statistical Summary
 - Declaration of Schedules
 - Statement of Financial Affairs
 - Statement of Intention
 - Means Test Part 1, and Part 2 if applicable (Forms 122A and 122B)
 - Request to waive the filing fee, request to pay the filing fee in installments, or a cashier’s check or money order for the filing fee. Filing fees change from time to time. Please call the clerk’s office to ascertain the correct fee. 304-233-1655.
 - Statement of Social Security Number
 - Pay advices (pay stubs) or other evidence of payment received within 60-days of the petition date. If none, use the Local Form: Statement Under Penalty of Perjury Concerning Payment Advices
 - Mailing List
- Physically (“wet”) sign:
 - Pages 6 and 8 of the petition (Form 101)
 - Fee Waiver Application or Application to Pay the Fee in Installments, if applicable (Form 103A or 103B)
 - Declaration of Schedules (Form 106Dec)
 - Statement of Financial Affairs (Form 107)
 - Statement of Intention (Form 108)
 - Statement of Social Security Number (Form 121)
 - Means Test Part 1 (Form 122A-1)
 - Means Test Part 2, if applicable (Form 122B).

- Statement Under Penalty of Perjury Concerning Payment Advices, if applicable

Petition Day or the Next Business Day

- Mail your petition and associated documents to U.S. Bankruptcy Court, P.O. Box 70, Wheeling, WV 26003. Alternatively, hand deliver your petition and schedules to the Bankruptcy Clerk's Office, 1125 Chapline Street, Suite 314, Wheeling, WV 26003. Normal business hours are 8:30 to 12:00 and 1:00 to 5:00 M-F. By appointment, petitions and schedules may be hand delivered to U.S. Bankruptcy Court, 324 West Main Street, Clarksburg, WV 26302. For an appointment, call 304-233-1655. A bankruptcy case is not filed until it is time stamped by the Bankruptcy Clerk's Office or opened in the court's electronic filing system.
- The bankruptcy judge and the chapter 7 trustee are assigned to your case.
- The bankruptcy clerk's office issues a notice that you filed a chapter 7 bankruptcy petition to all the creditors that you provided on your mailing list. Among other things, you and your creditors are informed of the date, time, and place for your meeting of creditors.

14 Days After the Petition

- Last day to file any deficient schedule or document. The failure to timely file such documents may result in the administrative dismissal of the case. The bankruptcy clerk's office will inform you if you are missing any documents.

About 7 Days Before the Meeting of Creditors

- Have your recent tax returns and bank statements ready for your chapter 7 trustee. The chapter 7 trustee Office will inform you of any request for documentation. Generally, you should have them ready at least 7 days before the date set for your meeting of creditors, which is held anywhere between 21 and 40 days after your petition date. See below.

21-40 Days After the Petition Date

- Attend the § 341 meeting of creditors as instructed on your notice of case filing and deadlines. Bring any documents with you that the chapter 7 trustee has requested. Following your meeting of creditors the chapter 7 trustee will typically determine if non-exempt assets exist to distribute to your pre-petition creditors. If the chapter 7 trustee believes such assets exist, the chapter 7 trustee will inform the bankruptcy clerk's office and your creditors will be provided a notice of the time within which to file proofs of claim in your case.

Within 10 Days After Your Meeting of Creditors

- Within 10 days after the meeting of creditors, the United States Trustee's Office is to review your case and determine if it is an abuse of the Bankruptcy Code for you to file a chapter 7 petition. If the United States Trustee believes your chapter 7 case may be abusive, it may undertake court action to dismiss your case or have it converted to chapter 13.

Within 30 Days After Your Meeting of Creditors

- You must perform your intention as listed on your Statement of Intention within 30 days from the date your meeting of creditors was set.

Within 60 Days After Your Meeting of Creditors

- Creditors have 60 days following the date first set for your meeting of creditors to file a complaint to except a certain debts from your anticipated bankruptcy discharge, or to attempt to deny you a discharge in bankruptcy.
- You must have taken a course in financial management before you can obtain a chapter 7 discharge. You may take that course at any time after you file your bankruptcy petition. Mail the certificate of completion to the Bankruptcy Clerk's Office, P.O. Box 70, Wheeling, WV 26003.
- Any agreement you intended to make to reaffirm a debt must be made before entry of your discharge order.
- After providing evidence of your completion of the post-petition instructional course in financial management, and upon expiration of the deadline for creditors to file complaints to except certain debts from your bankruptcy discharge, or to deny you a discharge, you will receive your chapter 7 discharge order from the court. Retain this copy in a safe place for future reference. If the chapter 7 trustee previously deemed your bankruptcy case as having "no-assets," then your bankruptcy case is closed contemporaneous with your discharge order and you have finished the chapter 7 bankruptcy process.

Anytime between Case Opening and Case Closing

- Any time after the filing of the petition and before case closure, you, a creditor, or an interested party may request specific relief from the court. Each request for relief may be associated with different procedures. When necessary, the moving party or the clerk's office will inform you if action is required by you. After your case is closed, the court may only reopen it for "cause."

The Chapter 7 Meeting of Creditors

The chapter 7 trustee conducts the meeting of creditors. The bankruptcy clerk's office will inform you of the date, time and place of the meeting. If two debtors are filing together, (a "joint case"), both debtors must appear in person. In addition to any documents requested by the chapter 7 trustee, bring the following:

- Personal Identification: A picture identification issued by a governmental unit, or other personal identifying information that establishes your identity. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not a U.S. citizen), military ID, resident alien card, and an identity card issued by a national government authority.
- Evidence of your social security number or a written statement that the documentation does not exist. Acceptable forms of proof of social security number include, but are not limited to: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.
 - Financial Information:
 - Evidence of your current income, such as your most recent payment advice, retirement and/or social security statement, disability statement, unemployment statement, etc.

- Statements for each of your depository and investment accounts, including checking, savings, and money market accounts, non-retirement accounts, mutual funds, brokerage accounts and educational trust accounts for the time period that includes the date of the filing of the petition
- Petition and Schedules – If the petition and schedules have been filed electronically, you must bring the original petition and schedules bearing your actual signatures. If you mailed or hand delivered your petition and schedules to the bankruptcy clerk’s office, and don’t have a copy, inform your chapter 7 trustee of that fact at the meeting of creditors. The bankruptcy clerk’s office keeps your original signatures for at least 60 days after the petition date in case your original signatures are required.
- Other Documents – Prior to a § 341(a) meeting, the trustee may ask you to provide documents to corroborate the information contained in your petition, statements, and schedules.

WHAT TO EXPECT IN CHAPTER 13:

Chapter 13 provides a process for individuals with a regular source of income to pay off a portion of their debts over a period of time under the supervision of the court and a trustee. Only individuals may file a chapter 13 petition.

A plan specifying how each creditor will be paid is filed with the petition or within 14 days thereafter. The bankruptcy courts for the Northern and Southern Districts of West Virginia have mandatory model chapter 13 plans that are available on the courts' websites, and in this packet. Payments are made to the "chapter 13 trustee" who makes distribution to creditors according to the provisions of a confirmed plan. Depending on much you are able to pay while maintaining a standard of living, debts may be paid back either in whole or in part.

Role of the Bankruptcy Clerk's Office:

The bankruptcy clerk's office is responsible for the general administration of bankruptcy cases. Any documents filed with the court must be submitted to the Bankruptcy Clerk's Office, P.O. Box 70, Wheeling, WV. 26003. If you are unrepresented and anticipate having an active case, you may request electronic filing privileges after filing your case by calling 304-233-1655 for details.

Role of the Presiding Bankruptcy Judge:

The presiding Bankruptcy Judge is responsible for making decisions that impact your case. The presiding Bankruptcy Judge is only typically involved if a legal controversy arises in your case that needs resolution, or at any scheduled hearing on confirmation of your proposed chapter 13 plan. Work with your chapter 13 trustee to help avoid unnecessary court appearances.

Role of the Chapter 13 Trustee:

The chapter 13 trustee is responsible for administering most aspects of your chapter 13 case. The chapter 13 trustee conducts your meeting of creditors and determines whether to object to confirmation of your proposed chapter 13 plan based upon the chapter 13 trustee's application of the Bankruptcy Code and Rules. You make periodic payments to the chapter 13 trustee, which are then distributed to your creditors.

Life of a Chapter 13 Case:

The steps discussed below relate only to a typical chapter 13 case. Every case is different.

Up to 180 days before filing

- Make an appointment to speak with an attorney before electing to proceed without counsel
- Obtain your most recent tax returns and bank statements and hold them in case the chapter 13 trustee requests to review them.
- Take the required pre-petition credit counseling course and obtain a certificate
- Obtain a credit report to better list your creditors and their addresses
- Gather and complete required forms and schedules
 - Credit Counseling Certificate
 - Petition
 - Schedules A/B, C, D, E/F, G, H, I, J, and J-2 if applicable

- Summary of Schedules and Statistical Summary
- Declaration of Schedules
- Statement of Financial Affairs
- Means Test Part 1, and Part 2 if applicable (Forms 122C1 and 122C2)
- Request to pay the fee in installments, or a money order for the filing fee. Filing fees change from time to time. Please call the clerk's office before obtaining a money order to ascertain the correct fee. 304-233-1655.
- Statement of Social Security Number
- Pay advices (pay stubs) or other evidence of payment received within 60-days of the petition date
- Mailing List
- Proposed chapter 13 plan
- Physically ("wet") sign:
 - Pages 6 and 8 of the petition (Form 101)
 - Application to Pay the Fee in Installments, if applicable (Form 103A)
 - Declaration of Schedules (Form 106Dec)
 - Statement of Financial Affairs (Form 107)
 - Statement of Social Security Number (Form 121)
 - Means Test Part 1 (Form 122C1)
 - Means Test Part 2, if applicable (Form 122C2)
 - Declaration of no payment advices, if applicable (Local Form)
 - Proposed chapter 13 plan

Petition Day or the Next Business Day

- Mail your petition and associated documents to U.S. Bankruptcy Court, P.O. Box 70, Wheeling, WV 26003. Alternatively, hand deliver your petition and schedules at the Bankruptcy Clerk's Office, 1125 Chapline Street, Suite 314, Wheeling, WV 26003. Normal business hours are 8:30 to 12:00 and 1:00 to 5:00 M-F. By appointment, petitions and schedules may be dropped off at U.S. Bankruptcy Court, 324 West Main Street, Clarksburg, WV 26302. For an appointment, call 304-233-1655. A bankruptcy case is not filed until it is time stamped by the Bankruptcy Clerk's Office or opened in the court's electronic filing system.
- The bankruptcy judge and the chapter 13 trustee are assigned to your case.
- The bankruptcy clerk's office issues a notice that you filed a chapter 13 bankruptcy petition to all the creditors you provided on your mailing list. Among other things, you and your creditors are informed of the date, time, and place for your meeting of creditors and the deadline within which to file proofs of claim. A proof of claim is the creditor's assertion of how much you owe them as of the date you filed your bankruptcy petition.

14 Days After the Petition

- Last day to file any deficient schedules or documents. The failure to file such documents may result in the administrative dismissal of the case. The clerk's office will inform you if you are missing any documents.
- Your proposed chapter 13 plan is due, if not already filed.

21-50 Days After the Petition

- Your meeting of creditors is scheduled between 21 and 50 days after you filed your bankruptcy petition. Generally, the chapter 13 trustee will request your bank statement and tax returns in advance of the meeting. Have those documents ready for the chapter 13 trustee to review.

30 Days After the Petition

- Your first plan payment is due. 11 U.S.C. § 1326(a). Payment is generally by a wage withholding order that is prepared by the bankruptcy clerk's office based on the information you provided in your proposed plan. If you do not have a wage withholding order, make your proposed plan payment to the chapter 13 trustee in the amount required under your proposed plan.

14 Days After Your Meeting of Creditors

- Creditors may object to your proposed chapter 13 plan. Generally, objections are due from creditors within 14 days after your meeting of creditors. This deadline may be extended if you do not timely file a proposed chapter 13 plan, or if you later amend your proposed plan. The chapter 13 trustee may object to confirmation of your proposed chapter 13 plan at any time.

20-45 Days After Your Meeting of Creditors

- The first hearing on the confirmation of your proposed chapter 13 plan is set not earlier than 20 days and not later than 45 days after the date of the meeting of creditors. You may have multiple confirmation hearings. You will be informed of the date and time of each hearing by the bankruptcy clerk's office.

90 Days After Your Meeting of Creditors

- Proofs of claim by your creditors (non-governmental creditors) are due 90 days after the date first set for your meeting of creditors. You are informed of the proof of claim deadline because it is stated in the notice of commencement of case, meeting of creditors, and deadlines, which is issued nearly contemporaneously with the petition. In most cases, a creditor that does not file a proof of claim does not get paid in chapter 13 even if you included that creditor in your bankruptcy schedules.

180 Days After the Petition

- Governmental creditors have 180 days from the date you filed your bankruptcy petition to file a proof of claim in your case.

181 – 211 Days After the Petition

- Generally, if there are no pending issues that prohibit the confirmation of your proposed chapter 13 plan, your chapter 13 trustee may recommend confirmation of your plan to the court. If there are pending issues, those are set for resolution by the presiding bankruptcy judge.

3-5 Years From the Effective Date of Your Proposed Plan to End of Plan Payments

- A chapter 13 plan may not exceed 5 years in duration. You may choose to run the length of your plan from the date of the first plan payment (due 30 days after filing your petition) or from the date of confirmation. During this time, you make payments to the chapter 13 trustee, who then disburses the payments to the creditors that are provided for in your plan and confirmation order.

Notice of Completion of Plan

- After you complete all payments required by your confirmed plan, the chapter 13 trustee will file a notice of completion of plan and any wage withholding order is terminated.
- You must complete a post-petition course in financial management at any time after filing your petition and before discharge may be entered.
- Following the chapter 13 trustee's notice of completion of plan payments, the bankruptcy clerk's office will provide you with a form to ascertain whether you owe any domestic support obligations. Complete the form and mail it to the bankruptcy clerk's office.
- Once plan payments are complete, you have provided evidence that you have completed the instructional course in financial management, and you have certified that you do not owe any domestic support obligations, the presiding bankruptcy judge enters your chapter 13 discharge order.

90 Days After Notice of Completion of Plan

- The trustee will cancel any checks that your creditors failed to cash and submit those payments to the bankruptcy court as unclaimed funds.

90+ Days After Notice of Completion of Plan

- The chapter 13 trustee publishes a Final Report and Account detailing all payments made by the chapter 13 trustee's office to your creditors. In the Northern District of West Virginia, those reports are published on the court's webpage: <http://www.wvnb.uscourts.gov/tfr> After 30 days, your bankruptcy estate is presumed to be fully administered. Fed. R. Bankr. P. 5009(a).

30 Days After Filing of the Final Report and Account

- If there is no objection to the chapter 13 trustee's Final Report, and no pending matters, your bankruptcy case is closed. Note that the closing of your completed chapter 13 bankruptcy case does not occur until at least 120 days after your discharge is entered.

The Chapter 13 Meeting of Creditors

The chapter 13 trustee conducts the meeting of creditors. The bankruptcy clerk's office will inform you of the date, time and place of the meeting. If two debtors are filing together, (a "joint case"), both debtors must appear in person. In addition to any documents requested by the chapter 13 trustee, bring the following:

- Personal Identification: A picture identification issued by a governmental unit, or other personal identifying information that establishes your identity. Acceptable forms of picture identification (ID) include: driver's license, U.S. government ID, state ID, passport (and current U.S. visa, if not

a U.S. citizen), military ID, resident alien card, and identity card issued by a national government authority.

- Evidence of your social security number(s) or a written statement that the documentation does not exist. Acceptable forms of proof of social security number include, but are not limited to: social security card, medical insurance card, pay stub, W-2 Form, IRS Form 1099, and Social Security Administration (SSA) Statement.
 - Financial Information:
 - Evidence of your current income, such as your most recent payment advice, retirement and/or social security statement, disability statement, unemployment statement, etc.
 - Statements for each of your depository and investment accounts, including checking, savings, and money market accounts, non-retirement accounts, mutual funds, brokerage accounts and educational trust accounts for the time period that includes the date of the filing of the petition
- Petition and Schedules – If the petition and schedules have been filed electronically, you must bring the original petition and schedules bearing your actual signatures. If you mailed or hand delivered your petition and schedules to the bankruptcy clerk's office, and don't have a copy, inform your chapter 13 trustee of that fact at the meeting of creditors. The bankruptcy clerk's office keeps your original signatures for at least 60 days after the petition date.
- Other Documents – Prior to a § 341(a) meeting, the trustee may ask you to provide documents to corroborate the information contained in your petition, statements, and schedules.

MOTION PRACTICE: HOW DOES IT WORK?

Key Terms:

- Motion:** A motion is a document submitted to the bankruptcy clerk's office with four key elements: 1) a caption; 2) a heading; 3) the body; and 4) a signature. Its purpose is to ask the court for specific relief. The bankruptcy clerk's office does not accept oral motions, motions submitted by email, or motions submitted by facsimile. Motions must be hand delivered or mailed to the Bankruptcy Clerk's Office, P.O. Box 70, Wheeling, WV 26003. Documents that you file must have your original "wet" signature.
- Objection:** An objection is a written document that asks the court not to grant relief requested by another party. It must contain a caption, a heading, a body, and a signature. The body of the objection should state why the objecting party does not want the court to grant another party's motion.
- Order:** Official actions of the court are accomplished through entry of an order. Oral rulings of the court are not effective until reduced to a written order entered on your case's docket sheet.

Typical Process of Motion Practice:

Typically, you, a creditor, the chapter trustee, or the United States Trustee will file a motion with the bankruptcy clerk's office requesting specific relief or action. For example, a debtor in a chapter 7 case may file a motion to redeem certain property from a secured creditor for a specific dollar value. The party submitting the motion must "serve" it on the affected party. Generally, service of a motion is by U.S. Mail, and specific service rules are located in Federal Rule of Bankruptcy Procedure 7004(b). You cannot obtain secret relief in bankruptcy. If you are asking the court to affect the rights of another party, you must inform that party by "serving" your motion upon them.

On receipt of a motion, the bankruptcy clerk's office may issue a notice to the affected party allowing a period of time for the filing of any written objection. The failure to file a timely written objection may cause an order to be entered that grants the relief requested. Alternatively, the bankruptcy clerk's office may set the motion directly for a hearing before the presiding bankruptcy judge. You will be informed of any objection deadline or any scheduled hearing by the bankruptcy clerk's office.

ADVERSARY PROCEEDING: HOW DOES IT WORK?

An adversary proceeding is a separate lawsuit associated with your bankruptcy case. The presiding bankruptcy judge may adjudicate the lawsuit so long as the subject of the lawsuit is directly related to or impacts your bankruptcy case. A nonexclusive list of adversary proceedings can be found in Bankruptcy Rule 7001.

Adversary proceedings are commenced only by the filing of a complaint. The person or entity filing a complaint is called the “plaintiff.” A complaint is different than a motion. Namely, a complaint generally consists of a heading followed by numbered paragraphs that: (a) identify the parties; (b) set forth the factual basis for the complaint; (c) provide the legal theories underlying the asserted rights to relief, and (d) states the relief requested from the court as it pertains to the person or entity against whom the complaint is filed (the “defendant”).

On the filing of a complaint, the bankruptcy clerk’s office issues a summons to the plaintiff. The plaintiff must immediately “serve” the summons and complaint on the person or entity against whom the complaint is filed.

Upon service of the summons and complaint, the defendant has 30 days from the date the summons was issued by the Clerk to file an “answer.” The answer should admit or deny the allegations in the complaint, state any causes of action that the defendant has against the plaintiff, and assert any legal defenses to the relief requested.

After the complaint and answer are filed with the bankruptcy clerk, the court will generally issue a scheduling order stating the deadlines for taking certain actions in the adversary proceeding. The court may determine that a pre-trial hearing is necessary before issuing deadlines.

DEFINITIONS

AUTOMATIC STAY

Once a debtor files a bankruptcy petition is filed, an automatic stay goes into effect under 11 U.S.C. § 362. There is no order from the court imposing the automatic stay and the stay occurs by operation of law. The stay is an injunction that stops lawsuits, foreclosures, garnishments, and collection activity against a debtor. Therefore, creditors may not initiate or continue to take any action to collect what the debtor owes them including: garnishing wages; foreclosing on real property; eviction from an apartment, or repossessing property. When you inform your creditors that you have filed bankruptcy, provide them with your case number and the district where your case is filed.

The automatic stay does not apply to all collection actions or in every case. A complete list of exceptions is found in 11 U.S.C. § 362(b) and (c). Even when a creditor's actions are barred by the automatic stay, the creditor can obtain permission to exercise its remedies under state law by filing a motion for relief from the automatic stay. If the court grants this motion, the automatic stay will no longer protect you against the collection efforts of that particular creditor.

CONFIRMATION

Confirmation refers to bankruptcy court approval of a proposed chapter 13 plan. A confirmation order in a chapter 13 case is entered when the court determines that your proposed chapter 13 plan is appropriate under the requirements of 11 U.S.C. § 1325. By confirming the plan, the court binds you and all your creditors to the terms of the confirmed plan. As a chapter 13 debtor, you may voluntarily dismiss your case at any time.

CREDIT COUNSELING

Credit counseling generally refers to two events in your bankruptcy case: (1) the "individual or group briefing" from a nonprofit budget and credit counseling agency that you must attend before filing a bankruptcy petition (sometimes called your entrance ticket to bankruptcy); and (2) the "instructional course in personal financial management" in chapters 7 and 13 that you must complete before a discharge is entered. There are exceptions to both requirements for certain categories of debtors, and for exigent circumstances.

DISCHARGE

A discharge order releases you from personal liability from specified types of debts. You have no legal requirement to repay a discharged debt. The discharge order is an injunction against any further attempt by a pre-petition creditor to collect a discharged debt. Typically, in a chapter 7 case, the discharge order is entered 61 days after the date first set for the meeting of creditors. In a chapter 13 case, a discharge order is not entered until after all payments under the confirmed plan are made.

DISMISSAL

Your bankruptcy case may be dismissed for numerous reasons. For example, the bankruptcy court has discretion to dismiss your case for "cause" after notice and a hearing. Once a case is dismissed the automatic stay terminates. This means that creditors are free to pursue their state law remedies as if you had not filed for bankruptcy relief. Your case may be dismissed for a failure to meet filing requirements, such as failing to obtain pre-petition credit counseling, or for failing to pay a required filing fee.

EXEMPT PROPERTY

Exempt Property refers to that portion of your material belongings that you may keep from your creditors. This may consist of specific items, or a proportional dollar value of certain items. Exemptions in West Virginia found in W. Va. Code § 38-10-4. The list of West Virginia's general bankruptcy exemptions is attached to this packet.

MAILING LIST

A mailing list is a list of all creditors in a case, and their addresses. You are required to file a mailing list with the bankruptcy clerk's office at the same time you file your petition. When submitted in paper, the mailing list should be typed in a single, left-justified column and arranged in alphabetical order. Without a mailing list, no creditor will be informed that you filed bankruptcy.

MEETING OF CREDITORS ("341 MEETING")

The Bankruptcy Code gives all creditors the opportunity to participate in a bankruptcy case. You are required to be in attendance at the first meeting of creditors ("341 meeting") to give the trustee and/or creditors an opportunity to examine you under oath concerning your property and financial affairs. Spouses filing a joint petition must both attend the meeting of creditors.

NOTICE AND SERVICE

Generally, the court may only take action in a case (i.e., grant a motion) if the court finds that affected parties received "notice" of the requested action. In this District, the bankruptcy clerk generally provides all notices. "Notice" is different from "service." The term "service" refers to a document filed by a party that requests action against or relief from another party. The moving party must "serve" (usually by U.S. Mail) the document on the affected party before relief may be granted.

OBJECTION TO DISCHARGE

If you file a chapter 7 case, a party in interest may request that you be denied a chapter 7 bankruptcy discharge. The deadline for filing such an action is 60 days from the date first set for your meeting of creditors. You will be notified if any party in interest seeks to deny you a chapter 7 discharge order and you will have an opportunity to respond.

OBJECTION TO DISCHARGEABILITY

Whereas a creditor who objects to entry of a chapter 7 discharge order is seeking to prohibit you from receiving any chapter 7 discharge as it relates to all your debts, an objection to dischargeability (also called an "exception to discharge") seeks to deny the bankruptcy discharge of a specific debt you owe to a specific creditor. Some debts are automatically excepted from a bankruptcy discharge and some require a creditor to take specific action within the 60-day period following the date first set for your meeting of creditors. If a creditor takes affirmative action to except the debt you owe the creditor from your bankruptcy discharge, you will be notified and have an opportunity to respond.

FREQUENTLY ASKED QUESTIONS:

1. Do I need an attorney to file a bankruptcy case?

While it is possible to file a bankruptcy case without representation, it may be difficult to do so successfully. It is recommended that a person considering bankruptcy consult with an attorney before filing a case. A business entity filing bankruptcy must be represented by an attorney.

2. How many copies do I need to file with the court?

One. The court requires the original documents for all new cases that are not filed electronically. Paper documents are scanned into the electronic case file and then destroyed after a period of at least 60 days.

3. What is the difference between chapters?

Please refer to Form 2010, Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy. This form is attached to this unrepresented debtor packet, located on page 9 of the instructions.

4. Where Can I obtain the petition and forms?

Official and local forms can be found on the court's website: www.wvnb.uscourts.gov

5. What do I need to file when filing a bankruptcy case with the court?

See the checklists for chapters 7 and 13 above.

6. Is there a fee to file bankruptcy?

Bankruptcy fees change periodically. In 2015, the filing fees are:

Chapter 7: \$335

Chapter 13: \$310

To see a complete list of other filing fees during a bankruptcy case, please see our fee schedule at the Bankruptcy Court Clerk's Office or on our website (www.wvnb.uscourts.gov) or call 304-233-1655.

7. What are the qualifications for paying the filing fee in installments?

If you cannot afford to pay the filing fee in full at the time of the petition, you may file an application to pay the filing fee in installments. Complete Form 103A and submit it to the bankruptcy clerk's office to see if you may pay the filing fee in installments. Installment payments are generally equal in amount, and do not extend beyond 4 months unless otherwise ordered by the court. If the court grants your application to make installment payments, the court's order will detail the amount and timing of each payment.

10. What if I can't pay the filing fee?

If you have income that is below 150% of the national poverty guidelines based on your household size, you may qualify for a waiver of the filing fee. Complete Form 103B and submit it to the bankruptcy clerk's office. If your application to proceed without payment of the filing fee is denied by the court, then you may be given the opportunity to pay the filing fee in installments.

11. What type of payment forms do you accept for the bankruptcy petition?

Payment for a bankruptcy petition by a pro se debtor must be paid by cashier's check or money order and made payable to the Clerk, U.S. Bankruptcy Court. No cash will be accepted.

12. What if I need help filling out the forms?

The bankruptcy clerk's office cannot give legal advice and cannot assist you in filing out the bankruptcy forms. An attorney can provide this service for you. The bankruptcy clerk's office may inform you of the required forms and general court processes.

13. How often can I receive a discharge?

Chapter 7 debtors should refer 11 U.S.C. § 727(a)(8) and 727(a)(9). Chapter 13 debtors should refer to 11 U.S.C. § 1328 (f)(1) and 1328(f)(2). Generally, if you previously obtained a chapter 7 discharge, you must wait 8 years before being eligible to obtain another chapter 7 discharge. If you previously obtained a chapter 7 discharge, you may be eligible to obtain a chapter 13 discharge if your chapter 13 case is filed more than 4 years after the chapter 7 discharge.

14. Where do I file my bankruptcy petition?

A petition may be hand delivered or mailed to:

United States Bankruptcy Court
1125 Chapline Street, 3d Floor
P.O. Box 70
Wheeling, WV 26003
(304) 233-1655
Office Hours: M-F 8:30 -12:00, 1:00 -5:00.

By appointment, a bankruptcy petition may be hand delivered to:

United States Bankruptcy Court
324 West Main Street
Clarksburg, WV 26302
(304) 233-1655

15. What are the statutes and rules that apply to bankruptcy filings?

Title 11, which is the United States Bankruptcy Code (the "Bankruptcy Code"), is the uniform Federal law that governs all bankruptcy cases. Bankruptcy procedures are in the Federal Rules of Bankruptcy Procedure. The court also has a set of local rules, which are available on the court's website, www.wvnb.uscourts.gov.

16. What is the difference between a co-debtor and a joint debtor?

A co-debtor is a person or entity that also liable for your debts. For example, if your father co-signed a car loan and you file bankruptcy, your father is a co-debtor. Joint debtors are spouses filing a single bankruptcy petition. Spouses may or may not be co-debtors on the obligations sought to be discharged in bankruptcy.

17. I only want to file on my credit card debts, not my house, is that possible?

No. You don't get to pick and choose what debts to file bankruptcy on. Disclose all your assets and list all your creditors. Debtors in chapter 7 may desire to reaffirm certain debts, like a home mortgage, and reaffirmed debts are not subject to any discharge order that may be entered in your case.

18. What is a section 341(a) meeting of creditors?

11 U.S.C. § 341(a) of the Bankruptcy Code requires every debtor to personally attend a meeting of creditors and to submit to an examination under oath. The trustee assigned to the case presides at the meeting. Creditors may question the debtor under oath, and conduct such other business as may be appropriate. Creditors are not required to attend the meeting. Debtors are required to bring specific documents to the 341 meeting; see the "What to Expect in a Chapter 7 and Chapter 13" sections in this packet. In addition, the Trustee may direct the debtors to produce documents or turnover property. The debtor must promptly reply to the trustee's requests.

19. What if I cannot attend my scheduled 341 Meeting?

You may request permission from the trustee assigned to your case to reschedule your meeting of creditors. The court does not grant or deny motions to continue a meeting of creditors as this is the responsibility of the case trustee and the United States Trustee. The Court may refuse to dismiss a case for failure to attend the meeting of creditors.

20. What if I missed my 341 Meeting?

The trustee assigned to your case may continue the 341 meeting to the next available date, or file a motion to dismiss your case because you did not attend the meeting.

21. Are co-debtors required to be at the 341 Meeting?

As a debtor in bankruptcy, you must attend the meeting of creditors. If you filed a joint petition with a spouse, both of you must attend the meeting of creditors. Co-debtors who have not filed bankruptcy are not required to attend the meeting of creditors.

22. What if I don't speak English?

Please call the U.S. Trustee's Office (304-347-3400).

23. How do I get a hearing date?

The Clerk's Office schedules all hearings. A copy of the Court's calendar of hearings is available on the Court's website at www.wvnb.uscourts.gov. If you would like a hearing before the court on a particular matter, you may make that request, in writing, to the Court.

24. How do I get copies or certified copies of documents?

Copies or certified copies of documents are available at the Clerk's Office. The cost for certification is \$11.00 per certification plus a copy fee. To obtain copies by mail write to U.S. Bankruptcy Court P.O. Box 70, Wheeling, WV 26003. You may order certified orders or copies on-line by visiting the court's website, www.wvnb.uscourts.gov and clicking on the "Online Payments" Tab. You must have a case number to order on-line. You may call the clerk's office at 304-233-1655 to ascertain the amount of any copy expenses.

25. How do I obtain case information?

Bankruptcy cases are public records and are available for viewing at the Bankruptcy Court Clerk's Office. In addition, you can obtain case information by calling the Voice Case Information System at 866-222-8029.

26. How long does a bankruptcy remain on my credit report?

Ten years under the provisions of the Fair Credit Reporting Act.

27. Can I get a loan or mortgage after I file for bankruptcy?

Can you get one now? You can take steps to rebuild your credit after filing bankruptcy.

28. How can I notify the court if my address changes?

As a debtor, you need to file a change of address notice with the bankruptcy clerk's office.

Attached is a list of Approved Credit Counseling Agencies and Approved Debtor Education Agencies for the Northern District of West Virginia. To see a full list of agencies, please visit www.wvnb.uscourts.gov.

Approved Credit Counseling Agencies**West Virginia****WVN****Northern District of West Virginia****\$0\$ BK Class Inc.**www.myonlinebankruptcyclass.com**Main Address:**60 E. Hopkins Road
Gilbert, AZ 85295
877-378-7122**Delivery Method:****Internet:** www.myonlinebankruptcyclass.com

English and Spanish

\$0 Debt Goal Inc.www.0debtgoal.com**Main Address:**130 W. Jefferson Street
Tipton, IN 46072
877-376-8070**Delivery Method:****Internet:** www.0debtgoal.com**001 Debtorcc, Inc.**www.debtorcc.org**Main Address:**372 Summit Avenue
Jersey City, NJ 07308
1-800-610-3920**Delivery Method:****Internet:** www.debtorcc.org

English and Spanish

1st Choice Credit Counseling & Financial Education w/ka DSDM, Inc.www.mybknow.com**Main Address:**2049 Marco Drive
Camarillo, CA 93010
877-692-5669**Delivery Method:****Internet:** www.mybknow.com or
www.mybknowspanish.com
Telephone: 877-692-5669

English and Spanish

English and Spanish

1\$ Wiser Consumer Education, Inc.www.1dollarwiser.com**Main Address:**118 N. Second Street
Suite A
Krum, TX 76249
972-292-7279**Delivery Method:****Internet:** www.1dollarwiser.com

123 Credit Counselors, Inc.www.a123cc.com**Main Address:**

703 Waterford Way (NW 62nd Ave.)
Suite 220
Miami, FL 33128
305-269-9201

Delivery Method:

Internet: www.a123cc.org
Telephone: 1-888-412-2123
Internet/Telephone: www.a123cc.org / 888-412-2123

English and Spanish

English and Spanish

English and Spanish

1A Bankruptcy Counseling, Inc.www.1stabc.org**Main Address:**

21 Callier Street, Suite 214
Peabody, MA 01960
888-823-4266

Delivery Method:

Internet: www.1stabc.org
Telephone: 888-823-4266

English and Spanish

English and Spanish

Abacus Credit Counselingwww.abacuscc.org**Main Address:**

15760 Ventura Boulevard
Suite 1240
Encino, CA 91436
800-516-3834

Delivery Method:

Internet: www.abacuscc.org
Telephone: 800-516-3834

English and Spanish

English and Spanish

AIC American Bankruptcy Counselorswww.abcdabtaid.com**Main Address:**

1690 S. Federal Blvd.
Denver, CO 80219
303-551-5599

Delivery Method:

Telephone: 1-800-299-8736

Academy of Financial Literacy, Inc.www.academyoffinancialliteracy.com**Main Address:**

2105 E. Oakland Street
Chandler, AZ 85225
877-833-2867

Delivery Method:

Internet: www.academyoffinancialliteracy.com

Access Counseling, Inc.www.accesscounseling.com**Main Address:**

633 W. 5th Street
Suite 26001

Approved Debtor Education Agencies

West Virginia
WVN
Northern District of West Virginia

\$\$\$0123 A+ Class www.jlandpartners.com

Main Address:
713 Preston Place
Grapevine, TX 76051
817-533-3423

Delivery Method:
Internet: www.jlandpartners.com
Telephone: 888-533-3423

\$0\$ BK Class Inc. www.myonlinebankruptcyclass.com

Main Address:
60 E. Hopkins Road
Gilbert, AZ 85295
877-376-7122

Delivery Method:
Internet: www.myonlinebankruptcyclass.com English and Spanish

\$02 Start Debtor Education, LLC www.02start.com

Main Address:
1913 Praslin Street
Eugene, OR 97402
866-676-1364

Delivery Method:
Internet: www.02Start.com

\$0 Debt Goal, LLC www.0debtgoal.com

Main Address:
2216 W. Lakeview Drive
North Vernon, IN 47265
317-447-3235

Delivery Method:
Internet: www.0debtgoal.com

\$10 Debtor Education, LLC www.10debtoeducation.com

Main Address:
21001 N. Tatum Blvd.
Suite 1630-128
Phoenix, AZ 85050
877-601-4141

Delivery Method:
Internet: 10debtoeducation.com

\$9 Debt Education

9dollardebteducation.com

Main Address:

900 Mohawk Street
Suite 230
Bakersfield, CA 93309
877-848-5754

Delivery Method:

Internet: www.9dollardebteducation.com

001 Debtoredu LLC

www.debtoredu.com

Main Address:

372 Summit Avenue
Jersey City, NJ 07308
800-610-3920

Delivery Method:

Internet: www.debtoredu.com

English and Spanish

1\$ Choice Credit Counseling & Financial Education a/k/a DBSM, Inc.

www.mybknow.com

Main Address:

2049 Marco Drive
Camarillo, CA 93010
877-692-5669

Delivery Method:

Internet: www.mybknow.com or www.mybknowspanish.com

English and Spanish

Telephone: 877-692-5669

English and Spanish

1\$ Wiser Consumer Education, Inc.

www.1dollarwiser.com

Main Address:

116 N. Second Street
Suite A
Krum, TX 76249
972-292-7279

Delivery Method:

Internet: www.1dollarwiser.com

111Education.com, Inc.

www.moneyrehab.com

Main Address:

5316 8th Street
Zephyrhills, FL 33542
813-788-3369

Delivery Method:

Internet: MoneyRehab.com

English and Spanish

123 Debtor.com, LLC

www.123Debtor.com

Main Address:

1913 Praslin Street
Eugene, OR 97402
866-676-1364

Delivery Method:

Instructions

Bankruptcy Forms for Individuals

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About this Booklet of Instructions

This booklet provides instructions for completing selected forms that individuals filing for bankruptcy must submit to the U.S. Bankruptcy Court. You can download all of the required forms without charge from:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>.

The instructions are designed to accompany the forms and are intended to help you understand what information is required to properly file. You are responsible for properly completing the forms. These instructions are not intended to provide, and should not be understood to provide, legal advice. They are not designed to fully explain, or to be relied upon in interpreting, the law.

Completing the forms is only a part of the bankruptcy process. You are strongly encouraged to hire a qualified attorney not only to help you complete the forms but also to give you general advice about bankruptcy and to represent you in your bankruptcy case. If you cannot afford to pay an attorney, you might qualify for free legal services if they are provided in your area. Contact your state or local bar association for help in obtaining free legal services or in hiring an attorney.

Note: It is extremely difficult to succeed in a chapter 11, 12, or 13 case without an attorney.

If an attorney represents you, you must provide information so the attorney can prepare your forms. Once the attorney prepares the forms, you must make sure that the forms are accurate and complete. These instructions may help you perform those tasks. If you are filing for bankruptcy without the help of an attorney, this booklet tells you which forms must be filed and provides information about them.

You should carefully read this booklet and keep it with your records. Review the individual forms as you read the instructions for each.

Although bankruptcy petition preparers can help you type the bankruptcy forms, they cannot tell you how to complete the forms, they cannot file the documents for you, and they cannot give you legal advice. Court employees cannot give you legal advice, either.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

About the bankruptcy forms and filing bankruptcy

Use the forms that are numbered in the 100 series to file bankruptcy for individuals or married couples. Use the forms that are numbered in the 200 series if you are preparing a bankruptcy on behalf of a nonindividual, such as a corporation, partnership, or limited liability company (LLC). Sole proprietors must use the forms that are numbered in the 100 series.

When a bankruptcy is filed, the U.S. Bankruptcy Court opens a case. It is important that the answers to the questions on the forms be complete and accurate so that the case proceeds smoothly. A person filing bankruptcy who gives false information could be charged with a federal crime or could lose all the benefits of filing for bankruptcy.

You should understand that filing a bankruptcy case is not private. Anyone has a right to see your bankruptcy forms after you file them, unless the court orders otherwise under 11 U.S.C. § 107. Certain information in court filings, however, must be protected from public disclosure under Bankruptcy Rule 9037.

Understand the terms used in the forms

The forms for individuals use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors.

For example, if a form asks, “Do you own a car?” the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the forms use *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

To understand other terms used in the forms and the instructions, see the *Glossary* at the end of this booklet.

Things to remember when filling out these forms

- Do not file these instructions with the bankruptcy forms that you file with the court.
- Be as complete and accurate as possible.
- If more space is needed, attach a separate sheet to the form. On the top of any additional pages, write your name and case number (if known). Also identify the form and line number to which the additional information applies.

- If two married people are filing together, both are equally responsible for supplying correct information.
- Do not list a minor child’s full name. Instead, fill in only the child’s initials and the full name and address of the child’s parent or guardian. For example, write A.B., a minor child (*John Doe, parent, 123 Main St., City, State*). 11 U.S.C. § 112; Bankruptcy Rule 1007(m) and 9037.
- For your records, be sure to keep a copy of your bankruptcy documents and all attachments that you file.

On what date was a debt incurred?

When a debt was incurred on a single date, fill in the actual date that the debt was incurred.

When a debt was incurred on multiple dates, fill in the range of dates. For example, if the debt is from a credit card, fill in the month and year of the first and last transaction.

About the Process for Filing a Bankruptcy Case for Individuals

Before you file your bankruptcy case

Before you file for bankruptcy, you must do several things:

- ❑ **Receive a briefing about credit counseling from an approved agency** within 180 days before you file. (If you and your spouse are filing together, each of you must receive a briefing before you file. Failure to do so may result in the dismissal of your case.) You may have a briefing about credit counseling one-on-one or in a group, by telephone, or by internet.

For a list of approved providers, go to:

http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm

In Alabama and North Carolina, go to:

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx>.

After you finish the briefing, you will receive a certificate that you will need to file in your bankruptcy case.

- ❑ **Find out in which bankruptcy court you must file your bankruptcy case.** It is important that you file in the correct district within your state. To find out which district you are in, go to:

<http://www.uscourts.gov/courtlinks>

- ❑ **Check the local court's website** for any specific local requirements that you might have to meet. Go to:

<http://www.uscourts.gov/courtlinks>

- ❑ **Find out which chapters of the Bankruptcy Code you are eligible for.** For descriptions of each chapter, review the information contained in the notice, *Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy* (Form B2010), which is included in this booklet.

When you file your bankruptcy case

There are several forms and documents that you must give the court at the time you file. Additional forms and documents must be filed no later than 14 days after you file your bankruptcy case, although they may be filed at the same time you file your case.

You must file the forms listed below on the date you open your bankruptcy case. For copies of the forms listed here, go to

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>. (The list continues on the next page.):

- ☐ *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). This form opens the case. Directions for filling it out are included in the form itself.
- ☐ *Statement About Your Social Security Numbers* (Official Form 121). This form gives the court your full Social Security number or federal Individual Taxpayer Identification number. To protect your privacy, the court will make only the last four digits of your number known to the general public. However, the court will make your full number available to your creditors, the U.S. trustee or bankruptcy administrator, and the trustee assigned to your case. This form has no separate instructions.
- ☐ Your filing fee. If you cannot pay the entire filing fee, you must also include:
 - ☐ *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A), or
 - ☐ *Application to Have the Chapter 7 Filing Fee Waived* (Official Form 103B). Use this form only if you are filing under chapter 7 and you meet the criteria to have the chapter 7 filing fee waived.
- ☐ A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file. (Your court may call this a *creditor matrix* or *mailing matrix*.)
- ☐ Your credit counseling certificate from an approved credit counseling agency. (See *Before you file your bankruptcy case*, above). If you have received the briefing about credit counseling but have not yet received the certificate, file it no later than 14 days after you file for bankruptcy. If you have not already received the briefing and believe you are entitled to a temporary waiver from receiving it or that you are not required to receive the briefing, see line 15 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).
- ☐ *For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* (Official Form 104). Fill out this form only if you file under chapter 11.
- ☐ *Initial Statement About an Eviction Judgment Against You* (Official Form 101A) and *Statement About Payment of an Eviction Judgment Against You* (Official Form 101B). Use Form 101A if your landlord has an eviction judgment against you. If you complete Form 101A and you want to stay in your residence for the first 30 days after you file, you must indicate that on the form. Use Form 101B if you have completed Form 101A and you want to stay in your rented residence form more than 30 days after you file for bankruptcy.
- ☐ *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119) and *Disclosure of Compensation of Bankruptcy Petition Preparer* (Form 2800). Use these forms

if a bankruptcy petition preparer typed your forms.

When you file your bankruptcy case or within 14 days after you file

You must file the forms listed below either when you file your bankruptcy case or within 14 days after you file your *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). If you do not do so, your case may be dismissed. Although it is possible to open your case by submitting only the documents that are listed under *When you file your bankruptcy case*, you should file the entire set of forms at one time to help your case proceed smoothly.

Although some forms may ask you similar questions, you must fill out all of the forms completely to protect your legal rights.

The list below shows the forms that all individuals must file as well as the forms that are specific to each chapter. For copies of the official forms listed here, go to <http://www.uscourts.gov>.

All individuals who file for bankruptcy must file these forms and the forms for the specific chapter:

Form 106J)

- ☐ *Schedules of Assets and Liabilities* (Official Form 106) which includes these forms:
 - ☐ *Schedule A/B: Property* (Official Form 106A/B)
 - ☐ *Schedule C: The Property You Claim as Exempt* (Official Form 106C)
 - ☐ *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D)
 - ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)
 - ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G)
 - ☐ *Schedule H: Your Codebtors* (Official Form 106H)
 - ☐ *Schedule I: Your Income* (Official Form 106I)
 - ☐ *Schedule J: Your Expenses* (Official

- ❑ *Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106Sum). This form gives an overview of the totals on the schedules
- ❑ *Declaration About an Individual Debtor's Schedules* (Official Form 106Dec)
- ❑ *Statement of Financial Affairs for Individuals Filing for Bankruptcy* (Official Form 107)
- ❑ *Disclosure of Compensation to Debtor's Attorney* — Unless local rules provide otherwise, Director's Form 2030 may be used.
- ❑ Credit counseling certificate that you received from an approved credit counseling agency
- ❑ Copies of all payment advices (*pay stubs*) or other evidence of payment that you received within 60 days before you filed your bankruptcy case. Some local courts may require that you submit these documents to the trustee assigned to your case rather than filing them with the court. Check the local court's website to find out if local requirements apply. Go to <http://www.uscourts.gov/courtlinks>.

If you file under chapter 7, you must also file:

- ☐ *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 108)
- ☐ *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1)
- ☐ If necessary, *Chapter 7 Means Test Calculation* (Official Form 122A-2)
- ☐ If necessary, *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp)

If you file under chapter 11, you must also file:

- ☐ *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122-B)

If you file under chapter 11 and are a small business debtor (that is, if you are self-employed and your debts are less than \$2,490,925*), within 7 days after you file your bankruptcy forms to open your case, you must also file your most recent:

- ☐ Balance sheet
- ☐ Statement of operations
- ☐ Cash-flow statement
- ☐ Federal income tax return

If you do not have these documents, you must file a statement made under penalty of perjury that you have not prepared either a balance sheet, statement of operations, or cash-flow statement or you have not filed a federal tax return.

If you file under chapter 11, you must file additional documents beyond the scope of these instructions. You should consult your attorney.

* Subject to adjustment on 4/01/16, and every 3 years after that for cases begun on or after the date of adjustment.

If you file under chapter 12, you must also file:

- ☐ Chapter 12 Plan (within 90 days after you file your bankruptcy forms to open your case)

If you file under chapter 13, you must also file:

- ☐ *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1)
- ☐ If necessary, *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C-2)
- ☐ *Chapter 13 Plan* (Official Form 113, if in effect). If Official Form 113 is not effective when you file, many bankruptcy courts require you to use a local form plan. Check the local court's website for any specific form that you might have to use. Go to <http://www.uscourts.gov/courtlinks>.)

Notice Required by 11 U.S.C. § 342(b) for Individuals Filing for Bankruptcy (Form 2010)

This notice is for you if:

- You are an individual filing for bankruptcy, and
- Your debts are 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.”

The types of bankruptcy that are available to individuals

Individuals who meet the qualifications may file under one of four different chapters of the Bankruptcy Code:

- Chapter 7 — Liquidation
- Chapter 11 — Reorganization
- Chapter 12 — Voluntary repayment plan for family farmers or fishermen
- Chapter 13 — Voluntary repayment plan for individuals with regular income

You should have an attorney review your decision to file for bankruptcy and the choice of chapter.

Chapter 7: Liquidation

	\$245	filing fee
	\$75	administrative fee
+	\$15	trustee surcharge
	\$335	total fee

Chapter 7 is for individuals who have financial difficulty preventing them from paying their debts and who are willing to allow their non-exempt property to be used to pay their creditors. The primary purpose of filing under chapter 7 is to have your debts discharged. The bankruptcy discharge relieves you after bankruptcy from having to pay many of your pre-bankruptcy debts. Exceptions exist for particular debts, and liens on property may still be enforced after discharge. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile.

However, if the court finds that you have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge.

You should know that even if you file chapter 7 and you receive a discharge, some debts are not discharged under the law. Therefore, you may still be responsible to pay:

- most taxes;
- most student loans;
- domestic support and property settlement obligations;

- most fines, penalties, forfeitures, and criminal restitution obligations; and
- certain debts that are not listed in your bankruptcy papers.

You may also be required to pay debts arising from:

- fraud or theft;
- fraud or defalcation while acting in breach of fiduciary capacity;
- intentional injuries that you inflicted; and
- death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs.

If your debts are primarily consumer debts, the court can dismiss your chapter 7 case if it finds that you have enough income to repay creditors a certain amount. You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income that applies in your state.

If your income is not above the median for your state, you will not have to complete the other chapter 7 form, the *Chapter 7 Means Test Calculation* (Official Form 122A-2).

If your income is above the median for your state, you must file a second form—the *Chapter 7 Means Test Calculation* (Official Form 122A-2). The calculations on the form—sometimes called the *Means Test*—deduct from your income living expenses and payments on certain debts to determine any amount available to pay unsecured creditors. If

your income is more than the median income for your state of residence and family size, depending on the results of the *Means Test*, the U.S. trustee, bankruptcy administrator, or creditors can file a motion to dismiss your case under § 707(b) of the Bankruptcy Code. If a motion is filed, the court will decide if your case should be dismissed. To avoid dismissal, you may choose to proceed under another chapter of the Bankruptcy Code.

If you are an individual filing for chapter 7 bankruptcy, the trustee may sell your property to pay your debts, subject to your right to exempt the property or a portion of the proceeds from the sale of the property. The property, and the proceeds from property that your bankruptcy trustee sells or liquidates that you are entitled to, is called *exempt property*. Exemptions may enable you to keep your home, a car, clothing, and household items or to receive some of the proceeds if the property is sold.

Exemptions are not automatic. To exempt property, you must list it on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

Chapter 11: Reorganization

	\$1,167	filing fee
+	\$550	administrative fee
	\$1,717	total fee

Chapter 11 is often used for reorganizing a business, but is also available to individuals. The provisions of chapter 11 are too complicated to summarize briefly.

Read These Important Warnings

Because bankruptcy can have serious long-term financial and legal consequences, including loss of your property, you should hire an attorney and carefully consider all of your options before you file. Only an attorney can give you legal advice about what can happen as a result of filing for bankruptcy and what your options are. If you do file for bankruptcy, an attorney can help you fill out the forms properly and protect you, your family, your home, and your possessions.

Although the law allows you to represent yourself in bankruptcy court, you should understand that many people find it difficult to represent themselves successfully. The rules are technical, and a mistake or inaction may harm you. If you file without an attorney, you are still responsible for knowing and following all of the legal requirements.

You should not file for bankruptcy if you are not eligible to file or if you do not intend to file the necessary documents.

Bankruptcy fraud is a serious crime; you could be fined and imprisoned if you commit fraud in your bankruptcy case. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Chapter 12: Repayment plan for family farmers or fishermen

	\$200	filing fee
+	\$75	administrative fee
	\$275	total fee

Similar to chapter 13, chapter 12 permits family farmers and fishermen to repay their debts over a period of time using future earnings and to discharge some debts that are not paid.

Chapter 13: Repayment plan for individuals with regular income

	\$235	filing fee
+	\$75	administrative fee
	\$310	total fee

Chapter 13 is for individuals who have regular income and would like to pay all or part of their debts in installments over a period of time and to discharge some debts that are not paid. You are eligible for chapter 13 only if your debts are not more than certain dollar amounts set forth in 11 U.S.C. § 109.

Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, usually using your future earnings. If the court approves your plan, the court will allow you to repay your debts, as adjusted by the plan, within 3 years or 5 years, depending on your income and other factors.

After you make all the payments under your plan, many of your debts are discharged. The debts that are not discharged and that you may still be responsible to pay include:

- domestic support obligations,
- most student loans,
- certain taxes,
- debts for fraud or theft,
- debts for fraud or defalcation while acting in a fiduciary capacity,
- most criminal fines and restitution obligations,
- certain debts that are not listed in your bankruptcy papers,
- certain debts for acts that caused death or personal injury, and
- certain long-term secured debts.

Warning: File Your Forms on Time

Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information about your creditors, assets, liabilities, income, expenses and general financial condition. The court may dismiss your bankruptcy case if you do not file this information within the deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

For more information about the documents and their deadlines, go to:

http://www.uscourts.gov/bkforms/bankruptcy_forms.html#procedure.

Bankruptcy crimes have serious consequences

- If you knowingly and fraudulently conceal assets or make a false oath or statement under penalty of perjury—either orally or in writing—in connection with a bankruptcy case, you may be fined, imprisoned, or both.
- All information you supply in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the U.S. Trustee, the Office of the U.S. Attorney, and other offices and employees of the U.S. Department of Justice.

Make sure the court has your mailing address

The bankruptcy court sends notices to the mailing address you list on *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101). To ensure that you receive information about your case, Bankruptcy Rule 4002 requires that you notify the court of any changes in your address.

A married couple may file a bankruptcy case together—called a *joint case*. If you file a joint case and each spouse lists the same mailing address on the bankruptcy petition, the bankruptcy court generally will mail you and your spouse one copy of each notice, unless you file a statement with the court asking that each spouse receive separate copies.

Understand which services you could receive from credit counseling agencies

The law generally requires that you receive a credit counseling briefing from an approved credit counseling agency. 11 U.S.C. § 109(h). If you are filing a joint case, both spouses must receive the briefing. With limited exceptions, you must receive it within the 180 days **before** you file your bankruptcy petition. This briefing is usually conducted by telephone or on the Internet.

In addition, after filing a bankruptcy case, you generally must complete a financial management instructional course before you can receive a discharge. If you are filing a joint case, both spouses must complete the course.

You can obtain the list of agencies approved to provide both the briefing and the instructional course from:

http://justice.gov/ust/eo/hapcpa/ccde/cc_approved.html.

In Alabama and North Carolina, go to:

<http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/ApprovedCreditAndDebtCounselors.aspx>.

If you do not have access to a computer, the clerk of the bankruptcy court may be able to help you obtain the list.

Instructions for Selected Forms

Schedule A/B: Property (Official Form 106A/B)

Schedule A/B: Property (Official Form 106A/B) lists property interests that are involved in a bankruptcy case. All individuals filing for bankruptcy must list everything they own or have a legal or equitable interest in. *Legal or equitable interest* is a broad term and includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

The information in this form is grouped by category and includes several examples for many items. Note that those examples are meant to give you an idea of what to include in the categories. They are not intended to be complete lists of everything within that category. Make sure you list everything you own or have an interest in.

You must verify under penalty of perjury that the information you provide is complete and accurate. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to \$250,000, or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Understand the terms used in this form

Community property — Type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Current value — In this form, report the *current value* of the property that you own in each category. *Current value* is sometimes called *fair market value* and, for this form, is the fair market value as of the date of the filing of the petition. *Current value* is how much the property is worth, which may be more or less than when you purchased the property. *Property you own* includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Report the current value of the portion you own

For each question, report the current value of the portion of the property that you own. To do this, you would usually determine the current value of the entire property and the percentage of the property that you own. Multiply the current value of the property by the percentage that you own. Report the result where the form asks for *Current value of the portion you own*. For example:

- If you own a house by yourself, you own 100% of that house. Report the entire current value of the house.
- If you and a sister own the house equally, report 50% of the value of the house (or half of the value of the house).

In certain categories, current value may be difficult to figure out. When you cannot find the value from a reputable source (such as a pricing guide for your car), estimate the value and be prepared to explain how you determined it.

List items once on this form

List items only once on this form; do not list them in more than one category. List all real estate in Part 1 and other property in the other parts of the form.

Where you list similar items of minimal value (such as clothing), add the value of the items and report a total.

Be specific when you describe each item. If you have an item that you think could fit into more than one category, select the most suitable category and list the item there.

Separately describe and list individual items worth more than \$500.

Match the values to the other schedules

Make sure that the values you report on this form match the values you report on *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D) and *Schedule C: The Property You Claim as Exempt* (Official Form 106C).

Schedule C: The Property You Claim as Exempt

(Official Form 106C)

How exemptions work

If you are an individual filing for bankruptcy, the law may allow you to keep some property, or it may entitle you to part of the proceeds if the property is sold after your case is filed. Property that the law permits you to keep is called *exempt* property. For example, exemptions may enable you to keep your home, a car, clothing, and household items.

Exemptions are not automatic. For property to be considered exempt, you must list the property on *Schedule C: The Property You Claim as Exempt* (Official Form 106C). If you do not list the property, the trustee may sell it and pay all of the proceeds to your creditors.

You may unnecessarily lose property if you do not claim exemptions to which you are entitled. You are strongly encouraged to hire a qualified attorney to advise you.

Determine which set of exemptions you will use

Before you fill out this form, you must learn which set of exemptions you can use. In general, exemptions are determined on a state-by-state basis. Some states permit you to use the exemptions provided by the Bankruptcy Code. 11 U.S.C. § 522.

The Bankruptcy Code provides that you use the exemptions in the law of the state where you had your legal home for 730 days before you file for bankruptcy. Special rules may apply if you did not have the same home state for 730 days before you file.

You may lose property if you do not use the best set of exemptions for your situation.

If your spouse is filing with you and you are filing in a state in which you may choose between state and federal sets of bankruptcy exemptions, you both must use the same set of exemptions.

Claiming exemptions

Using the property and values that you listed on *Schedule A/B: Property* (Official Form 106A/B) as your source, list on this form the property that you claim as exempt.

Listing the amount of each exemption

For each item of property you claim as exempt, you must specify the amount of the exemption you claim. Usually, a specific dollar amount is claimed as exempt, but in some circumstances, the amount of the exemption claimed might be indicated as 100% of fair market value. For example, a debtor might claim 100% of fair market value for an exemption that is unlimited in dollar amount, such as some exemptions for health aids.

Listing which laws apply

In the last column of the form, you must identify the laws that allow you to claim the property as exempt. If you have questions about exemptions, consult a qualified attorney.

Schedule D: Creditors Who Have Claims Secured by Property (Official Form 106D)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D).
- **Unsecured claims.** Report these on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

If your debts are not paid, a creditor with a secured claim may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors with unsecured claims do not have rights against specific property.

Many creditors' claims have a specific amount, which you do not dispute. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list the claims of all your creditors in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. For example, if you cosigned someone else's note, you may not have to pay unless that other person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been determined.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, if a bill collector demands payment for a bill you believe you already fully paid, you may describe the claim as disputed.

A single claim can have one, more than one, or none of these characteristics.

On *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D), list all creditors who have a claim that is secured by your property.

Do not leave out any secured creditors

In alphabetical order (as much as possible), list anyone who has judgment liens, garnishments, statutory liens, mortgages, deeds of trust, and other security interests against your property. When listing creditors who have secured claims, be sure to include all of them. For example, include the following:

- Your relatives or friends who have a lien or security interest in your property;
- Car or truck lenders, stores, banks, credit unions, and others who made loans to enable you to finance the purchase of property and who have a lien against that property;
- Anyone who has a mortgage or deed of trust on real estate that you own;
- Contractors or mechanics who have liens on property you own because they did work on the property and were not paid;
- Someone who won a lawsuit against you and has a judgment lien;
- Another parent or a government agency that has a lien for unpaid child support;
- Doctors or attorneys who have liens on the outcome of a lawsuit;
- Federal, state, or local government agencies such as the IRS that have tax liens against property for unpaid taxes; and
- Anyone who is trying to collect a secured debt from you, such as collection agencies and attorneys.

List the debt in Part 1 only once and list any others that should be notified about that debt in Part 2. For example, if a collection agency or an attorney is trying to collect from you for a debt you owe to someone else, list the person to whom you owe the debt in Part 1, and list the collection agency in Part 2. If you are not sure who the creditor is, list the person you are paying in Part 1 and list anyone else who has contacted you about this debt in Part 2.

If a creditor's full claim is more than the value of your property securing that claim—for instance, a car loan in an amount greater than the value of the car—the creditor's claim may be partly secured and partly unsecured. In that situation, list the claim only once on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D). Do not repeat it on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F). List a creditor in *Schedule D* even if it appears that there is no value to support that creditor's secured claim.

Determine the unsecured portion of secured claims

To determine the amount of a secured claim, compare the amount of the claim to the value of your portion of the property that supports the claim. If that value is greater than the amount of the claim, then the entire amount of the claim is secured. But if that value is less than the amount of the claim, the difference is an *unsecured portion*. For example, if the outstanding balance of a car loan is \$10,000 and the car is worth \$8,000, the car loan has a \$2,000 unsecured portion.

If there is more than one secured claim against the same property, the claim that is entitled to be paid first must be subtracted from the property value to determine how much value remains for the next claim.

For example, if a home worth \$300,000 has a first mortgage of \$200,000 and a second mortgage of \$150,000, the first mortgage would be fully secured, and there would be \$100,000 of property value for the second mortgage, which would have an unsecured portion of \$50,000.

\$300,000	value of a home
- \$200,000	<u>first mortgage</u>
\$100,000	remaining property value
\$150,000	second mortgage
- \$100,000	<u>remaining property value</u>
\$ 50,000	unsecured portion of second mortgage

Schedule E/F: Creditors Who Have Unsecured Claims (Official Form 106E/F)

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. When you file for bankruptcy, the court needs to know who all your creditors are and what types of claims they have against you.

Typically in bankruptcy cases, there are more debts than assets to pay those debts. The court must know as much as possible about your creditors to make sure that their claims are properly treated according to the rules.

Use *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F) to identify everyone who has an unsecured claim against you when you file your bankruptcy petition, unless you have already listed them on *Schedule D: Creditors Who Have Claims Secured by Your Property* (Official Form 106D).

Creditors may have different types of claims:

- **Secured claims.** Report these on *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D).
- **Unsecured claims.** Report these on *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. That property is sometimes called *collateral* for your debt and could include items such as your house, your car, or your furniture. Creditors

with unsecured claims do not have rights against specific property.

Many creditors' claims have a specific amount, which you do not dispute. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must list the claims of all your creditors in your schedules, even if the claims are contingent, unliquidated, or disputed.

Claims may be contingent, unliquidated, or disputed

Claims may be:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. For example, if you cosigned someone else's note, you may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you disagree about whether you owe the debt. For instance, if a bill collector demands payment for a bill you believe you already fully paid, you may describe the claim as disputed.

A single claim can have one, more than one, or none of these characteristics.

Creditors with unsecured claims do not have liens on or other security interests in your property. Secured creditors have a right to take property if you do not pay them. Common examples are lenders for your car, your home, or your furniture.

Do not leave out any unsecured creditors

List all unsecured creditors in each part of the form in alphabetical order as much as possible. Even if you plan to pay a creditor, you must list that creditor. When listing creditors who have unsecured claims, be sure to include all of them. For instance, include the following:

- Your relatives or friends to whom you owe money;
- Your ex-spouse, if you are still obligated under a divorce decree or settlement agreement to pay joint debts;
- A credit card company, even if you intend to fully pay your credit card bill;
- A lender, even if the loan is cosigned;
- Anyone who has a loan or promissory note that you cosigned for someone else;
- Anyone who has sued or may sue you because of an accident, dispute, or similar event that has occurred; or
- Anyone who is trying to collect a debt from you such as a bill collector or attorney.

Unsecured claims could be priority or nonpriority claims

What are priority unsecured claims?

In bankruptcy cases, *priority unsecured claims* are those debts that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common priority unsecured claims are certain income tax debts and past due alimony or child support. Priority unsecured claims include those you owe for:

- **Domestic support obligations**—If you owe domestic support to a spouse or former spouse; a child or the parent, legal guardian, or responsible relative of a child; or a governmental unit to whom such a domestic support claim has been assigned.
11 U.S.C. § 507(a)(1).
- **Taxes and certain other debts you owe the government**—If you owe certain federal, state, or local government taxes, customs duties, or penalties.
11 U.S.C. § 507(a)(8).
- **Claims for death or personal injury that you caused while you were intoxicated**—If you have a claim against you for death or personal injury that resulted from your unlawfully operating a motor vehicle or vessel while you were unlawfully intoxicated from alcohol, drugs, or another substance. This priority does not apply to claims for property damage.
11 U.S.C. § 507(a)(10).

■ **Other:**

- ❑ **Deposits by individuals**—If you received money from someone for the purchase, lease, or rental of your property or the use of your services but you never delivered or performed. For the debt to have priority, the property or services must have been intended for personal, family, or household use (only the first \$2,775* per person is a priority debt). 11 U.S.C. § 507(a)(7).
- ❑ **Wages, salaries, and commissions**—If you owe wages, salaries, and commissions, including vacation, severance, and sick leave pay and those amounts were earned within 180 days before you filed your bankruptcy petition or ceased business. In either instance, only the first \$12,475* per claim is a priority debt. 11 U.S.C. § 507(a)(4).
- ❑ **Contributions to employee benefit plans**—If you owe contributions to an employee benefit plan for services an employee rendered within 180 days before you file your bankruptcy petition, or within 180 days before your business ends. Count only the first \$12,475* per employee, less any amounts owed for wages, salaries, and commissions. 11 U.S.C. § 507(a)(5).

What are nonpriority unsecured claims?

Nonpriority unsecured claims are those debts that generally will be paid after priority unsecured claims are paid. The most common examples of nonpriority unsecured claims are credit card bills, medical bills, and educational loans.

What if a claim has both priority and nonpriority amounts?

If a claim has both priority and nonpriority amounts, list that claim in Part 2 and show both priority and nonpriority amounts. Do not list it again in Part 3.

In Part 3, list all of the creditors you have not listed before. You must list every creditor that you owe, regardless of the amount you owe and even if you plan to pay a particular debt. If you do not list a debt, it may not be discharged.

What is needed for statistical purposes?

For statistical reasons, the court must collect information about some specific categories of unsecured claims.

The categories for priority unsecured claims are:

- **Domestic support obligations**
- **Taxes and certain other debts you owe the government**
- **Claims for death or personal injury that you caused while you were intoxicated**

The categories for nonpriority unsecured claims are:

- **Student loans**—If you owe money for any loans that you used to pay for your education;
- **Obligations arising out of a separation agreement or divorce that you did not report as priority claims**—If you owe debts for separation or divorce agreements or for domestic support and you did not report those debts in Part 2; and
- **Debts to pension or profit-sharing plans and other similar debts**—If you owe money to a pension or profit-sharing plan.

Schedule G: Executory Contracts and Unexpired Leases (Official Form 106G)

Use *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G) to identify your ongoing leases and certain contracts. List all of your executory contracts and unexpired leases.

Executory contracts are contracts between you and someone else in which neither you nor the other party has performed all of the requirements by the time you file for bankruptcy. *Unexpired leases* are leases that are still in effect; the lease period has not yet ended.

You must list all agreements that may be executory contracts or unexpired leases, even if they are listed on *Schedule A/B: Property* (Official Form 106A/B), including the following:

- Residential leases (for example, a rental agreement for a place where you live or vacation, even if it is only a verbal or month-to-month arrangement);
- Service provider agreements (for example, contracts for cell phones and personal electronic devices);
- Internet and cable contracts;
- Vehicle leases;
- Supplier or service contracts (for example, contracts for lawn care or home alarm or security systems);
- Timeshare contracts or leases;
- Rent-to-own contracts;
- Employment contracts;
- Real estate listing agreements;
- Contracts to sell a residence, building, land, or other real property;
- Equipment leases;
- Leases for business or investment property;
- Supplier and service contracts for your business;
- Copyright and patent license agreements; and
- Development contracts.

Schedule H: Your Codebtors (Official Form 106H)

If you have any debts that someone else may also be responsible for paying, these people or entities are called *codebtors*. Use *Schedule H: Your Codebtors* (Official Form 106H) to list any codebtors who are responsible for any debts you have listed on the other schedules.

To help fill out this form, use both *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D) and *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

List all of your codebtors and the creditors to whom you owe the debt. For example, if someone cosigned for the car loan that you owe, you must list that person on this form.

If you are filing a joint case, do not list either spouse as a codebtor.

Other codebtors could include the following:

- Cosigner;
- Guarantor;
- Former spouse;
- Unmarried partner;
- Joint contractor; or
- Nonfiling spouse—even if the spouse is not a cosigner—where the debt is for necessities (such as food or medical care) if state law makes the nonfiling spouse legally responsible for debts for necessities.

Schedule I: Your Income (Official Form 106I)

In *Schedule I: Your Income* (Official Form 106I), you will give the details about your employment and monthly income as of the date you file this form. If you are married and your spouse is living with you, include information about your spouse even if your spouse is not filing with you. If you are separated and your spouse is not filing with you, do not include information about your spouse.

How to report employment and income

If you have nothing to report for a line, write \$0.

In Part 1, line 1, fill in employment information for you and, if appropriate, for a non-filing spouse. If either person has more than one employer, attach a separate page with information about the additional employment.

In Part 2, give details about the monthly income you currently expect to receive. Show all totals as monthly payments, even if income is not received in monthly payments.

If your income is received in another time period, such as daily, weekly, quarterly, annually, or irregularly, calculate how much income would be by month, as described below.

If either you or a non-filing spouse has more than one employer, calculate the monthly amount for each employer separately, and then combine the income information for all employers for that person on lines 2-7.

One easy way to calculate how much income per month is to total the payments earned in a year, then divide by 12 to get a monthly figure. For example, if you are paid seasonally, you would simply divide the amount you expect to earn in a year by 12 to get the monthly amount.

Below are other examples of how to calculate monthly amount.

Example for weekly payments:

If you are paid \$1,000 every week, figure your monthly income in this way:

$$\begin{array}{rcl} \$1,000 & \text{income every week} & \\ \times & 52 & \text{number of pay periods in the year} \\ \hline \$52,000 & \text{total income for the year} & \end{array}$$

$$\frac{\$52,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$4,333 \text{ monthly income}$$

Example for bi-weekly payments:

If you are paid \$2,500 every other week, figure your monthly income in this way:

$$\begin{array}{rcl} \$2,500 & \text{income every other week} & \\ \times & 26 & \text{number of pay periods in the year} \\ \hline \$65,000 & \text{total income for the year} & \end{array}$$

$$\frac{\$65,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$5,417 \text{ monthly income}$$

Example for daily payments:

If you are paid \$75 a day and you work about 8 days a month, figure your monthly income in this way:

	\$75	income a day
X	96	days a year
	\$7,200	total income for the year

$\frac{\$7,200 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$600 \text{ monthly income}$

or this way:

	\$75	income a day
X	8	payments a month
	\$600	income for the month

Example for quarterly payments:

If you are paid \$15,000 every quarter, figure your monthly income in this way:

	\$15,000	income every quarter
X	4	pay periods in the year
	\$60,000	total income for the year

$\frac{\$60,000 \text{ (income for year)}}{12} = \$5,000 \text{ (number of months in year) monthly income}$

Example for irregular payments:

If you are paid \$4,000 8 times a year, figure your monthly income in this way:

	\$4,000	income a payment
X	8	payments a year
	\$32,000	income for the year

$\frac{\$32,000 \text{ (income for year)}}{12 \text{ (number of months in year)}} = \$2,667 \text{ monthly income}$

In Part 2, line 11, fill in amounts that other people provide to pay the expenses you list on *Schedule J: Your Expenses*. For example, if you and a person to whom you are not married pay all household expenses together and you list all your joint household expenses on Schedule J, you must list the amounts that person contributes monthly to pay the household expenses on line 11. If you have a roommate and you divide the rent and utilities, do not list the amounts your roommate pays on line 11 if you have listed only your share of those expenses on Schedule J. Do not list on line 11 contributions that you already disclosed elsewhere on the form.

Note that the income you report on *Schedule I* may be different from the income you report on other bankruptcy forms. For example, the *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B), and the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1) all use a different definition of income and apply that definition to a different period of time. *Schedule I* asks about the income that you are now receiving, while the other forms ask about income you received in the applicable time period before filing. So the amount of income reported in any of those forms may be different from the amount reported here.

If, after filing Schedule I, you need to file an estimate of income in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental Schedule I. To do so you must check the “supplement” box at the top of the form and fill in the date.

Schedule J: Your Expenses (Official Form 106J and 106J-2)

Schedule J: Your Expenses (Official Form 106J) provides an estimate of the monthly expenses, as of the date you file for bankruptcy, for you, your dependents, and the other people in your household whose income is included on *Schedule I: Your Income* (Official Form 106I).

If you are married and are filing individually, include your non-filing spouse's expenses unless you are separated.

If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, Debtor 2 must complete and include *Schedule J-2: Expenses for Separate Household of Debtor 2* (Official Form 106J-2).

Do not include expenses that other members of your household pay directly from their income if you did not include that income on *Schedule I*. For example, if you have a roommate and you divide the rent and utilities and you have not listed your roommate's contribution to household expenses in line 11 of *Schedule I*, you would list only your share of these expenses on *Schedule J*.

Show all totals as monthly payments. If you have weekly, quarterly, or annual payments,

calculate how much you would spend on those items every month.

Do not list as expenses any payments on credit card debts incurred before filing bankruptcy.

Do not include business expenses on this form. You have already accounted for those expenses as part of determining net business income on *Schedule I*.

On line 20, do not include expenses for your residence or for any rental or business property. You have already listed expenses for your residence on lines 4 and 5 of this form. You listed the expenses for your rental and business property as part of the process of determining your net income from that property on *Schedule I* (line 8a).

If you have nothing to report for a line, write \$0.

If, after filing *Schedule J*, you need to file an estimate of expenses in a chapter 13 case for a date after your bankruptcy, you may complete a supplemental *Schedule J*. To do so you must check the "supplement" box at the top of the form and fill in the date.

Summary of Your Assets and Liabilities and Certain Statistical Information (Official Form 106Sum)

When you file for bankruptcy, you must summarize certain information from the following forms:

- *Schedule A/B: Property* (Official Form 106A/B)
- *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D)
- *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F)
- *Schedule I: Your Income* (Official Form 106I)
- *Schedule J: Your Expenses* (Official Form 106J)
- *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1), *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B), or *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C-1)

After you fill out all of the forms, complete *Summary of Your Assets and Liabilities and Certain Statistical Information* (Official Form 106Sum) to report the totals of certain information that you listed in the forms.

If you are filing an amended version of any of these forms at some time after you file your original forms, you must fill out a new *Summary* to ensure that your information is up to date and you must check the box at the top.

Statement of Financial Affairs for Individuals Filing for Bankruptcy (Official Form 107)

Your Statement of Financial Affairs for Individuals Filing for Bankruptcy, provides a summary of your financial history over certain periods of time before you file for bankruptcy. If you are an individual in a bankruptcy case, you must fill out this statement.
11 U.S.C. § 521(a) and Bankruptcy Rule 1007(b)(1).

If you are married and your spouse is not filing this case with you, you need only provide information on this form about your spouse if you are filing under chapter 12 or chapter 13 and are not separated from your spouse.

If you are in business as a sole proprietor, partner, family farmer, or self-employed

professional, you must provide the information about all of your business and personal financial activities.

Although this statement may ask you questions that are similar to some questions on the schedules, you must fill out all of the forms completely to protect your legal rights.

Understand the terms used in this form

Legal equivalent of a spouse — A person whom applicable nonfederal law recognizes as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Chapter 7 Statement of Your Current Monthly Income and Means Test Calculation (Official Forms 122A-1, 122A-1Supp, and 122A-2)

If you are filing under chapter 11, 12, or 13, do not fill out this form.

Official Forms 122A-1 and 122A-2 determine whether your income and expenses create a presumption of abuse that may prevent you from obtaining relief from your debts under chapter 7 of the Bankruptcy Code. Chapter 7 relief can be denied to a person who has primarily consumer debts if the court finds that the person has enough income to repay creditors an amount that, under the Bankruptcy Code, would be a sufficient portion of their claims.

You must file *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1) if you are an individual filing for bankruptcy under chapter 7. This form will determine your current monthly income and compare whether your income is more than the median income for households of the same size in your state. If your income is not above the median, there is no presumption of abuse and you will not have to fill out the second form.

Similarly, *Statement of Exemption from Presumption of Abuse Under § 707(b)(2)* (Official Form 122A-1Supp) determines whether you may be exempted from the presumption of abuse because you do not have primarily consumer debts or because you have provided certain military or homeland defense services. If one of these exemptions applies, you

should file a supplement, Form 122A-1Supp, and verify the supplement by completing Part 3 of Form 122A-1. If you qualify for an exemption, you are not required to fill out any part of Form 122A-1 other than the verification. If the exemptions do not apply, you should complete all of the parts of Form 122A-1 and file it without the supplemental form.

If you and your spouse are filing together, you and your spouse may file a single Form 122A-1. However, if an exemption on Form 122A-1Supp applies to only one of you, separate forms may be required. 11 U.S.C. § 707(b)(2)(C).

If your completed Form 122A-1 shows income above the median, you must file the second form, *Chapter 7 Means Test Calculation* (Official Form 122A-2). The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay other debts. If this amount is high enough, it will give rise to a *presumption of abuse*. A presumption of abuse does not mean you are actually trying to abuse the bankruptcy system. Rather, the presumption simply means that you are presumed to have enough income that you should not be granted relief under chapter 7. You may overcome the presumption by showing special circumstances that reduce your income or increase your expenses.

If you cannot obtain relief under chapter 7, you may be eligible to continue under another

chapter of the Bankruptcy Code and pay creditors over a period of time.

Read each question carefully. You may not be required to answer every question on this form. For example, your military status may determine whether you must fill out the entire form. The instructions will alert you if you may skip questions.

If you have nothing to report for a line, write \$0.

Information for completing the forms

To fill out several lines of the forms, you must look up information provided on websites or from other sources. For information to complete line 13 of Form 122A-1 and lines 6-15, 30, and 36 of Form 122A-2, go to:

www.justice.gov/ust/eo/bapcpa/meanstesting.htm

If your case is filed in Alabama or North Carolina, the administrative expense multiplier mentioned at line 36 can be found at:

www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/AdministrativeExpensesMultiplier.aspx.

For the *Bankruptcy Basics* information referred to on line 36 of Form 122A-2, go to:

www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics.aspx.

If you do not have a computer with internet access, you may be able to use a public computer at the bankruptcy clerk's office or at a public library.

Chapter 11 Statement of Your Current Monthly Income (Official Form 122B)

If you are filing under chapter 7, 12, or 13, do not fill out this form.

You must file the *Chapter 11 Statement of Your Current Monthly Income* (Official Form 122B) if you are an individual filing for bankruptcy under chapter 11.

If you have nothing to report for a line, write \$0.

Chapter 13 Statement of Your Current Monthly Income, Calculation of Commitment Period and Chapter 13 Calculation of Your Disposable Income

(Official Forms 122C–1 and 122C–2)

If you are filing under chapter 7, 11, or 12, do not fill out this form.

Official Forms 122C–1 and 122C–2 determine the commitment period for your payments to creditors, how the amount you may be required to pay to creditors is established, and, in some situations, how much you must pay.

You must file the *Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period* (Official Form 122C–1) if you are an individual and you are filing under chapter 13. This form will report your current monthly income and determine whether your income is at or below the median income for households of the same size in your state. If your income is equal to or less than the median, you will not have to fill out the second form. Form 122C-1 also will determine your applicable *commitment period*—the time period for making payments to your creditors, unless the court orders otherwise.

If your income is above the median, you must file the second form, *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C–2). The calculations on this form—sometimes called the *Means Test*—reduce your income by living expenses and payment of certain debts, resulting in an amount available to pay unsecured debts. Your

chapter 13 plan may be required to provide for payment of this amount toward unsecured debts.

Read each question carefully. You may not be required to answer every question on this form. The instructions will alert you if you may skip questions.

Some of the questions require you to go to other sources for information. In those cases, the form has instructions for where to find the information you need.

Generally, if you and your spouse are filing together, you should file one statement together.

Information for completing the forms

To fill out several lines of the forms, you must look up information provided on websites or from other sources. For information to complete line 16c of Form 122C-1 and lines 6-15, 30, and 36 of Form 122C-2, go to:

www.justice.gov/ust/eo/bapcpa/meanstesting.htm.

If your case is filed in Alabama or North Carolina, the administrative expense multiplier mentioned at line 36 can be found at:

www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyResources/AdministrativeExpensesMultiplier.aspx .

If you do not have a computer with internet access, you may be able to use a public computer at the bankruptcy clerk’s office or at a public library.

Statement of Intention for Individuals Filing Under Chapter 7 (Official Form 108)

If you are filing under chapter 11, 12, or 13, do not fill out this form.

If you are an individual filing under chapter 7, you must fill out the *Statement of Intention for Individuals Filing Under Chapter 7* (Official Form 108) if:

- creditors have claims secured by your property, or
- you have leased personal property and the lease has not expired.

The Bankruptcy Code requires you to state your intentions about such claims and provides for early termination of the automatic stay as to personal property if the statement is not timely filed. The same early termination of the automatic stay applies to any unexpired lease of personal property unless you state that you intend to assume the unexpired lease if the trustee does not do so.

To help fill out this form, use the information you have already provided on the following forms:

- *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D),
- *Schedule C: The Property You Claim as Exempt* (Official Form 106C), and
- *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 106G).

Explain what you intend to do with your property that is collateral for a claim

If you have property that is collateral (or security) for a claim, you must state what you intend to do with that property.

You may choose either to surrender the property to the creditor, or retain the property. Below is more information about each of these options.

You may surrender the property to the creditor. If you surrender the property to the creditor, your bankruptcy discharge will protect you from any claim for the difference between what you owe the creditor and what the creditor receives from a sale of the property, unless the court determines that the debt is nondischargeable.

You may want to retain the property. If you want to retain your secured personal property, you may be able to reaffirm the debt, redeem the property, or take other action (for example, avoid a lien using 11 U.S.C. § 522(f)).

- **You may be able to reaffirm the debt.** You may decide to remain legally obligated to pay a debt so that you can keep the property securing the debt. This is called *reaffirming a debt*. You may reaffirm the debt in full on its original terms or you and the creditor may agree to change the terms. For example, if you want to keep your car, you may reaffirm a car loan, stating that you will continue to make monthly payments for it. **Only reaffirm those debts that you are confident you can repay.** You may seek to reaffirm the debt if you sign a *Reaffirmation Agreement*, which is a contract between you and a creditor, and

you follow the proper procedure for the *Reaffirmation Agreement*. 11 U.S.C. § 524. The procedure is explained in greater detail in the Disclosures that are part of the reaffirmation documents.

- **You may be able to redeem your property.** 11 U.S.C. § 722. You can redeem property only if all of the following apply:
 - ❑ The property secures a debt that is a *consumer debt* — you incurred the debt primarily for personal, family, or household use.
 - ❑ The property is *tangible personal property* — the property is physical, such as furniture, appliances, and cars.
 - ❑ You are either claiming the property as exempt or the trustee has abandoned it.

To obtain court authorization to redeem your property, you must file a motion with the court. If the court grants your motion, you pay the creditor the value of the property or the amount of the claim, whichever is less. The payment will be a single lump-sum payment.

Explain what you intend to do with your leased personal property

If you lease personal property such as your car, you may be able to continue your lease if the trustee does not assume the lease. To continue your lease, you can write to the lessor that you want to assume your lease. The creditor may, at its option, notify you that it is willing to have you assume the lease and may condition the assumption on cure of any outstanding default. If the lessor notifies you that it is willing to have you assume the lease, you must write to the lessor within 30 days stating that you assume the lease. 11 U.S.C. § 365(p)(2).

File the *Statement of Intention* before the deadline

You must file this form either within 30 days after you file your bankruptcy petition or by the date set for the meeting of creditors, whichever is earlier. You must also deliver copies of this statement to the creditors and lessors you listed on the form. Bankruptcy Rule 1007(b)(2).

If two married people are filing together in a joint case, both are equally responsible for supplying correct information. Both debtors must sign and date the form.

Application for Individuals to Pay the Filing Fee in Installments (Official Form 103A)

If you cannot afford to pay the full filing fee when you first file for bankruptcy, you may pay the fee in installments. However, in most cases, you must pay the entire fee within 120 days after you file, and the court must approve your payment timetable. Your debts will not be discharged until you pay your entire fee.

Do not file this form if you can afford to pay your full fee when you file.

If you are filing under chapter 7 and cannot afford to pay the full filing fee at all, you may be qualified to ask the court to waive your filing fee.

See *Application to Have Your Chapter 7 Filing Fee Waived* (Official Form 103B).

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out the *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119); include a copy of it when you file this application.

Application to Have the Chapter 7 Filing Fee Waived (Official Form 103B)

The fee for filing a bankruptcy case under chapter 7 is \$335. If you cannot afford to pay the entire fee now in full or in installments within 120 days, use this form. If you can afford to pay your filing fee in installments, see *Application for Individuals to Pay the Filing Fee in Installments* (Official Form 103A).

If you file this form, you are asking the court to waive your fee. After reviewing your application, the court may waive your fee, set a hearing for further investigation, or require you to pay the fee in installments or in full.

For your fee to be waived, all of these statements must be true:

- You are filing for bankruptcy under chapter 7.
- You are an individual.
- The total combined monthly income for your family is less than 150% of the official poverty guideline last published by the U.S. Department of Health and Human Services (DHHS). (For more information about the guidelines, go to <http://www.uscourts.gov>.)
- You cannot afford to pay the fee in installments.

Your family includes you, your spouse, and any dependents listed on *Schedule I*. Your family may be different from your *household*, referenced on *Schedules I* and *J*. Your household may include your unmarried partner and others who live with you and with whom you share income and expenses.

If a bankruptcy petition preparer helped you complete this form, make sure that person fills out *Bankruptcy Petition Preparer's Notice, Declaration, and Signature* (Official Form 119); include a copy of it when you file this application.

If you have already completed the following forms, the information on them may help you when you fill out this application:

- *Schedule A/B: Property* (Official Form 106A/B)
- *Schedule I: Your Income* (Official Form 106I)
- *Schedule J: Your Expenses* (Official Form 106J)

For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders (Official Form 104)

If you are filing under chapter 7, 12, or 13, do not fill out this form.

The people or organizations to whom you owe money are called your *creditors*. A *claim* is a creditor's right to payment. If you are an individual filing for bankruptcy under chapter 11, you must fill out *For Individual Chapter 11 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims Against You and Are Not Insiders* (Official Form 104).

Creditors may have different types of claims:

- Secured claims, or
- Unsecured claims.

If your debts are not paid, creditors with secured claims may be able to get paid from specific property in which that creditor has an interest, such as a mortgage or a lien. If a creditor has security interest in your property, but the value of the property available to pay the creditor is less than the amount you owe the creditor, the creditor has both a secured and an unsecured claim against you. The amount of the unsecured claim is the total claim minus the value of the property that is available to pay the creditor.

Generally, creditors with unsecured claims do not have rights against specific property, or the specific property in which the creditor has rights is not worth enough to pay the creditor in

full. For example, if you owe a creditor \$30,000 for your car and the creditor has a security interest in your car but the car is worth only \$20,000, the creditor has a \$20,000 secured claim and a \$10,000 unsecured claim.

\$30,000	Total amount you owe creditor
— \$20,000	Amount your car is worth (amount of secured claim)
<hr/>	
\$10,000	Amount of unsecured claim

Many claims have a specific amount, and you clearly owe them. However, some claims are uncertain when you file for bankruptcy, or they become due only after you file. You must include such claims when listing your 20 largest unsecured claims on this list.

Claims may be contingent, unliquidated, or disputed.

The form asks you to identify claims that are:

- Contingent claims,
- Unliquidated claims, or
- Disputed claims.

A claim is *contingent* if you are not obligated to pay it unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

A claim is *unliquidated* if the amount of the debt cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the amount has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been set.

A claim is *disputed* if you do not agree that you owe the debt. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

A single claim can have one, more than one, or none of these characteristics.

On this form, list the creditors with the 20 largest unsecured claims who are not insiders

You must file this form when you file your chapter 11 bankruptcy case with the court.

When you list the 20 largest unsecured creditors, include all unsecured creditors, except for the following two types of creditors, even if you plan to pay them. Do not include:

- Anyone who is an *insider*. *Insiders* include relatives; general partners of you or your relatives; corporations of which you are an officer, director, or person in control; and any managing agent. 11 U.S.C. § 101(31).
- Secured creditors, unless the unsecured claim resulting from inadequate collateral value places the creditor among the holders of the 20 largest unsecured claims.

Make sure that all of the creditors listed on this form are also listed on either *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 106D) or *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 106E/F).

On the form, you will fill in what the claim is for. Examples include trade debts, bank loans, professional services, and government contracts.

Glossary

Definitions of Some Terms Used in the Forms for Individuals Filing for Bankruptcy

Here are definitions of some of the important terms used in the forms for individuals who are filing for bankruptcy. See *Bankruptcy Basics* (www.uscourts.gov/FederalCourts) for more information about filing for bankruptcy and other important terms you should know. These definitions are intended only to provide guidance. They are not a substitute for legal advice.

Annuity — A contract for the periodic payment of money to you, either for life or for a number of years.

Bankruptcy petition preparer — A person or business, other than a lawyer or someone who works for a lawyer, that charges a fee to prepare bankruptcy documents. Under your direction and control, the bankruptcy petition preparer generates bankruptcy forms for you to file by typing them. Because they are not attorneys, they cannot give legal advice or represent you in bankruptcy court. Also called *typing services*.

Business debt — A debt that you incurred to obtain money for a business or investment or incurred through the operation of the business or investment.

Claim — A creditor's right to payment, even if contingent, disputed, unliquidated, or unmatured.

Codebtor — A person or entity that may also be responsible for paying a claim against the debtor.

Collateral — Specific property subject to a lien from which a creditor may be paid ahead of other creditors without liens on that property. Includes a mortgage, security interest, judgment lien, statutory lien, or other lien.

Community property — A type of property ownership available in certain states for property owned by spouses and, in some instances, legal equivalents of spouses. Community property states and territories include Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Puerto Rico, Texas, Washington, and Wisconsin.

Consumer debt — A debt you incurred primarily for a personal, family, or household purpose.

Contingent claim — A debt you are not obligated to pay unless a particular event occurs after you file for bankruptcy. You owe a contingent claim, for example, if you cosigned someone else's loan. You may not have to pay unless that person later fails to repay the loan.

Creditor matrix or mailing matrix — A list of names and addresses of all of your creditors, formatted as a mailing list according to instructions from the bankruptcy court in which you file.

Creditor — A person or organization to whom you owe money or who claims that you owe it money.

Current value, fair market value, or value — The amount property is worth, which may be more or less than when you purchased the property. Absent specific instruction, the value should be the price that could be realized from a cash sale or liquidation without duress within a reasonable time. See the instructions for specific forms regarding whether the value requested is as of the date of the filing of the petition, the date you complete the form, or some other date.

Debtor 1 — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse. The same person retains this designation in all of the forms.

Debtor 2 — A second person in a married couple who is filing a bankruptcy case with a spouse.

Dependent — A person who is economically dependent on you regardless of whether the person can be claimed as a dependent on your federal tax return. However, *Chapter 7 Means Test Calculation* (Official Form 122A-2) and *Chapter 13 Calculation of Your Disposable Income* (Official Form 122C-2) use the term in a more limited way. See the instructions on those forms.

Discharge — A discharge in bankruptcy relieves you after your bankruptcy case is over from having to pay debts that you owed before you filed your bankruptcy case. Most debts are covered by the discharge, but not all. (The instruction booklet explains more about common debts that are not discharged in bankruptcy.) Only your personal liability is removed by the discharge.

Disputed claim — A debt you do not agree that you owe. For instance, your claim is disputed if a bill collector demands payment for a bill you believe you already fully paid.

Eviction judgment — A judgment for possession that your landlord has obtained in an eviction, unlawful detainer action, or similar proceeding.

Executory contract — A contract between you and someone else in which both of you still have obligations to perform under the contract at the time you file for bankruptcy.

Exempt property — Property, or the value of a portion of it, that the law allows you to keep for your use rather than surrender it for the payment of your debts, provided that you follow the correct procedure to claim the exemption.

Garnishment — A procedure by which a creditor can reach money of yours that is in the hands of a third party to satisfy a debt. Garnishments are sometimes used by creditors to obtain money from your wages or bank account.

Individual debtor — A human being who is filing for bankruptcy either alone or with a spouse, whether or not the individual owns a business.

Joint case — A single case filed by a married couple.

Judgment lien — A lien that arises as a result of a judgment against you.

Legal equivalent of a spouse — A person recognized by applicable nonfederal law as having a relationship with the debtor that grants legal rights and responsibilities equivalent, in whole or in part, to those granted to a spouse.

Legal or equitable interest — A broad term that includes all kinds of property interests in both tangible and intangible property, whether or not anyone else has an interest in that property.

Negotiable instrument — A financial instrument that you can transfer to someone by signing or delivering it, including personal checks, cashiers' checks, promissory notes, and money orders.

Non-individual debtor — A debtor that is not a human being — for example, an artificial entity such as a corporation, partnership, or limited liability company (LLC).

Non-negotiable instrument — A financial instrument that you cannot transfer to someone by signing or delivering it.

Nonpriority unsecured claim — A debt that generally will be paid after priority unsecured claims are paid. The most common examples are credit card bills, medical bills, and educational loans.

Payment advice — A statement such as a pay stub or earnings statement from your employer that shows all earnings and deductions from your pay.

Presumption of abuse — A rebuttable legal presumption that you have too much income after allowed expenses to be granted relief under chapter 7.

Priority unsecured claim — A debt that the Bankruptcy Code requires to be paid before most other unsecured claims are paid. The most common examples are certain income tax debts and past due alimony or child support.

Property you own — Includes property you have purchased, even if you owe money on it, such as a home with a mortgage or an automobile with a lien.

Reaffirming a debt — Agreeing to repay a debt that would otherwise be discharged by entering into a new written agreement with the creditor. A reaffirmation agreement may allow you to keep property that a creditor has the right to take from you because it secures the debt being reaffirmed. For a reaffirmation agreement to be effective, there are many procedural and legal requirements that must be satisfied during the bankruptcy case.

Secured claim — A claim that may be satisfied in whole or in part either

- by a charge against or an interest in specific property of the debtor, or
- by a right of setoff.

Common examples of creditors who have secured claims are lenders from your car, your home, or your furniture.

Sole proprietorship — A business you own as an individual that is not a separate legal entity such as a corporation, partnership, or LLC. Sole proprietors must use the bankruptcy forms that are numbered in the 100 series.

Statutory lien — A lien that arises as a result of a statute.

Unexpired lease — A lease that is in effect at the time you filed for bankruptcy.

Unliquidated claim — A debt with an amount cannot be readily determined, such as by referring to an agreement or by a simple computation. An unliquidated claim is one for which there may be a definite liability but where the value has not been set. For instance, if you were involved in a car accident, the victim may have an unliquidated claim against you because the amount of damages has not been determined.

Unsecured claim — A claim held by a creditor who does not have security interest in or other lien on your property or a right of setoff.

You — A debtor filing alone or one person in married couple who is filing a bankruptcy case with a spouse.

W. Va. Code § 38-10-4

Current through Acts of the 2015 Regular Session.

Michie's™ West Virginia Code > *Chapter 38. Liens.* > *Article 10. Federal Tax Liens; Orders and Decrees in Bankruptcy.*

§ 38-10-4. Exemptions of property in bankruptcy proceedings.

Pursuant to the provisions of *11 U. S. C. § 522(b) (1)*, this state specifically does not authorize debtors who are domiciled in this state to exempt the property specified under the provisions of *11 U. S. C. § 522(d)*.

Any person who files a petition under the federal bankruptcy law may exempt from property of the estate in a bankruptcy proceeding the following property:

- (a) The debtor's interest, not to exceed twenty-five thousand dollars in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence or in a burial plot for the debtor or a dependent of the debtor: Provided, That when the debtor is a physician licensed to practice medicine in this state under article three [*§§ 30-3-1 et seq.*] or article fourteen [*§§ 30-14-1 et seq.*], chapter thirty of this code, and has commenced a bankruptcy proceeding in part due to a verdict or judgment entered in a medical professional liability action, if the physician has current medical malpractice insurance in the amount of at least one million dollars for each occurrence, the debtor physician's interest that is exempt under this subsection may exceed twenty-five thousand dollars in value but may not exceed two hundred fifty thousand dollars per household.
- (b) The debtor's interest, not to exceed two thousand four hundred dollars in value, in one motor vehicle.
- (c) The debtor's interest, not to exceed four hundred dollars in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for the personal, family or household use of the debtor or a dependent of the debtor: Provided, That the total amount of personal property exempted under this subsection may not exceed eight thousand dollars.
- (d) The debtor's interest, not to exceed one thousand dollars in value, in jewelry held primarily for the personal, family or household use of the debtor or a dependent of the debtor.
- (e) The debtor's interest, not to exceed in value eight hundred dollars plus any unused amount of the exemption provided under subsection (a) of this section in any property.
- (f) The debtor's interest, not to exceed one thousand five hundred dollars in value, in any implements, professional books or tools of the trade of the debtor or the trade of a dependent of the debtor.
- (g) Any unmeasured life insurance contract owned by the debtor, other than a credit life insurance contract.
- (h) The debtor's interest, not to exceed in value eight thousand dollars less any amount of property of the estate transferred in the manner specified in *11 U. S. C. § 542(d)*, in any accrued dividend or interest under, or loan value of, any unmeasured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.
- (i) Professionally prescribed health aids for the debtor or a dependent of the debtor.
- (j) The debtor's right to receive:
 - (1) A social security benefit, unemployment compensation or a local public assistance benefit;
 - (2) A veterans' benefit;
 - (3) A disability, illness or unemployment benefit;
 - (4) Alimony, support or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

- (5) A payment under a stock bonus, pension, profit sharing, annuity or similar plan or contract on account of illness, disability, death, age or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, and funds on deposit in an individual retirement account (IRA), including a simplified employee pension (SEP) regardless of the amount of funds, unless:

 - (A) The plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose;
 - (B) The payment is on account of age or length of service;
 - (C) The plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408 or 409 of the Internal Revenue Code of 1986; and
 - (D) With respect to an individual retirement account, including a simplified employee pension, the amount is subject to the excise tax on excess contributions under Section 4973 and/or Section 4979 of the Internal Revenue Code of 1986, or any successor provisions, regardless of whether the tax is paid.
- (k) The debtor's right to receive or property that is traceable to:

 - (1) An award under a crime victim's reparation law;
 - (2) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (3) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of the individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (4) A payment, not to exceed fifteen thousand dollars on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent;
 - (5) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;
 - (6) Payments made to the Prepaid Tuition Trust Fund or to the Savings Plan Trust Fund, including earnings, in accordance with article thirty [§§ 18-30-1 et seq.], chapter eighteen of this code on behalf of any beneficiary.