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BASIC CONSUMER CHAPTER 7 AND 13 FOR THE NONBANKRUPTCY ATTORNEY

SCOPE:

This chapter is a practical how to survey of consumer Chapter 7 and Chapter 13 processes for the non-bankruptcy lawyer who has a client with consumer debt issues and is considering bankruptcy alternatives.

OVERVIEW:

Bankruptcy Courts have nationwide jurisdiction to restrain, enjoin, or curtail any action by creditors against debtors who file for relief. Consumer debtors typically have problems with credit card debts, personal loans, home and/or car loans, repossession and foreclosure deficiencies, income taxes, and child support. Both Chapters 7 and 13 cases create an opportunity to discharge and/or restructure these types of consumer debts and obtain a fresh start.

In Chapter 7 cases, the Court appoints a Trustee who has the responsibility to examine the debtor's financial circumstances and collect the debtor's nonexempt assets so that creditors can be paid on a pro-rata basis. In most instances, Chapter 7 debtors have little or limited nonexempt assets, so as a general rule there is no liquidation. Debtors receive a discharge in about five months. Chapter 7 debtors typically discharge credit cards, personal loans, deficiencies, and other unsecured debts. They generally have car loans and home loans that they either pay direct (reaffirm) or surrender. They may have priority debts, and these remain unchanged in a Chapter 7 and are not discharged.

In Chapter 13 cases, the Court appoints a Trustee to work with the debtor to reorganize and rehabilitate the debtor over a period of time, usually three to five years. Chapter 13 debtors are often looking to stop or postpone a foreclosure or repossession. Many times, they have unpaid property taxes, income taxes, and child support. Chapter 13 can be a workable restructuring of these debts. It can also discharge the same type of debts as a Chapter 7. A typical Chapter 13 debtor restructures home and car loans, discharges unsecured debts either in full or in part, and may have IRS debt also paid by the Chapter 13 Trustee.

The Bankruptcy Code was enacted by the United States Congress to provide a mechanism for dealing with problems caused by debtor/creditor relationships. The Code provides methods for providing

debtors with relief while at the same time giving creditors a way to retrieve or repossess their collateral or to legally protect their interests. Bankruptcy Courts are Federal Courts governed by the Bankruptcy Code, Bankruptcy Rules, and the Federal Rules of Civil Procedure.

WHO MAY BE A CONSUMER DEBTOR? (11 USC § 109)

Individuals, or individuals in the case of a married couple (i.e., joint individuals) may file either a Chapter 7 or Chapter 13. There are no debt limits for Chapter 7 debtors, but there are debt limits in place for Chapter 13 debtors, as described below.

VENUE: (28 USC § 1408)

For consumer cases, typically, venue is based on the domicile or residential address; that is, the case is filed in the district and division of the debtor's domicile/residence.

OVERVIEW OF CHAPTERS 7 AND 13: (11 USC §701 et seq. or 11 USC §1301 et seq.)

If a client is considering bankruptcy, then the Bankruptcy Code provides a consumer debtor with two forms of relief: Chapters 7 and 13. Choosing which Chapter to file is extremely critical for the client and is affected by the results of the means test described below.

Chapter 7: A Chapter 7 case, often known as "straight bankruptcy" or "liquidation" is the choice for most consumer debtors who have a large amount of dischargeable unsecured debt. The debtor keeps only property that is considered "exempt" and agrees to turn over to the Court appointed Trustee all other property. Most consumer debtors in Texas own only exempt property or mostly exempt property. All nonexempt property is then sold, and the creditors are paid on a pro-rata basis. The debtor sees a discharge of all debts (i.e., unsecured debts), except those that Congress has expressly made non-dischargeable (i.e., child support, alimony, income taxes, student loans, etc.).

Chapter 13: In this "wage-earner plan," a debtor works out a plan with a creditor that permits the debtor to keep most, if not all, of his property while making reduced payments to a Bankruptcy Trustee over a three-to-five year period. Chapter 13 proceedings are available only to individuals who have a regular income and owe non-contingent, liquidated, unsecured debts of less than $336,900.00 and non-contingent, liquidated, secured debts of less than $1,010,650.00 (adjusted every three years to reflect changes in the Consumer Price Index. (11 USC §109(e)). Typical consumer Chapter 13 debtors are attempting to restructure secured debts due to pending foreclosure of homes, repossession of cars, and/or outstanding priority claims such as income tax or child support. It is still possible to discharge unsecured claims in a Chapter 13 subject to the "means test." A Chapter 13 is typically used to "cure" mortgage arrears and allow a debtor to resume a restructured mortgage payment and/or restructure automobile debt.

CLASSIFICATION OF DEBTS IN CONSUMER CASES: (11 USC §506 and 507)

There are, in general, three types of debts in consumer bankruptcy cases. They are: (1) priority claims, (2) secured claims, and (3) unsecured claims.

Priority claims are defined by 11 USC § 507. Typical priority debts for consumer debtors include most income taxes and domestic support obligations, which is a general term that encompasses child support and alimony. Priority claims may be non-dischargeable in a Chapter 7 or 13 proceeding. Priority claims are typically paid in full in Chapter 13 cases. Domestic support obligations may also require the liquidation of non-exempt assets in a Chapter 7.

Secured claims are defined by 11 USC § 506. Secured consumer debts are typically either a purchase money security interest or a non-purchase security interest. Secured claims are governed by the UCC and State statutes.

A purchase money security interest is created normally when a creditor loans a debtor money to purchase a specific item, known as "collateral"; good examples are cars and homes. If the debtor is unable to entirely pay for it, the creditor may repossess the collateral. For example, if the client purchases an automobile, he typically agrees in writing to borrow money from a lender to purchase the automobile and, in exchange, grant the lender a security interest in the vehicle. This is known as purchase money security interest. Should the client file for bankruptcy, the client will have several choices, either to pay or surrender the collateral and seek a discharge of the debt, depending on the type of bankruptcy he files.

Another category of secured debt arises when the client gives a security interest in something other than property that the borrowed money is used to purchase. For example, the client borrows money from a finance company that, in exchange, requires him to secure repayment with his household furniture. This is called a non-purchase money security interest, because the client owned the furniture before borrowing the money, and he did not use the proceeds of the loan to purchase the furniture. In certain instances, the client's pledge of security to the lender can be stricken by filing an appropriate motion in bankruptcy, and the debt will be treated as unsecured. See 11 USC § 522(f) As a general rule, subject to lien avoidance, all secured claims are either paid and the debtor retains the collateral or the collateral is surrendered in exchange for a discharge of the indebtedness. How a debtor pays is a major difference between a Chapter 7 or Chapter 13.

The final type of debt is unsecured. Generally, any debt not a priority or a secured claim is unsecured. Here the creditor and debtor have no expectation or requirement that the debtor provide any form of security. Examples include Master Card, Visa, and similar credit card debts, medical bills, and personal loans. The typical consumer debtor is attempting, subject to the limitations of the Bankruptcy Code, to discharge these debts. As a practice pointer, remember that certain unsecured claims such as student loans are nondischargeable and problematic.

WHAT IS THE AUTOMATIC STAY? (11 USC §362)

The automatic stay applies not only in Chapter 7 or 13 bankruptcies but also in all other types of bankruptcies, and it is a stay against the commencement or continuation of all action of any type to collect a debt and obligation by a creditor. Generally, it will prevent any type of collection effort against the client, such as a creditor sending a bill, telephone collection from collectors, or a lawsuit to enforce a debt. Specifically, it prevents:

1. The commencement or continuation including the issuance or employment of process if there is a lawsuit of any type to recover a claim of any nature.

2. The enforcement against the debtor or property of the debtor of a judgment obtained before the commencement of the case.

3. Any act to obtain possession of property of the estate or to exercise control of the property of the estate.

5. Any setoff of any debt owed by the debtor that arose before the filing of the case. Generally, "setoff" refers to actions by depositories or lending institutions to attempt to charge a debt against property that might be on deposit, for example, a bank account balance.)

6. The commencement or continuation of any proceeding in the United States Tax Court concerning the debtor.

There are several points that should be remembered concerning the automatic stay. The automatic stay under Chapter 7 generally does not aid or protect a third party, or person obligated with the Chapter 7 debtor, on an obligation. Thus, if a person is obligated with the Chapter 7 debtor, that obligation can be collected and usually will be, by suit or otherwise. A Chapter 13 offers a benefit in that on consumer debts, there is a co-debtor stay, so that protection to a consumer co-debtor may be afforded in a Chapter 13. (11 USC §1301)

The automatic stay relates only to debts or actions that arose on or before the commencement of the bankruptcy proceeding. Thus, if the debt was incurred subsequent to the filing of the bankruptcy, the automatic stay would offer no protection, nor would that debt be discharged.

In addition, it is important to remember that the automatic stay does not stay certain other defined actions, including, but not limited to:

1. Commencement or continuation of any criminal action. (This also can involve action to collect on a hot check.)

2. Collection of any alimony, maintenance, or support from property that is not property of the estate. Actions for divorce, child support, or modification of custody or child support that do not affect property of the estate are also not stayed.

3. Enforcement of a governmental unit's police or regulatory power, including enforcement of a judgment that does not involve the payment of money, such as an injunction or cease and desist order obtained in an action or proceeding by a governmental unit.

4. The tax issuance to the debtor by a governmental unit of a notice of a tax deficiency.

5. Action by a lessor to obtain possession of leased real property after a court has entered judgment for possession.

There are other specific provisions relating to the continuation of the automatic stay and qualifications for the automatic stay that may apply in certain business situations; however, these points generally cover the ways in which a consumer debtor will be affected by the automatic stay.

A consumer debtor may see a secured creditor, such as a mortgage holder on a home, automobile or the like, file a motion to modify the stay to permit recovery of such property during the term of the bankruptcy proceeding. It is very important for an individual filing under Chapter 7 to understand his options concerning second claims if payments are not current, the secured creditor will likely seek to modify the stay.

Remember, there is an automatic stay only in the first case filed by a client in any given 12 month period. On a second case filed within twelve months of a prior bankruptcy dismissal, the stay only lasts for 30 days unless extended by the Court upon timely filed motion and signed order. There is no automatic stay on any case after the second case filed within a year of prior case dismissals. In a third case, the stay can only be imposed after the filing of a motion and a signed order.

<u>WHAT IS THE BASIC CONCEPT OF CHAPTER 7? (11 USC § 701 et seq.)</u>

The basic concept can be stated in one phrase: The voluntary surrender to a Chapter 7 Trustee by a debtor filing a petition of all nonexempt assets in exchange for a discharge under Chapter 7. In order to determine what non-exempt assets mean, one must first determine what is exempt. Exemptions are property interests which legislatures (at the state and/or federal level) have by statute listed as property free and clear of creditor claims. All of the possible exemptions which exist are in statute form, but some of them are antiquated and seldom used. In order for property to be exempt, it must be listed in a statue. Any asset not listed by statute is not exempt.

Only people are entitled to exemptions; corporations receive no exemptions. When a corporation files a Chapter 7, it gives up all of its assets and ceases to be, since it does not receive a discharge from its debts. Bankruptcy laws do not permit corporations to secure discharges in a Chapter 7. Individuals can select exemptions from one of two lists: state exemptions or federal exemptions.

The choice of exemptions is governed by and perhaps limited by how long the client has lived in his state of domicile and how long the client has owned his home (for real estate only). Homestead exemptions are contained in the Constitution, Article 16 §§ 50, 51 and Texas Property Code §§ 41.001 et seq. as well as the Federal Exemption of 11 USC § 522. If the client has been a domiciliary of the state of Texas for the last 30 months, he may claim a Texas or a Federal exemption. If the client has lived in Texas less than this time, his choice of exemptions is complex and is determined by the state(s) of his domicile during the 24th – 30th month period prior to filing and that state's applicable state law. In simple terms, his exemption choice is provided by state law of the state that he has been domiciled in for the greater portion of the 180 days (six months) between the 24th to 30th month prior to his Chapter 7 filing. So again, by example, if the client has lived in Texas for two years but in the six months prior to the two years he had been a resident of California, then his exemption choices would be governed by California law. This may include his choice of that state's exemption or federal exemption. It could also provide for no choice; that is, just that state's exemption or just a federal exemption, but the client would always be allowed at least some exemption choice. Please remember that domicile and residence are not the same. The client may be in the armed forces or travel for work and be a resident of Iraq, but his domicile will still be the state to which he will return. (11 USC § 522(b)(3)). Should the client not qualify for a Texas exemption, then other state exemptions or the federal exemption will always apply.

In summary form, the Texas state exemptions involve the ability of the debtor to own and maintain a home, regardless of value (but only if he has owned the property for 1,215 days or rolled over equity from a prior home and combined ownership totals 1,215 days), that is located on ten acres or less of land in a city, town, or village, or urban area (an area which is not necessarily a part of the city but which receives city services and effectively operates as if it were in a city) or in a rural area (generally in an area where agriculture, mining, timber operations, farming, ranching, etc., are carried out) the debtor is entitled to a homestead exemption of 100 acres if not married and 200 acres if married. In addition, an exemption is allowed for burial lots for the client and his family. There is a limit of $136,875.00 per debtor; $273,750.00 in a case with a husband and wife, if they have owned the real property for less than 1,215 days. Note, this is an equity interest which is the difference between value and what is owed and not the value of the property. By example, a property worth $400,000.00 that has a $350,000.00 mortgage has equity of $50,000.00. (11 USC § 522(p)(1))

In addition to the real property exemption, a debtor who is single is entitled to a personal property exemption for <u>things</u> used by the debtor and or members of the debtor's family, as long as the aggregate fair market value at disposal (i.e., price the items could be sold for) is no more than $30,000.00. If the debtor is a married person, the limit is $60,000.00. These assets include: home furnishings, provisions for consumption, farming or ranching vehicles and implements, tools, equipment, books, apparatus used in a profession or trade, wearing apparel, jewelry not to exceed 25% of the allowed exemption, two firearms,

athletic and sporting equipment, a motor vehicle for each person who holds a license, two horses, 12 head of cattle, 60 head of other livestock, 120 fowl, and household pets.

In addition, retirement plans, including most every type of plan which includes but is not limited to 401(k), IRA, Roth IRA, 403b, are exempt. Annuities are exempt, as well.

The primary benefit of the federal exemption package to a debtor is that it allows the debtor to partially exempt some cash or liquid assets. While the state exemptions do not permit a cash asset exemption, it is possible to exempt cash or other liquid assets under federal exemptions up to a maximum of $10,125.00 if the individual is not married, or up to a maximum of $20,250.00 if married and filing jointly. (11 USC §522(d)(5))

The federal exemptions, however, are limited in other regards. The federal exemptions are limited to the following (these exemptions can be doubled for a couple filing a joint petition):

1. The debtor's equity interest in real property used as a residence not to exceed $20,200.00.

2. The federal exemptions consist of items kept primarily for personal or family use:

    - Motor vehicles (limited to $3,225.00 per debtor)
    - Real property (house and/or land limited to $20,200.00 per debtor)
    - Household goods and furnishings (*limited to $10,775.00 per debtor for all assets so marked)
    - Clothing (*limited to $10,775.00 per debtor for all assets so marked)
    - Books and musical instruments (*limited to $10,775.00 per debtor for all assets so marked)
    - Pets and animals producing family use products (*limited to $10,775.00 per debtor for all assets so marked)
    - Crops such as garden produce (*limited to $10,775.00 per debtor for all assets so marked)
    - Burial plots (included in the $20,200.00 per debtor limit for real estate)
    - Tools or books necessary to make a living (limited to $2,025.00 per debtor)
    - Cash value on life insurance policies
    - Social security, unemployment, public assistance, veterans or disability benefits
    - Pension, profit sharing, 401(K), IRA or other similar plan
    - Alimony or child support necessary for support
    - Certain personal injury settlements (limited to $20,200.00 per debtor)

Note, most of the federal limits in the Bankruptcy Code are adjusted at every three-year interval to reflect changes in the Consumer Price Index.

Any asset not exempt except assets that are of no consequential value must be turned over to the Chapter 7 Trustee. To determine what must be "given up," one must look very carefully at the exemption statutes and determine what may be claimed as exempt. Any asset which is not exempt can be liquidated for the benefit of the client's creditors.

In the event that there is a question by a creditor, Trustee, or interested party, the bankruptcy judge (in a hearing) will determine the value of the assets the client is claiming as exempt. Of course, in such a hearing, evidence on value will be considered from other sources, as well as those presented by the debtor. The objecting party will file an Objection to Exemptions. Any objection not made within 30 days of the conclusion of the first meeting of creditors is waived. (B.R. 4003)

Experience has shown that about 90% of the consumers' debtors who file Chapter 7 have no property interest that must be liquidated or surrendered. Those debtors with assets above the homestead exemption can file a Chapter 13 and, typically, maintain these non-exempt assets.

WHAT IS MEANS TESTING IN A CHAPTER 7? (11 USC §707)

Means testing is an income test monitored by the United States Trustee in a Chapter 7. Should the client fail the "means test," and filed a Chapter 7 he will see a Motion to Dismiss his Chapter 7 prosecuted by the United States Trustee due to presumed abuse. The ability of a consumer debtor to file a Chapter 7 with no presumed abuse is determined and controlled by said means test (Bankruptcy Form B22A). The means test is, for all practical purposes, a backward looking artificial income test which may not appear rational at all times but determines the client's ability to file a Chapter 7. The more money the client has made in the last six months, the less likely he is to pass the "means test." Clients who would otherwise be good Chapter 7 clients can be forced to file a Chapter 13, if they fail the "means test." Means testing can, unfortunately, be complicated and compared to completing a tax return, as it calculates gross income and allowed deductions.

The means test by definition applies to all consumer debtors, but if the debtor has business debt and that debt is at least 51% in total amount attributable to business debts, then the means test is not applicable, and the client may file a Chapter 7 without concern for the means test.

Means testing is determined by a historical look at a debtor's gross income and expenses over the last full six months. To determine if a debtor can file a Chapter 7, the attorney must first determine if the client's current monthly income (called CMI) is above or below median income as defined by the federal government. Unfortunately, CMI is neither current or sometimes even actual income, but a six month average ending at the month before filing the bankruptcy case of most but not all funds derived from all sources that the client has received in the last six months. Most commonly this includes gross pay from the client's employment and net income (after business expenses) for self employed clients. It, however, does not include social security or payments under the social security act, such as unemployment or disability income, and it does not include sporadic income, such as gifts from parents or loans from a retirement plan. If the client's CMI is below median income then the client qualifies to file a Chapter 7. If debtor's CMI is above median income he can still qualify to file a Chapter 7, if after deduction of allowed expenses from monthly income the debtor is left with less than $109.58 per month. These expenses are ones allowed by the Internal Revenue Code, as well as actual expenses for secured debt service and other expenses enumerated by the Bankruptcy Code, such as health care, child care, life and health insurance, support of elderly parents, charitable giving, cell phone bills and the like. These deductions, on a step by step basis, are available on the Bankruptcy Form 22A, and a chart for current median income is shown below. If after deducting these allowed expenses from debtor's CMI he has more than $109.58 per month but less than $182.50 per month left, he will qualify, as long as unsecured debts total more than $43,800.00 or if the means test result times 60 is less than 25% of the unsecured debt total. If a debtor's means test result is above $182.50 and he does not have special circumstances, such as a serious medical condition or a call or order to active duty in the Armed forces, then the debtor does not qualify to be in a Chapter 7.

A step by step evaluation for determining means testing is shown below. The form and allowances are available at the United States Trustee website. See Appendix for details. Any lawyer who routinely does means testing invests in a software package to aid in these calculations.

1. If debts are primarily consumer debts, (i.e., 51% of the total value of debts are consumer debts, meaning not business debts) then calculate Current Monthly Income, called CMI pursuant to § 101(10A) of the Bankruptcy Code. If debts are not primarily consumer debts (i.e., debts are primarily business

debts, as defined by the Bankruptcy Code), then, fortunately, means testing does not apply, and the client need not be concerned with means testing.

2. Compare CMI to Median State Income (MSI). If CMI is above MSI, go to step 3. If not, the client has passed the means test and can file a Chapter 7.

Current median state income numbers for the state of Texas are as follows:

MEDIAN FAMILY INCOME
TEXAS
Cases Filed On or After 2/1/07

	Annual	6 Month	Monthly
1 earner	34,418.00	17,209.00	2,868.17
2-person families	48,849.00	24,424.50	4,080.75
3-person families	51,678.00	24,839.00	4,306.50
4-person families	59,369.00	29,684.50	4,947.42
5-person families	65,669.00	32,834.50	5,472.42
6-person families	71,969.00	35,894.50	5,997.42
7-person families	78,269.00	39,134.50	6,522.42
8-person families	84,569.00	42,284.50	7,047.42
9-person families	90,869.00	45,434.50	7,572.42
10-person families	97,169.00	48,584.50	8,097.42
11-person families	103,469.00	51,734.50	8,622.42

3. Subtract monthly expenses per the Bankruptcy Code from CMI; again, this is current monthly income. These expenses are limited by IRS national standards for allowable living expenses, allowable living expenses for transportation, and IRS local standards for housing and utilities. These expenses differ by family size, income, and number of cars and may be supplemented or adjusted due to payments on secured debts, like a house or car. Exact numbers are available at the United States Trustee's website for National Standard for Living Expenses, for the Local Housing and Utilities Expenses, and Local Transportation Expenses. If what is left after subtracting monthly expenses from CMI is under $109.58, the debtor has passed the means test and can file a Chapter 7. If the remainder is $109.58 to $182.50, then proceed to number 5. If the remainder is over $182.50, then under means testing, the debtor probably does not qualify for a Chapter 7, unless step 6 applies.

5. If Monthly Disposable Income (MDI) is $109.58 to $182.50, does the means test result times 60 months pay 25% of his general unsecured creditors, if he contributes this amount to his unsecured creditors over time. If no, debtor passes the means test and can file a Chapter 7. If yes, debtor probably does not qualify for a Chapter 7, unless step 6 applies.

6. Are there special circumstances? If yes and US Trustee agrees, means testing does not apply and debtor can file a Chapter 7. If not, debtor probably does not qualify for a Chapter 7, but debtor is entitled to a hearing to prove that he should be exempt from means testing based on special circumstances.

WHAT ARE THE ADVANTAGES OF CHAPTER 7?

There are really two advantages of a Chapter 7 filing for clients. First is the imposition of the automatic stay. The automatic stay is provided for under the Bankruptcy Code and stays any creditors from collecting or attempting to collect any debt that might be otherwise owed to them. This stay is perpetual,

if the client is discharged; however, upon earlier order of the Court or upon validation of a lien on certain property that the debtor holds (such as an automobile, computer, home, or the like), a creditor may exercise that lien and recover that property, if payments are not properly made. Please note, however, that the automatic stay is limited, if the client files more than one case in a year of a prior dismissed case. The automatic stay exists for only 30 days in a second case, unless extended by the Court, and there is no automatic stay, if the client filed a third case or more within a year of two or more dismissed cases.

There are, however, exceptions to the automatic stay. These include divorces, child support matters, and landlords who have obtained a judgment for possession. In addition, the automatic stay does not stay criminal prosecution at any stage. Thus, if someone is charged with a crime because of some act occurring before or after filing a bankruptcy Code, generally the filing of a petition under any of the chapters of the Bankruptcy Code simply does not stop or stay such prosecution. The most frequent type of prosecution involves hot checks.

Second is the advantage of a fresh financial start for the client. Fresh financial start means that the client will not be labored by oppressive debt and obligation. This begins with the automatic stay and concludes upon discharge.

WHAT IS CREDIT COUNSELING AND WHAT DO CLIENTS NEED TO DO BEFORE THEY FILE? (11 USC § 109(h))

All consumer debtors who file any type of bankruptcy must obtain a credit counseling certificate during the 180-day period preceding the date of filing. It is imperative to know some courts have ruled that one cannot obtain credit counseling on the day of filing. A receipt of credit counseling completion is called the credit counseling certificate. This receipt of certification must come from an approved credit counseling agency, which is an individual or group briefing that outlines the opportunities for available credit counseling and assists such individuals in performing a related budget analysis. Failure to obtain credit counseling prior to filing bankruptcy is grounds for dismissal and is typically fatal to any bankruptcy case.

The list of approved agencies is available at the United States Trustee's website. The credit counseling certificate typically costs about $50.00, and the session is typically 90 minutes in length. The required class is offered by internet, telephone, and in person. Most consumer bankruptcy lawyers develop a working relationship with one or more credit counseling agencies to which they recommend clients. Often these agencies will offer billing privileges to counsel for the debtor.

A second round of credit counseling called the debtor education course must be completed prior to discharge. A list of approved debtor education courses is also listed at the United States Trustee's website. This education course typically takes 60 minutes and has a cost of between $17.50 and $50.00. Unlike the initial credit counseling, which is routinely the same price among all credit counseling agencies, there is a wide disparity in pricing of the debtor education courses. The required class is offered by internet, telephone, and in person. Again, most consumer bankruptcy lawyers develop a working relationship with one or more credit counseling agencies to which they recommend clients. Often these agencies will offer billing privileges to counsel for the debtor.

WHAT DOCUMENTS MUST BE FILED WHEN FILING A CHAPTER 7? (11 USC § 521)

There are a number of documents which must be filed and signed by the client. These documents are generally referred to as disclosure documents, or documents which are designed to provide information to the Court concerning a particular case. All official forms are available at the U.S. Court's website. Generally, these documents are:

1. A credit counseling certificate.

2. A petition requesting relief under Chapter 7. Official Form B1.

3. A statement as to attorney's fees, Rule 2016(b) disclosure. Official Form B203.

4. A Summary of Schedules and Declaration of Schedules. Official Form B6.

5. A list of assets, Schedules A and B. Official Forms B6A and B6B.

6. A claim of exemptions, Schedule C. Official Form B6C.

7. A list of all debts, Schedules D (secured debts), E (priority debts), and F (unsecured debts). Official Forms B6D and B6E.

8. A list of co-debtors and of executor contracts, Schedules G and H. Official Forms B6G and B6H.

9. A list of monthly expenses and income, Schedules I and J. Official Forms B6I and B6J.

10. A Statement of Financial Affairs. Official Form B7.

11. Statement of Intent. Official Form B8.

12. A means test calculation. Official Form B22A.

13. Pay remittances for the last sixty days.

12. The debtor(s) last filed tax return or provide a copy to the Chapter 7 Trustee no later than seven days prior to the first meeting of creditors.

14. The debtor(s) credit counseling certificate and a copy of the debt repayment plan, if any.

15. The debtor(s) bank statements for the sixty days prior to filing or provide a copy to the Chapter 7 Trustee no later than seven days prior to the first meeting of creditors.

Copies of all documents that are filed with the Court should be forwarded to the Chapter 7 Trustee at least seven days prior to the scheduled first meeting of creditors. Again, any attorney routinely filing Chapter 7 or 13 cases invests in software to assist with form drafting.

WHAT OPTIONS EXIST AS TO SECURED DEBT?

First, it must be understood what secured debt is. Secured debt is a situation where a security interest has been retained by a creditor to permit that creditor to foreclose on certain described property or to recover possession, if payments are not made. Generally, when talking about property, the bankruptcy attorney must determine whether it is real property (land and buildings) or personal property (things and/or cash on deposit of some nature).

As to real property, there are three possibilities that exist under Chapter 7. The debtor may:

1. Agree to surrender the property and thus seek a discharge.

The surrender, or loss, of the property should usually be contemplated within 90 to 120 days after filing the bankruptcy action and involves a giving back of the property by the debtor. A creditor may ask that the period of time to give it back be shortened, but the filing of the Chapter 7 gives to the debtor a minimum period of time in order to make arrangements to substitute some other property for that being surrendered. Even if the motion to lift stay is filed immediately after the debtor's petition, the minimum period of post petition use of the property should still be about 45 days.

If the creditor holding the lien does not file a motion to modify the stay, possession of the property can be maintained until discharge (four to five months after filing).

2. Reaffirm the debt and obligation. (11 USC § 524(c))

On the date of filing a Chapter 7, debts and obligations generally come to an end and are not revived unless the debts are non-dischargeable automatically under law (child support, alimony, etc.) or the Court enters an order denying discharge of a certain debt or permits reaffirmation by court order.

The process of reaffirmation came into the Bankruptcy Code in 1979. It involves the Court entering an order that gives "new life" through the process of reaffirmation to the debt that existed prior to bankruptcy.

Reaffirmation is a process that grants to creditors the right to sue for any post bankruptcy deficiency. Deficiency means the amount of debt remaining after the collateral or property has been sold and applied against it, and thus reaffirmation is sought by many creditors to accomplish that objective.

Reaffirmation is governed by 11 USC § 524(c). Requirements include that the agreement be made prior to discharge, that required notices contained in §524(c) be given, that the agreement be filed with the Court and be accompanied by a declaration or affidavit signed by the attorney representing the debtor, that the agreement is fully informed, voluntary, and not an undue hardship on the debtor(s). Reaffirmation Agreements are part of the official bankruptcy forms and can be found at Form 240A. See Appendix for a link to forms.

As to personal property (i.e., a property interest that is mortgaged or pledged to secure the payment of the debt), the options are basically the same, with one additional option added. The options, again, are:

1. To surrender the property and seek a discharge.

2. To reaffirm the debt (discussion as set out above).

3. To redeem the property. (11 USC § 722)

The process of redemption provides a debtor the right to pay to the creditor the fair market value of the property at the date the bankruptcy action was filed. The fair market value is paid in one lump sum as opposed to stretched out or time payments; therefore, where the property is of value of more than several hundred dollars, it may be difficult for redemption to be used, in that the funds to redeem the property interest must be available.

Redemption should only be contemplated when there is sufficient cash on hand to compensate the creditor for the value of the property without otherwise endangering the debtor(s) economic stability. Upon filing of a Motion to Redeem, the redemption value can be agreed to by the debtor and creditor (i.e., lien holder); however, if they cannot agree, then the Court can determine the redemption value. It is payable in the one lump sum, as soon as the process is brought to an end. Redemption is a powerful tool for dealing with credit cards that claim a secured interest in durable goods, such as furniture, appliances, and the like. As a practice pointer, these creditors are not bank credit cards, such as Visa or Mastercard, but, typically, specialty retailers with their own credit plans. Redemption must also be evaluated in light of the lien holder's actual intent to repossess, because often there is no such intent and redemption is not actually needed.

4. Avoid the lien. (11 USC § 522(f))

There is a special provision relating to non-purchase money security interest in personal property. It is found under Section 522(f) of the Bankruptcy Code. It provides that the debtor may avoid a lien that impairs an exemption, if the lien is a lien growing out of a note and security agreement and if it is non-possessory, non-purchase money security interest, in any household furnishing, wearing apparel, books, animals, crops, musical instruments, or jewelry primarily used by the family for personal or household use as well as any implements, professional books or tools of the trade of the debtor, or professionally prescribed health aids for the debtor or a dependent of the debtor.

In order to avoid such a lien, it must be non-purchase money (i.e., proceeds of loan not being used to buy the property) and must necessarily relate to a lien which was granted to secure the payment of a debt, such as an individual borrowing money on household goods and furnishings and/or jewelry.

A separate motion with accompanying notice to the creditor and a court order must be sought in order to avoid such lien. In many cases, a finance company taking a lien upon household goods and furnishings does so with little intention to secure the return of this property, and a formal lien and validation process may not be necessary. However, care should be taken to determine whether or not the lien is truly non-possessory, non-purchase money.

WHO IS THE CHAPTER 7 TRUSTEE AND WHAT DOES HE DO? (11 USC § 704)

The Trustee is an individual, not necessarily an attorney, who is charged by the court to do basically three things:

1. Examine the statements, schedules, and documents filed by the debtor to determine if the rules have been followed.

The Trustee determines, primarily from the debtor's testimony and information received from any interested creditors, that the statements and schedules have been properly prepared and that the debtor's duty has been discharged. If there are any additions, corrections, or deletions that are deemed necessary, the Trustee can request such amendments be made.

2. Sell and dispose of non-exempt property for the benefit of creditors.

In the event there is property which is not exempt, or property which cannot be exempted under the applicable federal or state statute, the Trustee will accumulate that property and sell and dispose of it for the benefit of the client's creditors by taking the proceeds from the sale and, after

depositing them in a special trust bank account at the conclusion of the case, paying it in equal shares, depending upon the amount of their claim, to creditors who have timely filed a Proof of Claim.

3. Determine if any third parties have received unfair advantage and, if so, take action to set aside such advantage.

   Such action usually falls into two categories: 11 USC §547 and §548

   a. Transfer to third parties within certain time periods (usually one year prior to filing the petition).

      Transfers that can be avoided are limited to transfers for no or inadequate consideration, such as giving to a friend, relative, or even a creditor a property interest prior to filing bankruptcy which would otherwise be available for sale with the proceeds distributed to creditors.

   b. Recovery of preferential payments to creditors prior to filing bankruptcy.

      The regular, reoccurring monthly payments on prior debts or payments on the monthly utility bills are not the type or debt to consider. Preferential payments in the consumer sense usually relate to payments on past due antecedent debts which were made by the debtor at a time of insolvency or which rendered the debtor insolvent and were made within one year of filing the petition or within one year of filing, if the beneficiary is someone defined as an insider.

      The definition of insider is difficult, but it generally relates to someone who, because of a particular circumstance, bears a different or close relationship to the debtor.

The Trustee has little or no discretion. The Trustee is not given discretion under the Bankruptcy Code, but is required to do certain things or take certain action if, upon investigation, facts and circumstances appear to be present. The Bankruptcy Judge has the only discretion under the law.

Trustees are frequently criticized for taking action or not taking action, but again, the Trustee's decision to act or not act is based solely upon the information that is discovered. For example, in a case where the Trustee's investigation reveals only "exempt assets," creditors may have a hunch or strong belief that other assets are present; however, the Trustee cannot proceed unless their hunch can be supported by a "willing witness" who stands ready to give evidence.

On the other hand, if a third party comes forward supported by the opinion of competent counsel, the Trustee must pursue the claim, regardless of his or her personal reservation and/or friendship with any of the individuals who may be involved.

Once a claim has been commenced, the settlement of the claim is left to the Court. If a Trustee wishes to settle a pending claim, this is accomplished by court hearing and order. All the Trustee can do is make a recommendation.

WHO IS THE UNITED STATES TRUSTEE AND WHAT DOES HE DO? (28 USC § 581 et seq.)

The United States Trustee is an arm of the Department of Justice and was created by Congress to be the administrative oversight of the bankruptcy process. The United States Trustee can appear in any case

and take any legal action necessary for the preservation of the Bankruptcy Code or to stop abuse in the bankruptcy process. The United States Trustee is the main gatekeeper of the bankruptcy means test and can bring action against any debtor who fails that test to dismiss the case. The Untied States Trustee can take action to stop fraudulent activity and oversee the audit process. By statute, one in every 250 Chapter 7 or 13 cases filed is audited. These paper audits assure compliance with the Bankruptcy Code, just like tax audits assure compliance with the Tax Code. While there is no stated remedy for failing a bankruptcy audit, it is expected and has been seen that the United States Trustee will either object to dischargeability or attempt to revoke discharge, should the auditors find material misstatements.

WHAT IS EXPECTED TO TAKE PLACE AT THE MEETING OF CREDITORS AND WHAT IS A SECTION 341 MEETING? (11 USC § 341)

"Section 341 Meeting," or "First Meeting of Creditors," is a term that has come into bankruptcy law over the last several years. It is a result of the provisions of the Bankruptcy Code of 1978, which became official in 1979. It provides that all debtors shall attend a meeting of creditors and provides, generally, the procedure of such a meeting. From thence, came the reference to the Section 341 Meeting. A Section 341 Meeting is this meeting of creditors.

As pointed out before, a meeting of creditors is a somewhat misleading name. It is not an occasion where creditors get together for a meeting. It relates primarily to a session between the debtor and the Court appointed Trustee, whose job is to determine whether or not the debtor has followed all of the applicable rules, regulations, and statutory provisions.

The Section 341 Meeting will generally occur within 30 to 40 days after the case is filed. Both the debtor and attorney will receive notification of the meeting of creditors, usually at the same time, as will all of the parties in interest listed in the Chapter 7 bankruptcy papers who are creditors or parties holding a claim against the debtor.

The notice that is sent out invites all interested parties to attend; however, on the national average, less than 10% of all creditors ever attend. Generally, the Trustee will ask only those questions which are designed to allow the Trustee to perform his or her statutory obligation under the Trustee's three basic functions.

Creditors who appear only ask questions to:

1. Establish that they have the right debtor by reviewing identity documents.

   Debtors are required to produce a governmental picture identification, drivers license, passport, military I.D, and proof of social security number.

2. Present information or evidence to the Trustee concerning certain assets that the debtor had an interest in at some prior time, such as at the time a financial statement would have been given. This is generally referred to as asset investigation.

3. Determine the position of the debtor or to determine whether or not the debtor will reaffirm an otherwise secured debt.

   Remember that a secured creditor can never impose one of the three options on the debtor. It is the debtor's choice, but the creditor is likely to want to determine which choice is to be pursued and how likely the debtor will treat the collateral.

4. Determine relevant facts to object to the discharge of the debtor or dischargeability of a debt.

   Inquiries relating to discharge and dischargeability primarily involve detailed questioning concerning property values on financial statements given some time previous to bankruptcy, at times when the debtor was attempting to borrow money or obtain the extension of credit.

5. Present information to the Trustee as to transactions concerning the debtor's property that might aid the Trustee in recovering property of the estate, either through preference recovery property or securing the return of property transferred by the debtor pre-petition without consideration (money flowing to the debtor) or inadequate consideration.

6. Determine relevant facts to determine compliance on the means test and to verify any numbers contained therein.

The appearance of a creditor at a meeting of creditors should not be viewed by the debtor as something that is bad or ominous. Frequently, such visits are only to obtain information, with little other impact related to them. In the unusual case, the creditor may appear for the purpose of obtaining information leading to a decision as to whether or not to file an objection to the discharge of the debtor or dischargeability of the indebtedness.

WHAT DEBTS ARE NOT DISCHARGEABLE IN A CHAPTER 7? (11 USC §523)

Debts that are not dischargeable are different from cases where a debtor may be denied a discharge of all his or her debts. Generally, the exceptions to discharge that are set out in 11 USC § 523 of the Bankruptcy Code are as follows:

1. Taxes for a tax period less than three years old where returns were properly filed when due.

   For example, if contemplating filing bankruptcy on April 25, 2007 and the debtor owes taxes for 2003 (note: a return would have been due on April 15, 2005), assuming that the return was properly filed, no tax lien has been filed, and no extension agreements had been arranged or agreed to, then taxes would generally be dischargeable. There are exceptions, if tax liens have not been filed or if the taxes are due to a fraudulent return.

2. Taxes that are for trust fund payments are never discharged.

   For example, the debtor had operated a business and had withheld taxes from employees' pay and never paid those to the IRS. Such an obligation is not dischargeable at any point in time. No matter what Chapter might be filed, the debtor would always owe those taxes. All that could occur would be a plan for repayment under Chapter 11 and Chapter 13.

   The same would apply in situations involving sales tax withheld from sales and not remitted to the comptroller of public accounts. Of course, any fraudulent tax reporting is generally never dischargeable.

3. False statements when credit was obtained.

   False statements when credit was obtained, such as in the case of false pretenses, false representations or fraud and/or the use of a statement in writing that is materially false to obtain credit constitute an exception to discharge.

4. Purchases or incurring of debt in contemplation of bankruptcy.

   Generally, purchases or incurring of debt in contemplation of bankruptcy may not be discharged. For example, one runs up substantial debt with the intent in mind of "getting the creditor" or "getting a free ride" with no intention of repaying the debt. Such debts are non-dischargeable. These are generally called charge ups.

5. Consumer debts owed to a single creditor and aggregating more than $550.00 for "luxury goods or services" including cash advances incurred by an individual debtor on or within 90 days before filing are presumed not to be dischargeable. Purchases of "non-luxury or ordinary goods and services" aggregating more than $825.00 on or within 70 days before filing are presumed not to be dischargeable.

6. Creditors whose names and addresses are not listed in the schedules or whose names and addresses are listed inaccurately.

7. Fraudulent acts by a person acting in a fiduciary capacity, such as through embezzlement or larceny.

8. Alimony or child support due to a separation agreement, divorce or order of a Court, as well as debts incurred during a divorce or separation or due to a marital property division.

9. For willful and malicious injury by the debtor to another entity.

10. A debt for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit.

11. An educational loan unless there is a showing of "undue hardship."

12. A debt that arises from a judgment or consent decree entered in a Court of record against the debtor, wherein liability was incurred by such debtor's operation of a motor vehicle, vessel, or aircraft while legally intoxicated is not dischargeable.

13. There is a provision that prevents a debt from being discharged, if the debtor has been denied a discharge in a prior case within eight full years.

It is impossible in these few pages to provide all of the legal intricacies of issues, such as discharge of certain indebtedness. This is designed as a general guide and must be treated as such. There is no substitute for detailed legal research. If you recognize in your particular situation with your client the existence of any debt that might be subject to the dischargeability rules, I urge you to do further research. The time deadline for filing a complaint typically under 11 USC § 523 is 60 days from the date first set for the meeting of creditors.

WHEN MAY A DEBTOR BE DENIED A DISCHARGE IN A CHAPTER 7? (11 USC § 727)

Generally, there are limited situations when a consumer debtor may be denied a discharge. An individual consumer may be denied a discharge, if any of the following conditions exist:

1. Debtor, with intent to hinder, delay, or defraud a creditor, has transferred, removed, destroyed, or mutilated property of the estate within one year after filing.

2. Debtor has failed to maintain or has mutilated records that are necessary to determine the debtor's financial condition or business transactions.

3. Debtor knowingly made a false oath or account, presented a false claim, or gave, offered, or received or attempted to obtain money or property for acting or failing to act as the code requires, including withholding from any officer of the Court (Trustee or other appointed individual) any recorded information, including books, documents, records and papers relating to the debtor's property or financial affairs.

4. Debtor has failed to explain satisfactorily the loss of any asset or deficiencies in assets.

5. Debtor has refused to obey any lawful order of the Court or to respond to any material question.

6. Debtor has been granted a discharge under Chapter 7 within the last eight years.

7. Debtor has been granted a discharge under Chapter 13 within the last six years.

It is important to note, however, that in the case of discharge or dischargeability, these are issues to be determined by courts upon trials, hearing all relevant evidence and information. Issues of discharge or dischargeablity are brought by adversary proceeding that is a lawsuit, not a motion filed in the Bankruptcy Court. If a person wishes to object to the dischargeability of the debt or the discharge of the debtor, the Court must first conduct a trial and determine from competent, factual evidence whether or not the discharge or dischargeability of the debt as sought against the debtor has been proven by a preponderance of the evidence. The time deadline for filing a complaint typically under 11 USC § 727 is 60 days from the date first set for the meeting of creditors.

The numbers of discharge or dischargeability objections which are annually filed are a very small percentage of the number of bankruptcy cases filed, probably equaling less than 5% of all such cases. Unless you as an attorney or if your prospective debtor(s) are aware of some particular circumstance or some particular factor that would lead you to believe that someone has cause to object to the discharge or dischargeability of a debt, I believe that such occurrence is generally remote.

WHEN WILL THE CLIENT RECEIVE HIS DISCHARGE AND DOES THE DEBTOR NEED TO TAKE FURTHER ACTION?

A debtor must take and file the debtor education course prior to discharge. A link to the list of approved debtor education courses is listed in the Appendix. This education course typically takes 60 minutes and has a cost of between $17.50 and $50.00. The certificate obtained by the debtor is filed with the Court. Discharges are usually entered by the Court, assuming no objection to discharge or dischargeability has been filed, and the required debtor education certificate has been filed. It can be anticipated that such an order of discharge will be entered 90 days after the date of the creditors' meeting; thus, unless other factors become apparent, a discharge can be contemplated within the 90 day scenario. Other than possible clerical or mechanical errors that could conceivably occur in the bankruptcy clerk's office, there are limited factors or circumstances that could delay a discharge other than a formal objection.

CAN A CHAPTER 7 BE CONVERTED TO A CHAPTER 13? (11 USC § 707)

Yes, prior to dismissal or discharge a Chapter 7 can be converted to a Chapter 13, as long as the debtor is eligible for relief under Chapter 13 of the Bankruptcy Code.

WHAT IS THE EFFECT OF THE CLIENT'S CHAPTER 7 DISCHARGE? (11 USC § 524)

The discharge of a debtor acts as an injunction to insure protection against collection activity. A discharge under Chapter 7 voids any judgment, to the extent that such judgment is a determination of the personal liability of the discharged debt. It also operates as an injunction against the commencement or continuation of an action, the employment of process or an act, to collect, recover or offset discharged debts. It is the typical conclusion of a consumer Chapter 7 case. The discharge injunction is enforceable by civil contempt.

WHAT IS THE BASIC CONCEPT OF CHAPTER 13?

The Bankruptcy Code calls Chapter 13 an adjustment of debt of an individual with regular income. This requires that the debtor file a Chapter 13 plan to pay his secured and/or priority debts, typically by a wage order thru a court-appointed Trustee who distributes the funds to his creditors in small installments until the debts are paid. The Judge will approve, that is confirm, a repayment plan that his creditors must accept. There is no voting by creditors on a Chapter 13 plan. A Chapter 13 plan typically lasts from 3-5 years, depending on the required commitment period. Secured creditors are typically paid either partially or in full, or their collateral is surrendered to them. Priority creditors are always fully paid, and unsecured creditors receive a distribution based on either the liquidation test or disposable income test, whichever test requires a higher payment to unsecured creditors. As a practice pointer, many Chapter 13 debtors are not required to make any payment to unsecured creditors given either test, but most Court's will require a nominal distribution to unsecured creditors. This, typically, requires a minimum distribution of between one and three percent of unsecured claims.

WHAT IS THE LIQUIDATION TEST AND HOW DOES IT AFFECT A CHAPTER 13 PLAN?

The liquidation test requires that unsecured creditors in a Chapter 13 receive more than what they would have received had the debtor filed a Chapter 7. As exempt assets are not subject to liquidation in a Chapter 7, the client's claim of and allowance of exemptions determines the liquidation test and a calculation of payments to unsecured creditors. If a debtor has $12,000.00 in non exempt assets in a Chapter 7 and proposes a 60 month plan in a Chapter 13, then a monthly payment to unsecured creditors of $200.00 per month will pay these creditors $12,000.00 over time. However, to meet the liquidation test, the debtor would need to pay more than $12,000.00, so a payment of $200.01 per month or $12,000.60 over 60 months technically passes the liquidation test. A short recapitulation of exemptions is below. Exemptions are more completely covered in the Chapter 7 discussion.

In summary form, the Texas state exemptions involve the ability of the debtor to own and maintain a home, regardless of value (but only if he has owned the property for 1215 days or rolled over equity from a prior home and combined ownership totals 1215 days), that is located on ten acres or less of land in a city, town, or village, or urban area (an area which is not necessarily a part of the city but which receives city services and effectively operates as if it were in a city), or in a rural area (generally in an area where agriculture, mining, timber operations, farming, ranching, etc., are carried out). The debtor is entitled to a homestead exemption of 100 acres if not married, and 200 acres if married. In addition, an exemption is allowed for burial lots for the client and his family. There is a limit of $125,000.00 per debtor; $250,000.00 in a case with a husband and wife, if they have owned the property for less than 1,215 days. Note, this is equity interest, which is the difference between value and what is owed and not the value of the property. By example, a property worth $400,000.00 that has a $350,000.00 mortgage has equity of $50,000.00.

In addition to the real property exemption, a debtor who is single is entitled to a personal property exemption for things used by the debtor and or members of the debtor's family, as long as the aggregate

fair market value at disposal (i.e., price the items could be sold for) is no more than $30,000.00. If the debtor is a married person, the limit is $60,000.00.

These assets include home furnishings, provisions for consumption, farming or ranching vehicles and implements, tools, equipment, books, apparatus used in a profession or trade, wearing apparel, jewelry not to exceed 25% of the allowed exemption, two firearms, athletic and sporting equipment, a motor vehicle for each person who holds a license, two horses, 12 head of cattle, 60 head of other livestock, 120 fowl, and household pets.

In addition, retirement plans including most every type of plan which includes but are not limited to 401k, IRA, Roth IRA, 403b are also exempt in addition annuities are also exempt.

The primary benefit of the federal exemption package to a debtor is that it allows the debtor to partially exempt some cash or liquid assets. While the state exemptions do not permit a cash asset exemption, it is possible to exempt cash or other liquid assets under federal exemptions up to a maximum of $10,125.00, if the individual is not married, or up to a maximum of $20,250.00, if married and filing jointly. (11 USC §522(d)(5))

The exemptions, however, are limited in other regards. The exemption under federal exemption is limited to the following (these exemptions can be doubled for a couple filing a joint petition):

1. The debtor's equity interest in real property used as a residence not to exceed $20,200.00.

2. The federal exemptions consist of items kept primarily for personal or family use:

    - Motor vehicles (limited to $3,225.00 per debtor)
    - Real property (house and/or land limited to $20,200.00 per debtor)
    - Household goods and furnishings (*limited to $10,775.00 per debtor for all assets so marked)
    - Clothing (*limited to $10,775.00 per debtor for all assets so marked)
    - Books and musical instruments (*limited to $10,775.00 per debtor for all assets so marked)
    - Pets and animals producing family use products (*limited to $10,775.00 per debtor for all assets so marked)
    - Crops such as garden produce (*limited to $10,775.00 per debtor for all assets so marked)
    - Burial plots (included in the $20,200.00 per debtor limit for real estate)
    - Tools or books necessary to make a living (limited to $2025.00 per debtor)
    - Cash value on life insurance policies
    - Social security, unemployment, public assistance, veterans or disability benefits
    - Pension, profit sharing, 401(K), IRA, or other similar plan
    - Alimony or child support necessary for support
    - Certain personal injury settlements (limited to $20,200.00 per debtor)

Remember that most of the Federal limits in the Bankruptcy Code are adjusted at every three-year interval to reflect changes in the Consumer Price Index.

WILL THE CLIENT SUFFER A LOSS OF ANY PROPERTY?

Practically speaking, it is rare that a Chapter 13 debtor loses any property or possessions owned on the date of filing. The Chapter 13 Trustee is not in the business of taking a debtor's assets to satisfy creditor claims unlike a Chapter 7 Trustee. When the client promised to pay liquidation value through the Chapter 13 plan, he generally alleviated the need to surrender assets.

WHAT IS MEANS TESTING AND HOW DOES IT EFFECT A CHAPTER 13 PLAN? (11 USC §1322)

In a Chapter 13 Bankruptcy, the debtor must pay his unsecured creditors the higher of his net disposable income or the amount determined by the liquidation test. The Bankruptcy Code has incorporated the means test into the definition of disposable income, so the results of the means test determine the minimum payout to unsecured creditors in a Chapter 13. Remember, that payout is a minimum, and the client could be forced to pay a higher amount, if the liquidation test calls for a higher payment.

There is one major positive difference for debtors between the Chapter 7 means test and the Chapter 13 means test, and that is the ability to deduct in the Chapter 13 means test, "qualified retirement deductions" including both voluntary retirement deductions as well as retirement loan repayments. (11 USC § 541(b)(7) and 11 USC § 362(b) (19)) The ability of this deduction in a Chapter 13 means test can mean that a debtor fails the Chapter 7 means test but has a negative means test number in a Chapter 13.

Means testing is determined by a historical look at a debtor's gross income over the last full six months. Attorneys can follow the Form B22C, which is intuitively called "Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income." Be advised that the means test forms for Chapter 7 (Form B22A) and Chapter 13 (Form B22C) are different. First, determine if the client's current monthly income, (called CMI) is above or below median income as defined by the federal government. Median income determines the commitment period (plan length) in a Chapter 13. Debtor(s) with below median income must have a 36 month plan but can propose a plan up to 60 months. Any debtor(s) with income above median income must propose a 60 month plan. CMI is a six month average ending at the month before filing a bankruptcy case of most (but not all) funds derived from all sources received in the last six months, most commonly, gross pay from the client's employment and net income (after business expenses) for self employed clients. It, however, does not include social security or payments under the social security act, such as unemployment or disability income, and it does not also include sporadic income, such as gifts from parents or loans from a retirement plan. Deduction of allowed expenses include expenses allowed by the Internal Revenue Code, as well as actual expenses for secured debt service and other expenses enumerated by the Bankruptcy Code, such as health care, child care, life and health insurance, support of elderly parents, charitable giving, cell phone bills, qualified retirement deductions and the like. If after these deductions on a step by step basis are funds available on the Bankruptcy Form B22C and they don't have "special circumstances" such as a serious medical condition or a call or order to active duty in the Army, then he must contribute this amount monthly to payment of his unsecured debts. Remember, this is a minimum and may be higher given the results of the liquidation test. If there are special circumstances and the Chapter 13 Trustee and Judge agrees, the client may make a lower payment to unsecured creditors than the amount specified in the "means test." One may never make a lower payment to unsecured creditors than what is required by the liquidation test.

WHAT OPTIONS EXIST AS TO SECURED DEBT IN A CHAPTER 13?

In most consumer Chapter 13 cases, there exist three common types of secured debts: the homestead claim and claims that attach to the homestead; such as, property taxes and homeowners associations, automobile claims; and a secured consumer credit card, typically for appliances, electronics, and furniture. As to all three classifications, there are three possibilities with some variations.

The debtor may:

1. Agree to surrender the property and thus seek a discharge of this debt.

   This is the same as surrender in a Chapter 7. The surrender of, or loss, of the property should usually be contemplated within 60 to 90 days after filing the bankruptcy action and involves a

giving back of the property by the debtor. A creditor may ask that the period of time to give it back be shortened, but the filing of the Chapter 13 gives to the debtor a minimum period of time in order to make arrangements to substitute some other property for that being surrendered. Even if the motion to modify stay is filed immediately after the debtor's petition, the minimum period of post petition use of the property should still be 30 to 60 days.

2. Pay the debt direct.

On most secured debts, simply make the payments as they come due and payable and retain the property. This option exists only if the debt is current and not in default.

3. To restructure the debt (typically non-mortgage claims).

The process of restructuring the entire debt (community property taxes, homeowners association claims, cars with equity or 910 car claims so called because the car was financed in the 910 days prior to the bankruptcy filing or the value of the collateral securing the debt of a creditor whichever is less, called a "cram down" (typically on secured debt like a car, furniture, jewelry or electronics), provides a debtor the right to pay to the creditor the debt at the date the bankruptcy action was filed with interest. The debt is paid in monthly time payments over a period not to exceed sixty months plus interest, typically, at two points over the prime rate as of the day of the bankruptcy filing. Congress has limited the right to "cram down," that is pay value rather than the outstanding debt on automobile debts less than 910 days old. (11 USC §1325) On 910 car claims, so called because the debt is less than 910 days old, the creditor must receive payment of the outstanding debt irrespective of the value of the collateral.

To restructure the debt (typically mortgage claims).

Your client may also restructure an arrearage on a home or car over the same plan length. This typically occurs with a house or other real property or any other debt where the restructuring of the debt (as above) would lead to a higher monthly payment then the normal contractual payment amount. These are typically debts payable over a period of greater than 60 months, like a home or mobile home. In addition to curing the arrearage, one must also make the regular monthly contractual payments to the creditor. In some districts, these direct home payments become part of the Chapter 13 plan and are paid to the Chapter 13 Trustee.

4. Lien Avoidance for certain secured claims is also available in a Chapter 13.

There is a special provision relating to non-purchase money security interest in personal property and is found under Section 522(f) of the Bankruptcy Code. It provides that the debtor may avoid a lien that impairs an exemption, if the lien is a lien growing out of a note and security agreement and if it is non-possessory, non-purchase money security interest in any household furnishing, wearing apparel, books, animals, crops, musical instruments, or jewelry primarily used by the family for personal or household use as well as any implements, professional books, or tools of the trade of the debtor, or professionally prescribed health aids for the debtor or a dependent of the debtor.

In order to avoid such a lien, it must be non-purchase money (i.e., proceeds of loan not being used to buy the property) and must necessarily relate to a lien which was granted to secure the payment of a debt, such as an individual borrowing money on household goods and furnishings and/or jewelry.

A separate motion with accompanying notice to the creditor and court order must be sought in order to avoid such lien. In many cases, a finance company taking a lien upon household goods and furnishings does so with little intention to secure the return of this property, and a formal lien and validation process may not be necessary. However, care should be taken to determine whether or not the lien is truly non-possessory, non-purchase money.

WHAT OPTIONS EXIST AS TO PRIORITY DEBT IN A CHAPTER 13? (11 USC § 1322(a)(2))

Priority debts in a Chapter 13, typically, income taxes and/or child support, must be paid in full. This payment is, typically, without post-petition interest or penalty. Because priority debts must be paid in full, clients with large priority claims often do not have sufficient income to fund a Chapter 13 plan, if large claims exist. Small or moderate priority claims often can be favorable, paid over 60 months with no interest or penalty.

WILL THE COURT REQUIRE A WAGE ORDER OR AUTOMATIC BANK DRAFT OF THE CLIENT'S PLAN PAYMENT AND MORTGAGE PAYMENT?

The answer is yes, in some divisions by local rule, and often plan payments which include mortgage payment (if applicable) are required to be deducted from the client's wages, by wage order or deducted directly from his checking account by a preauthorized draft. Preauthorized drafts are required for the self employed or those not paid by an employer.

WHAT ARE THE ADVANTAGES OF CHAPTER 13?

There are really two advantages of a Chapter 13 filing for clients.

First, the imposition of the automatic stay is generally, the ability in a Chapter 13 to stop a foreclosure, repossession, tax levy, lawsuit, or the like as well as staying creditor collection efforts including telephone calls. The automatic stay is provided for under the Bankruptcy Code and stays any of the client's creditors from collecting or attempting to collect any debt that might be otherwise owed to them. Please note, however, that the automatic stay is limited, if the client files more than one case in a year. The automatic stay exists for only 30 days in a second case, unless extended by the Court. There is no automatic stay, if the client files a third or more cases in a year.

There are, however, exceptions to the automatic stay. These include divorces, child support matters, and landlords who have obtained a judgment for possession. In addition, the automatic stay does not stay criminal prosecution at any stage. Thus, if someone is charged with a crime because of some act occurring before or after filing a bankruptcy, generally the filing of a petition under any of the chapters of the Bankruptcy Code simply does not stop or stay such prosecution. The most frequent type of prosecution involves hot checks.

Second is the ability to restructure debts into a Chapter 13 plan that calls for orderly future Chapter 13 plan payments that allows the client the ability to restructure debts and retain assets.

WHAT IS CREDIT COUNSELING AND WHAT DO CLIENTS NEED TO DO BEFORE THEY FILE? (11 USC § 109(h))

All consumer debtors who file any type of bankruptcy must obtain a credit counseling certificate during the 180-day period preceding the date of filing. It is imperative to know some courts have ruled that one cannot obtain credit counseling on the day of filing. A receipt of credit counseling completion is called the credit counseling certificate. This receipt of certification must come from an approved credit

counseling agency, which is an individual or group briefing that outlines the opportunities for available credit counseling and assists such individuals in performing a related budget analysis. Failure to obtain credit counseling prior to bankruptcy case is grounds for dismissal and is typically fatal to any bankruptcy case.

The list of approved agencies is available at the United States Trustee website listed in the appendix. The credit counseling certificate typically costs about $50.00, and the session is typically 90 minutes in length. The required class is offered by internet, telephone, and in person. Most consumer bankruptcy lawyers develop a working relationship with one or more credit counseling agencies to which they recommend clients. Often these agencies will offer billing privileges to counsel for the debtor.

A second round of credit counseling called the debtor education course must be completed prior to discharge. While a list of approved debtor education courses is listed at the United States Trustee website**,** most Chapter 13 Trustee's offer this class to debtor(s) free of charge as part of their integrated debtor(s) education program.

WHAT DOCUMENTS MUST BE FILED WHEN FILING A CHAPTER 13? (11 USC § 521)

There are a number of documents which must be filed and signed by the client. These documents are generally referred to as disclosure documents, or documents which are designed to provide information to the Court concerning a particular case. All official forms are available at United States Courts website and local division bankruptcy websites. Generally, these documents are:

1. A credit counseling certificate.

2. A petition requesting relief under Chapter 13. Official Form B1.

3. A statement as to attorney's fees, Rule 2016(b) disclosure. Official Form B203.

4. A Summary of Schedules and Declaration of Schedules. Official Form B6.

5. A list of assets, Schedules A and B. Official Forms B6A and B6B.

6. A claim of exemptions, Schedule C. Official Form B6C.

1. A list of all debts, Schedules D (secured debts), E (priority debts), and F (unsecured debts). Official Forms B6D and B6E.

2. A list of co-debtors and of executor contracts, Schedules G and H. Official Forms B6G and B6H.

3. A list of monthly expenses and income, Schedules I and J. Official Forms B6I and B6J.

4. A Statement of Financial Affairs. Official Form B7.

5. A Chapter 13 Plan. Often a local form available on the local Bankruptcy Court website.

6. A means test calculation. Official Form B22C.

7. Pay remittances for the last sixty days.

14. The debtor(s) last filed tax return or provide a copy to the Chapter 13 Trustee no later than seven days prior to the first meeting of creditors.

15. The debtor(s) credit counseling certificate and a copy of the debt repayment plan, if any.

16. The debtors bank statements for the sixty days prior to filing or provide a copy to the Chapter 13 Trustee no later than seven days prior to the first meeting of creditors.

Copies of all documents that are filed with the Court should be forwarded to the Chapter 13 Trustee at least seven days prior to the scheduled first meeting of creditors. Again, any attorney routinely filing Chapter 7 or 13 cases invests in software to assist with form drafting.

WHO IS THE CHAPTER 13 TRUSTEE AND WHAT DOES HE DO? (11 USC § 1302)

The Trustee is an individual, generally an attorney, who is charged by the Court to do basically three things:

1. Examine the statements, schedules, and documents filed by the debtor to determine if the rules have been followed.

   The Chapter 13 Trustee determines, primarily from the debtor's testimony and information received from any interested creditors, that the statements and schedules have been properly prepared and that the debtor's duty has been discharged. If there are any additions, corrections, or deletions that are deemed necessary, the Trustee can request such amendments be made.

2. Review the Chapter 13 plan to determine that it complies with all applicable code sections and can be recommended for confirmation or conversely dismissed or converted to a Chapter 7, if it does not.

   Such action usually falls into three categories:

   a. Review and recalculate the Chapter 13 means test.

      In a Chapter 13, the Chapter 13 Trustee is the main gatekeeper of the bankruptcy means test. He can only recommend to the Court confirmation of the Chapter 13, if among other requirements, if it meets the means test. That is, it pays to unsecured creditors the monthly amount specified in the means test over the commitment period of the Chapter 13 plan.

   b. Determining that the Chapter 13 plan meets the liquidation test.

      The liquidation test requires that unsecured creditors in a Chapter 13 receive more than what they would have received had the debtor filed a Chapter 7. As exempt assets are not subject to liquidation in a Chapter 7, the client's claim of and allowance of exemptions determines the liquidation test and a calculation of payments to unsecured creditors. For example, if a debtor has $12,000.00 in non exempt assets in a Chapter 7 and proposes a 60 month plan in a Chapter 13, then a monthly payment to unsecured creditors of $200.00 per month will pay these creditors $12,000.00 over time. However, to meet the liquidation test, the debtor would need to pay more than $12,000.00, so a payment of $200.01 per month or $12,000.60 over 60 months technically passes the liquidation test.

c. Determining that the Chapter 13 plan is proposed in good faith.

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief of the absence of malice and the absence of design to defraud or seek an unconscionable advantage.

d. Making a recommendation to the Court to confirm or not confirm a Chapter 13 plan.

Assuming that the client with attorney's assistance has complied with the applicable provisions of 11 USC § 1325, which includes the liquidation test and good faith requirements, the Trustee will recommend the case for confirmation.

3. Administration of the case post confirmation

After confirmation, the Trustee will continue to receive Chapter 13 plan payments as well as disburse funds. Should the client become delinquent, the Trustee will file a Motion to Dismiss. Should claims be filed post confirmation that renders the plan deficient, he will bring the same to the Court's attention. Should a post confirmation modification be required, he will review the modification and recommend or not recommend its approval to the Court. The Trustee will also certify that the payments under the Chapter 13 plan are complete and that the debtor (subject to his responsibilities) can be discharged.

WHO IS THE UNITED STATES TRUSTEE AND WHAT DOES HE DO IN A CHAPTER 13? (28 USC § 581 et seq.)

Typically, the United States Trustee will do very little.

Generally, he will only appear in the most egregious of Chapter 13 cases or if the case is selected for random audit. As the gatekeeper function is passed in means testing to the Chapter 13 Trustee in Chapter 13 cases, a Trustee has little interest in the typical consumer Chapter 13 but can take action to stop fraudulent activity and oversee the audit process. As by law, one in every 250 Chapter 7 or 13 cases filed is audited. These paper audits will assure compliance with the Bankruptcy Code, just like tax audits assure compliance with the Tax Code.

WHAT IS EXPECTED TO TAKE PLACE AT THE MEETING OF CREDITORS AND WHAT IS A SECTION 341 MEETING? (11 USC § 341)

"Section 341 Meeting," or "First Meeting of Creditors," is a term that has come into bankruptcy law over the last several years. It is a result of the provisions of the Bankruptcy Code of 1978, which became official in 1979. It provides that all debtors shall attend a meeting of creditors and provides, generally, the procedure of such a meeting. From thence, came the reference to the Section 341 Meeting. A Section 341 Meeting is this meeting of creditors.

As pointed out before, a meeting of creditors is a somewhat misleading name. It is not an occasion where creditors get together for a meeting. It relates primarily to a session between the debtor and the Chapter 13 Trustee, whose job is to determine whether or not the debtor has followed all of the applicable rules, regulations, and statutory provisions so that the Chapter 13 plan can be confirmed.

The Section 341 Meeting will generally occur within 30 to 50 days after the case is filed. By this time the debtor's first plan payment will have come due, and the Trustee can make a determination if the plan is feasible. Both the debtor and attorney will receive notification of the meeting of creditors, usually at the

same time, as will all of the parties in interest listed in the Chapter 13 bankruptcy papers who are creditors or parties holding a claim against the debtor.

In a Chapter 13, the Trustee typically asks questions in the following pattern:

1. Establish that they have the right debtor by reviewing identity documents.

   Debtors are required to produce a governmental picture identification, drivers license, passport, military I.D, and proof of social security number.

2. Establish that the debtor reviewed and signed the schedules and that they are true and accurate to the best of the knowledge and belief of the debtor. Establish that the schedules contain a complete list of all assets and debts of the debtor, current income and expenses, and for the means test a look back of income and expenses over the last full six months prior to the Chapter 13 filing.

3. Establish that the debtor understands and comprehends his plan.

   Trustees are concerned the debtor's attorney has done his job. They want to be aware that the attorney has taken the time and made the effort to educate the client regarding the Chapter 13 process.

4. Determine relevant facts to determine that the debtor has completed the Form 22C means test correctly.

   Any value placed into the means test for which the Chapter 13 Trustee has reason to inquire can be discussed at the creditors meeting.

5. Determine relevant facts to determine that the Chapter 13 plan meets all applicable standards for confirmation.

   This would include any inquiry that the Trustee may have as to the liquidation test or good faith.

6. Answer questions posed by creditors, if any.

The appearance of a creditor at a meeting of creditors should not be viewed by the debtor as something that is bad or ominous. Frequently, such visits are only to obtain information, with little other impact related to them. In the unusual case, the creditor may appear for the purpose of obtaining information leading to a decision as to whether or not to file an objection to the confirmation of the debtor plan.

WHAT DEBTS ARE NOT DISCHARGEABLE IN A CHAPTER 13? (11 USC §1328)

A discharge under Chapter 13 generally discharges all debts except long term mortgages, student loans, criminal fines, criminal restitution, civil restitution for willful or malicious injury, as well as the rare instance where a creditor has timely complained (typically within 60 days of the date of the first meeting of creditors) and had a judicial determination that certain debts are nondischargeable debts pursuant to 11 USC § 523(a) paragraph (2), (3), (4), or (9). These debts are:

1. For money, property, services or an extension, renewal, or refinancing of credit, to the extent obtained by false pretenses, a false representation, or actual fraud.

False statements when credit was obtained, such as in the case of false pretenses, false representations, or fraud, and/or the use of a statement in writing that is materially false to obtain credit constitute an exception to discharge.

2. Purchases or incurring of debt in contemplation of bankruptcy.

   Generally, purchases or incurring of debt in contemplation of bankruptcy may not be discharged. For example, one runs up substantial debt with the intent in mind of "getting the creditor" or "getting a free ride" with no intention of repaying the debt. Such debts are non-dischargeable. These are generally called charge ups.

3. Consumer debts owed to a single creditor and aggregating more than $550.00 for luxury goods or services including cash advances incurred by an individual debtor on or within 90 days before filing are presumed not to be dischargeable. Purchases of non-luxury or ordinary goods and services aggregating more than $825.00 on or within 70 days before filing are presumed not to be dischargeable.

4. Creditors whose names and addresses are not listed in the schedules or whose names and addresses are listed inaccurately.

5. Fraudulent acts by a person acting in a fiduciary capacity, such as through embezzlement or larceny

6. A debt that arises from a judgment or consent decree entered in a Court of record against the debtor wherein liability was incurred by such debtor's operation of a motor vehicle, vessel, or aircraft while legally intoxicated is not dischargeable.

Be advised that certain debts such as child support and certain income taxes are also nondischargeable, but as these debts are paid in full as part of the Chapter 13 plan payment and they typically would not be due after the bankruptcy is complete and discharged. The debts above, however, could survive bankruptcy and be owing after a case is complete. It is impossible in these few pages to provide all of the legal intricacies of issues such as discharge of certain indebtedness. This is designed as a general guide to follow and must be treated as such. There is no substitute for detailed legal research. If you recognize in your particular situation with your client the existence of any debt that might be subject to the dischargeability rules, I urge you to do further research. The time deadline for filing a complaint typically under 11 USC § 523 is 60 days from the date first set for the meeting of creditors.

CAN A CHAPTER 13 DEBTOR BE DENIED A DISCHARGE?

Generally, a Chapter 13 debtor cannot be denied a discharge. If a Chapter 13 debtor confirms a plan and makes all of the required Chapter 13 plan payments, then he is going to be discharged. Typically, any grounds that would have denied a discharge in a Chapter 7 case would be raised by a creditor or party in interest at confirmation of the Chapter 13 plan and, if proven, should have prevented a debtor from confirming a plan. If a debtor is able to confirm a plan and he makes all of the required payments, then he will be discharged, unless the debtor has not paid a domestic support obligation that is due on or before the end of the case or if the debtor executes a waiver of discharge. (11 USC § 1328(a))

However, in extremely limited instances, the debtor cannot be discharged in a Chapter 13, if the Court finds that the debtor owes a debt arising from (a) a violation of state or federal securities laws, regulations or orders; (b) fraud, deceit or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security; (c) a criminal act, intentional tort or willful or reckless misconduct that caused

serious physical injury or death to another individual in the preceding five years and have claimed an exemption for any residence in an amount in excess of $136,875.00 (d) or is guilty of a felony or may be found guilty of a felony which under the circumstances demonstrates that the filing of the case was an abuse of the Chapter 13 process. (11 USC §1328(h))

WHEN WILL THE CLIENT RECEIVE DISCHARGE AND DOES THE DEBTOR NEED TO TAKE FURTHER ACTION? (11 USC § 1328(a))

At the completion of the Chapter 13 plan payments, the debtor must file the certification and motion for entry of Chapter 13 discharge and proposed discharge order. A form motion is available at the Southern District of Texas' website. A debtor must also take and file the personal financial management instructional course prior to discharge. Typically, this course is provided by the Chapter 13 Trustee to the Chapter 13 debtor as part of the Chapter 13 Trustee's debtor education program. If not or if a client has not taken this class, a list of approved debtor education courses is available at the United States Trustee website**.** This education course typically takes sixty 60 minutes and has a cost of between $17.50 and $50.00. The certificate obtained by the debtor is filed with the Court and/or attached to the certification and motion for entry of discharge. Discharges are then usually entered by the Court as soon as practical thereafter. Other than possible clerical or mechanical errors that could conceivably occur in the bankruptcy clerk's office, there are limited factors or circumstances that could delay a discharge.

WHAT IS THE EFFECT OF THE CLIENT'S CHAPTER 13 DISCHARGE? (11 USC § 1328)

As previously discussed, a discharge under Chapter 13 generally discharges all debts except long term mortgages, student loans, criminal fines, criminal restitution, civil restitution for willful or malicious injury, as well as the rare instance where a creditor has timely complained (typically within 60 days of the date of the first meeting of creditors) and had a judicial determination that certain debts are nondischargable debts pursuant to 11 USC § 523(a) paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8) or (9). Given the length of time the client will be in a Chapter 13, discharge violations are rare after a Chapter 13, but, again, the discharge order acts as an injunction to insure protection against collection activity. A discharge under Chapter 13 voids any judgment, to the extent that such judgment is a determination of the personal liability of the discharged debt. It also operates as an injunction against the commencement or continuation of an action, the employment of process or an act, to collect, recover or offset discharged debts. It is the typical conclusion of a consumer Chapter 13 case. The discharge injunction is enforceable by civil contempt.

CAN A CHAPTER 13 BE CONVERTED TO A CHAPTER 7? (11 USC § 1307)

Yes, prior to dismissal or discharge a Chapter 13 can be converted to a Chapter 7, as long as the debtor is eligible for relief under Chapter 7 of the Bankruptcy Code.

APPENDIX

USEFULL CONSUMER BANKRUPTCY WEBSITES

1. United States Trustee website www.usdoj.gov/ust

2. Searchable Bankruptcy Code www.4law.cornell.edu/uscode/11/

3. United States Bankruptcy Courts website www.uscourts.gov/bankruptcycourts.html

4. National Bankruptcy Pacer https://pacer.login.uscourts.gov/cgi-bin/login.pl

5. American Bankruptcy Institute www.abiworld.org

6. National Association of Consumer Bankruptcy Attorneys www.nacba.org

7. Chapter 13 Trustee websites www.13network.com or www.bestcase.com/Trustees13.htm

8. Vehicle Valuations www.nadaguides.com or www.edmunds.com or www.kbb.com

9. Paycheck calculator for budgets www.paycheckcity.com/netpaycalc/netpaycalculator.asp

10 Caselaw/Legal Research www.texasbarcle.com/CLE/HOME.ASP or www.findlaw.com or http://www.law.cornell.edu/supct/index.html

11. United States Court website http://www.uscourts.gov/

12. Southern District of Texas Bankruptcy Website www.txs.uscourts.gov/bankruptcy/

13. Northern District of Texas Bankruptcy Website www.txnb.uscourts.gov/

14. Eastern District of Texas Bankruptcy Website www.txeb.uscourts.gov/

15. Western District of Texas Bankruptcy Website www.txwb.uscourts.gov/