

CHAPTER 13 PLANS, ADEQUATE PROTECTION, OBJECTIONS TO CLAIMS, AND THE EFFECT OF CONFIRMATION

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I. Eligibility

11 U.S.C. §109 defines who may be a debtor under any chapter. 11 U.S.C. §109(h) has been amended to require that no individual may be a debtor unless within 180 days prior to filing of the bankruptcy petition, the debtor received an individual or group credit briefing from an approved non-profit agency.¹

The requirement to receive creditor counseling may be waived if the debtor submits a certification to the court:

- (a) describing exigent circumstances that warrant a waiver of the credit briefing requirement and the certification;
- (b) stating that the debtor sought credit counseling services from an approved nonprofit agency but was unable to get the services during the five day period beginning on the date which the debtor made the request and the court is satisfied with the certification.²

In order to continue in a bankruptcy case without credit counseling, the debtor must file a motion seeking a determination of eligibility for relief, by the court. In order to obtain an extension, however, the debtor must show that exigent circumstances warrant a waiver of the credit briefing requirement and he attempted to receive credit counseling services but was unable to get the services.³ If the court grants the exemption, it may only last for thirty days after

¹ The requirement to receive credit counseling prior to filing for bankruptcy relief applies to all individuals, whether in a chapter 7, 11, 12 or 13 and applies to those persons defined and not defined as “assisted persons”. An “assisted person” is anyone whose debts are primarily consumer in nature and the value of whose nonexempt property is less than \$150,000. 11 U.S.C. §101(3) (2005).

² 11 U.S.C. §109(h)(3)(A) (2005).

³ *In re Watson*, Case No. 05-77864-SCS, slip op. at 6 (Bankr. E.D.Va. Nov. 3, 2005). In *Watson*, the debtor argued that section 109(h)(3)(A) and (B) should be read as having an or between the two provision rather than an and, so that a debtor only has to show either exigent circumstances that warrant an extension of time to receive credit counseling or that the debtor attempted to receive credit counseling but was unable to do so. The Bankruptcy Court for the Eastern District of Virginia rejected this argument, concluding that based upon the plain meaning of section 109(h) the subsection should be read in the conjunctive not the disjunctive. *Id.* The Bankruptcy Court reasoned: “the use of the semi-colon following Section 109(h)(3)(A)(i) and the use of the semi-colon and the word “and” following Section 109(h)(3)(A)(ii) suggests Congress’ intent that a debtor make a sufficient showing under all three subparts of Section 109(h)(3)(A) to be eligible to be a debtor under the Bankruptcy Code.” *Id.* at 7.

the petition is filed.⁴ The briefing is not required if the court determines that the debtor is incapacitated, disabled, or on active military duty in a combat zone.⁵

II. Attorney Obligations and Potential Liability

A. Disclosures and the Initial Consultation Letter

The attorney must provide certain disclosures to clients who are by definition “assisted persons.” Those disclosures must be made within three days after the first date on which a debt relief agency⁶ first offers to provide any bankruptcy assistance services to an assisted person.⁷ In addition to making clear to the client that he is required to provide complete, accurate and truthful information, the client must provide:

1. a list of all assets at the replacement value of each asset as defined in 11 U.S.C. §506;
2. a complete list of all liabilities; and
3. current monthly income and in a case under chapter 13, his disposable income.⁸

Obtaining this information will help the attorney determine under which chapter the client must utilize, if any. One recommended method of obtaining such information and ensuring the client understands the importance of this and complies is to circulate an initial consultation letter, which instructs the client to bring certain information to the initial consultation, including a

⁴ 11 U.S.C. §109(h)(3)(B) (2005).

⁵ 11 U.S.C. §109(h)(4) (2005).

⁶ A debt relief agency is defined as any person who provides any bankruptcy assistance to an assisted person in return for money or other valuable consideration. 11 U.S.C. §101(12A) (2005). A debt relief agency does not include any person who is an officer, director, employee or agent of a person who provides bankruptcy assistance, a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, a creditor of the assisted person, to the extent that the creditor has helped the assisted person to restructure any debt owed by the assisted person to the creditor, a depository institution, or an author, publisher, distributor, or seller of works subject to copyright protection under title 17. 11 U.S.C. §101(12A) (A) – (E) (2005). Recently, the Bankruptcy Court for the Middle District of Georgia, Macon Division, considered whether attorneys who practice bankruptcy law are debt relief agencies, as defined in section 101(12A). *In re McCartney*, 2006 WL 75306 (Bankr. M.D. Ga. January 12, 2006). In this case, an attorney filed a Motion to Determine Attorney Status, seeking a ruling by the court on whether attorneys are debt relief agencies. Instead of ruling on the merits of the motion, the court dismissed it, concluding that the movant “failed to satisfy the case or controversy requirement” and was instead looking for an advisory opinion from the court. *Id.* at 3.

⁷ Section 527(a).

⁸ 11 U.S.C. §527(a)(2)(A) – (C) (2005).

complete list of all assets and liabilities. The initial consultation letter should also explain the standard of valuation. The sample letter attached to these materials as Exhibit A may provide a good starting point for this. The sample initial consultation letter attached as Exhibit A also contains the statutorily mandated disclosures.

Regardless of the form of communication, be careful to make the disclosures required under the statute.

At the initial consultation, the attorney should make sure that the client executes a certification (receipt) that the client has received the required disclosures. In addition to the initial consultation letter, the attorney should keep a checklist, containing a list of the steps required under the statute to be used and completed during the life of the case.⁹ If used, this checklist provides the attorney with a defined process. It cannot be repeated often enough, the new statute is about process. Process is about systems that are replicated on a regular and consistent basis. Taking the time to develop and implement good internal process will minimize any exposure an attorney will have under BAPCPA. Real estate is about location; BAPCPA is about **process**.

B. The Engagement Letter

Attorneys must execute a written contract (typically referred to as an engagement letter) with the client within five days after the first date on which the attorney first provided any bankruptcy assistance services to an assisted person, and to provide a copy of the fully executed engagement letter to the client.¹⁰

The engagement letter should describe in reasonable detail the services the attorney will provide, the fees for such services and the terms of payment.¹¹ If the contract between the attorney and assisted person does not contain any one of these provisions it may be considered void and may not be enforced.¹² The engagement letter must not contain any statement that is untrue or misleading and must not misrepresent the services to be provided, the benefits and risks

⁹ A copy of a proposed checklist for a bankruptcy case can be found in the appendix following these materials, as Exhibit B.

¹⁰ 11 U.S.C. §528(a) (2005).

¹¹ *Id.*

¹² 11 U.S.C. §526(c) (2005). In addition, if the contract between the parties does not comply with sections 526 or 527 the contract is considered void. *Id.*

that may result if the assisted person becomes a debtor in a bankruptcy case, or advise the assisted person “to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.”¹³ The dilemma facing attorneys is whether or not section 528 which requires that the engagement letter contain information regarding the fees to be charged for filing a bankruptcy case on behalf of the assisted person can be complied with in light of the apparently contradictory language contained in section 526(a)(4) which prohibits an attorney from advising an assisted person or even a prospective assisted person to incur more debt in contemplation of filing or to pay an attorney a fee or charge for services performed as part of preparing for or representing that person in a bankruptcy case. What about building chapter 13 fees into a chapter 13 plan?

The engagement letter must also advise the client that the information provided by the assisted person related to her bankruptcy case must be complete, accurate and truthful, that all assets and liabilities are required to be completely and accurately disclosed and that the replacement value of each asset must be stated in the documents. The debtor must also be advised that any and all information provided by the assisted person during the case is subject to audit, and that failure to provide such information may result in the dismissal of the case, fines and possible criminal prosecution.

If the attorney is found, after notice and a hearing, to have intentionally or negligently failed to comply with any of the provisions contained in section 526, 527 or 528 with respect to a case or proceeding the attorney may be liable for additional damages for “actual damages, and for reasonable attorneys’ fees and costs.”¹⁴ In addition, if an assisted person’s case is dismissed or converted because of the attorney’s intentional or negligent failure to file any required document the attorney may also be liable for additional damages.¹⁵ Finally, if it is found, after notice and a hearing, that the attorney intentionally or negligently disregarded the material requirements of

¹³ 11 U.S.C. §526(a) (2005).

¹⁴ Section 526(c).

¹⁵ *Id.*

title 11 of the Federal Rules of Bankruptcy Procedure, the attorney may be liable.¹⁶ This is one of the many reasons that good process is necessary.

III. The Automatic Stay

One significant change engendered by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) is to the automatic stay provisions of 11 U.S.C. §362. The filing of a bankruptcy petition under any chapter of the Bankruptcy Code operates as an automatic stay of certain actions. Section 362 provides that the stay applies to all entities. Prior to the enactment and application of BAPCPA, the stay typically was effective automatically upon the filing of a bankruptcy petition in order to facilitate the preservation of the bankruptcy estate.

BAPCPA has brought considerable change to the scope of the stay, adding exceptions or types of actions to which the stay does not apply upon the filing of a bankruptcy petition and allowing creditors, under certain circumstances, to get *in rem* relief from the stay. Further, an individual debtor’s prior bankruptcy filings can determine whether the stay will go into effect in a subsequent case and, if it does, when it will cease to be effective.

A. Repeat Filers

One of the purposes behind the enactment of BAPCPA was to discourage serial, bad faith and other types of abusive bankruptcy filings. As a means to discourage such filings, BAPCPA provides that the stay now terminates in situations involving debtors who have filed for bankruptcy relief more than one time within a given period of time. For example, except in a chapter 11 or 13 case refilled after dismissal under 11 U.S.C. §707(b), the automatic stay with respect to leases, debt and property securing debt ends thirty (30) days after the later filing if the debtor had another case pending within one year and that prior case was dismissed. The court may continue the stay, after a hearing that must be held within thirty (30) days after the later filing, if the moving party proves that the later case was filed in good faith with respect to the creditors stayed. In addition, when seeking the continuation of the automatic stay when the debtor has previously filed a bankruptcy case within one year of the current filing, the debtor must provide adequate notice as to why the automatic stay should be extended against all

¹⁶ *Id.*

creditors, if the debtor wants the stay continued to all creditors.¹⁷ As to all creditors, there is a rebuttable presumption of a lack of good faith if: (a) the debtor had more than one previous case pending within one year; or (b) a previous case was dismissed within the preceding year, after the debtor failed to (i) file or amend required documents without substantial excuse; or (ii) provide adequate protection as ordered by a court; or (iii) perform the terms of a confirmed plan; or (c) there has not been a substantial change in the financial or personal affairs of the debtor since dismissal of the last case. The evidentiary standard here is clear and convincing.¹⁸ This means the presentation of real evidence in a real trial – a proffer will probably not be enough.

Other than in a case refilled under section 707(b), no automatic stay will arise if the debtor had two or more cases pending within the preceding year that were dismissed. Upon request of any party, the court will enter an order confirming that no stay is in effect.

An attorney meeting with a client regarding potential bankruptcy relief needs to determine whether the individual has filed for relief before, and if so when, where, and how many times. The answer to these questions will affect the kind and scope of relief the individual may receive once the case has been filed. If the client is facing a foreclosure but has filed for bankruptcy relief two times in the prior year, filing for bankruptcy relief may not stop the foreclosure from occurring and thus may not be the ideal solution for the client. Attorneys should not only ask the client whether he has filed for relief before, but should also run the name and social security number of the client on the national pacer website to determine the client's past filing history. If it is established that the assisted person has filed either once or more than once within the year, but the attorney is satisfied that the bankruptcy case is necessary, the attorney should file a motion to either continue the stay past the thirty days (in the case of a filer

¹⁷ See, e.g., *In re Charles*, 2005 WL 2897462 (Bankr. S.D. Tex. November 4, 2005). In *Charles*, the debtor provided inadequate notice as to why the automatic stay should be continued with respect to all creditors, however the Bankruptcy Court for the Southern District of Texas, Houston Division, noted that the debtor could replead with additional allegations if the debtor believed that the extension of the stay was warranted against additional creditors. *Id.* at *2.

¹⁸ See, e.g., *In re Havner*, 2006 WL 51214 (M.D.N.C. January 4, 2006). In this case, the debtor had one prior bankruptcy case dismissed within one year of his current case. Upon filing for bankruptcy relief under BAPCPA, the debtor filed a motion to continue the automatic stay with respect to all creditors. The court considered the totality of the circumstances when considering whether the debtor filed the current case in good faith focusing on the following factors: (a) the timing of the bankruptcy petition; (b) how the debt(s) arose; (c) the debtor's motive in filing for relief; (d) why the debtor's prior case was dismissed; (e) the likelihood that the debtor will have a steady income during the current case, and will be able to properly fund a plan; and (f) whether the Trustee or creditors object to the motion for an extension of the stay. *Id.* at *4. After considering each of these factors, the court denied extending the stay, concluding that the debtor failed to "carr[y] his burden to show by clear and convincing evidence that he filed the [p]resent [c]ase in good faith." *Id.*

who has only filed once before in the preceding year) or a motion or complaint to impose the stay (in the case of a filer who has filed more than once within the preceding year).

B. Personal Property

The automatic stay will terminate as to personal property financed or leased if the debtor fails to timely file a proper statement of intent or fails to take action to implement the statement of intention within the time prescribed in 11 U.S.C. §521(a)(2). If the debtor fails to reaffirm or redeem within forty-five days, the stay terminates automatically and the property is no longer considered property of the estate. It is very important for the attorney to review, with the client and prior to filing, what secured debt the client has and whether the client wants to retain the personal property and continue paying the secured creditor. It is important to determine whether the client has the ability, assuming he wants to retain the property and continue paying on the debt, to continue with such payments. This has more relevance in chapter 7 cases, as the chapter 13 plan will typically address many of these issues.

IV. New Duties of the Debtor

A. Filing

Pursuant to 11 U.S.C. §521, the debtor is required to file, in addition to her schedules and statement of financial affairs, the following documents:

1. copies of all pay stubs (advices) or other evidence of payment received within sixty days before the date of the filing of the petition (watch out for personal identifiers here);
2. a statement of the amount of monthly net income itemized to show how the amount is calculated and a statement disclosing any reasonably anticipated increase in income or expenditures over the twelve month period following the date of the filing (this will preclude manipulating the process in the case of a seasonal employee);
3. a statement from the attorney whose name is listed on the petition as counsel for the debtor, indicating that the attorney provided to the debtor the following documents¹⁹:

¹⁹ As stated previously, a suggested initial consultation letter is attached hereto as Exhibit A.

- a. the 342 notice, which requires brief description of chapter 7, 11, 12 and 13 and the general purpose, benefits, and costs of proceeding under each of the chapters²⁰;
 - b. the types of services available from credit counseling agencies; and
 - c. statements specifying that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case is subject to fine, imprisonment or both (the 11 U.S.C. §527(a) disclosure)²¹; and
 - d. all information supplied by a debtor in connection with a bankruptcy case is subject to audit by the Attorney General (the 11 U.S.C. §527(b) disclosure)²².
- 4. All individual debtors must file with the court:
 - a. A certificate from an approved credit counseling agency;
 - b. A copy of the debt repayment plan if any developed through the credit briefing/counseling; and
 - c. A record of any interest the debtor has in an educational IRA or a qualified state tuition program.²³
- 5. Chapter 13 debtors must provide, on the later of 90 days after the end of a tax year or one year after the petition, if no plan is confirmed, a statement of income and expenditures for the tax year most recently concluded;²⁴ and
- 6. Chapter 13 debtors must annually provide, after the plan is confirmed and until the case is closed, not later than the date that is forty-five days before the anniversary of the confirmation, a statement of the income and expenses of the debtor

²⁰ See Exhibit A.

²¹ See Exhibit A.

²² See Exhibit A.

²³ 11 U.S.C. §521(c) (2005).

²⁴ 11 U.S.C. §521(f) (2005).

during the tax year of the debtor most recently concluded and the monthly income of the debtor, that shows how the income, expenses and monthly income are calculated.²⁵

B. Failure to Provide Required Documentation

If the debtor does not file with the court all of his bankruptcy papers and the other documents required pursuant to section 521 within forty-five days from the date of filing, the case will automatically be dismissed on the forty-sixth day. Some courts have local procedures where this forty-five day period is considered an outside window, and will dismiss cases for failure to comply within the forty-five day window. Be careful. The debtor may request an extension to file the documents, but the motion must be filed before the forty five days (or applicable period) has run, and notice of the motion and such a motion will only be granted upon a showing of justification by the debtor. The trustee may also seek an extension, but on the trustee's motion the court must find that the debtor made a good faith attempt to file pay stub information required by 11 521(a)(1)(B)(iv).²⁶ What are the due process implications of "automatic dismissal?"

C. 341

A chapter 13 debtor must also provide to the trustee, no later than seven days before the date first set for the first 341, a copy of the debtor's federal income tax return for the most recent tax year ending before the commencement of the case and for which the return was filed.²⁷ If the debtor fails to provide this information, the case will be dismissed, unless the debtor can show that the failure to provide the documentation is due to circumstances beyond the debtor's control. At this stage, the return does not have to be filed with the court, but only provided to the trustee and to any creditor that requests a copy. However, upon the request of the court, the U.S. Trustee or any party in interest, the return must be filed with the court.²⁸ Chapter 13 trustees have specific requirements in the handling and dissemination of these returns.

With respect to taxes, Chapter 13 debtors must, upon the request of the court, U.S. Trustee, or other party in interest, file with the court, a statement under penalty of perjury, of the

²⁵ 11 U.S.C. §521(g) (2005).

²⁶ 11 U.S.C. §521(i) (2005).

²⁷ 11 U.S.C. §521(e)(2) (2005).

²⁸ Section 521(f).

income and expenses of the debtor during the tax year and the monthly income along with a detailed explanation of how the income, expenses and monthly income are calculated.²⁹

V. Conversion or Dismissal

11 U.S.C. §1307 contains the grounds for conversion or dismissal of a chapter 13 case and pursuant to BAPCPA, new grounds, including:

- (a) failure to pay any domestic support obligation due post-petition;
- (b) failure to provide this certificate required under section 521(a)(1)(B)(iii);
- (c) failure to provide payment stubs (advices);
- (d) failure to provide monthly net income statement; and
- (e) failure to file a tax return.

Upon conversion from chapter 13 to a chapter 7, the valuations of property and of allowed secured claims in the chapter 13 case do not apply.³⁰ In addition, upon conversion from chapter 13, any creditor with a secured claim on the petition date, continues to be secured by the security unless the full amount of such claim (not just the secured amount) was paid before conversion.³¹

VI. Contents of the Plan

11 U.S.C. §1322(b)(10) has been added to allow for the payment of interest accruing post-petition on any unsecured claim that is non-dischargeable if the debtor has sufficient disposable income and the debtor's plan proposes to pay all allowed claims in full. Absent a one hundred per cent distribution to unsecured claims, interest is not allowed on non-dischargeable claims.

11 U.S.C. §1322(d) has been added so that if a debtor's income is less than the median income the plan must be for three years and if the income is more than the median income, the plan period must be for five years. If the debtor is proposing to pay 100% of his unsecured debts, he may propose a plan lasting for less than five years.

11 U.S.C. §1322(f) has been added to require that a plan may not materially alter the terms of a pension loan or profit-sharing loan and the amount required to pay such loan are not to be considered disposable income. 11 U.S.C. §1325(b) allows deductions or payment for pension

²⁹ 11 U.S.C. §521(f)(4) (2005).

³⁰ 11 U.S.C. §348(f)(1)(B) (2005).

³¹ 11 U.S.C. §348(f)(1)(C)(i) (2005).

loans to be deducted from income when determining net disposable income, but only if the annual income is greater than the median income. Keep in mind that pursuant to 11 U.S.C. §362(b)(19), the loan may be collected without violating the automatic stay.

11 U.S.C. §365 has been changed and this change affects 11 U.S.C. §1322(b)(7). 11 U.S.C. §365(p)(3) provides that if a personal property lease is not assumed in the plan confirmed by the court, the leased property is deemed rejected as of the conclusion of the confirmation hearing and the automatic stay is terminated. Therefore, if a debtor fails to clearly provide for the assumption of a personal property lease, and if there is any arrearage, to cure the arrearage in a reasonable period of time under the plan, the lessor may obtain the property without needing to obtain relief from the stay.

VII. Confirmation Hearing

The confirmation hearing may not be held earlier than twenty days from the date of the meeting of creditors, and not later than forty-five days after the date of the meeting of creditors, unless the court determines that it would be in the best interests of the creditors and the estate to hold the hearing at an earlier date and there is no objection to this.³² An interesting question is what date does the clock start running? Does the time start running by the first date set for the meeting of creditors, the first date the meeting actually took place, or the date on which the meeting was concluded? Also, note that the time for the hearing cannot be extended, only shortened.

VIII. Confirmation of a Plan

A. Cramdown: An Historic Anachronism?

Prior to the enactment of BAPCPA, debtors could bifurcate claims under 11 U.S.C. §506(a) into secured and unsecured portions. A creditor was secured to the extent of the debtor's interest in the collateral securing the obligation and any amount in excess was treated as unsecured. Now, however, the debtor's ability to treat secured claims in a chapter 13 plan has been limited. 11 U.S.C. §1325(a)(5) has been amended to provide that section 506 does not apply to claims secured by a purchase money security interest ("PMSI") to buy a car for personal use if it was bought within 910 days (2 days less than 2.5 years) of the filing for bankruptcy relief. Note that this does not apply to a PMSI in a vehicle used for business. In addition, section

³² 11 U.S.C. §1324 (2005).

506 does not apply to any other item subject to a PMSI that was purchased by the debtor within one year of the filing. As a result, a debtor must pay the full amount of the loan, regardless of the actual value of the asset.³³ There will be no strip-down for the items described above. For example, department stores that take a security interest in everything purchased with their store card may have an entirely secured claim if the debtor used the card at all within the one period prior to the filing, subject to the ability to perfect a security interest in the goods purchased.

B. Adequate Protection

Prior to the enactment of BAPCPA, creditors with a security interest often had to wait for payment on their secured claims until after payment of administrative claims and mortgage arrearage claims before payments on secured claims were made. BAPCPA has modified this structure and now provides that adequate protection applies both pre- and post-confirmation to a chapter 13 case.³⁴ Debtors are now required to make or provide for adequate protection payments to secured creditors before confirmation in chapter 13 cases. The plan must provide for periodic payments in equal monthly installments and must be sufficient to provide adequate protection to secured creditors during the life of the plan.³⁵ This means that if the value of collateral decreased by \$50 per month, the debtor will be required to pay at minimum the \$50 reduction in value plus an interest factor to ensure that the secured creditor is compensated in equal monthly installments for the reduction in the value of the collateral.³⁶ In the pre-confirmation situation, debtors will have to calculate how much the payments to secured creditors should be, transmit such payments to the chapter 13 trustee, who will send the payments to the secured creditors. In order for adequate protection payments to be made, however, secured creditors will have to file claims with the court and the creditors will have to determine the amount of depreciation that occurs on a monthly basis.

Debtors are also required to make adequate protection payments to creditors for lease obligations that become due after the order for relief, reducing proposed lease payments under

³³ While the debtor may not be able to alter the amount of the loan to be repaid, the debtor may be able to modify the repayment term and the interest rate pursuant to 11 U.S.C. §1322(b)(2), which was not amended.

³⁴ 11 U.S.C. §1325(a)(5)(B)(iii)(II) (2005).

³⁵ Richardo I. Kilpatrick, *Selected Creditor Issues Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 American Bankruptcy L.J. 816, 836 (2005).

³⁶ *Id.*

the plan by the amount of the pre-confirmation payments, and debtors are required to provide trustees with evidence that such payments were made.³⁷

C. Other Confirmation Requirements

Section 1325 now includes a requirement that the court find that the chapter 13 petition was filed in good faith in order for a proposed plan to be confirmed.³⁸ Prior to the enactment of BAPCPA, courts sometimes considered whether the petition was filed in good faith although section 1325 contained no such requirement.

In addition to filing a petition in good faith, the debtor must be current on all domestic support obligations that became payable after the petition was filed.³⁹ Many of the changes provided for in BAPCPA deal with domestic support obligations and how such obligations should be treated within the bankruptcy process. BAPCPA provides expanded protections for a variety of support obligations along with significant help in collecting such obligations and an example of this is new section 1325(a)(8). A suggested certificate to be made by the debtor related to the payment of post-petition, pre-confirmation domestic support obligations is attached hereto as Exhibit C, located in the Appendix.

A chapter 13 debtor is required to have filed all tax returns required by 11 U.S.C. §1308 in order for the debtor's plan to be confirmed.⁴⁰ Section 1308 requires that all local, state and federal tax returns due for all of the taxable periods ending during the four year period ending on the date the bankruptcy petition was filed.

The debtor bears the burden of proof on all confirmation issues, including establishing that the petition was filed in good faith, that she is current on all postpetition support payments and that all the required tax returns have been filed. The debtor will have to provide some proof to the court and the chapter 13 trustee that the returns were filed and that the post-petition support obligations were in fact paid.

³⁷ 11 U.S.C. §1326(a) (2005).

³⁸ 11 U.S.C. §1325(a)(7) (2005).

³⁹ 11 U.S.C. §1325(a)(8) (2005).

⁴⁰ 11 U.S.C. §1325(a)(9) (2005).

D. Discharge

1. Prerequisites

In order for the debtor to receive his discharge, the debtor must complete all of his plan payments and certify that the debtor is current on domestic support obligations (“DSOs”).⁴¹ This requirement evidences that one purpose behind BAPCPA was to protect non-debtor ex-spouses who have former spouses filing for bankruptcy relief. BAPCPA provides expanded protections for a variety of support obligations along with significant help in collecting such obligations.

In addition, the debtor must show that she completed the required personal financial management course, better known as debtor education.⁴² While 11 U.S.C. §111 does not require a debtor who has completed the debtor education file a certification attesting to this fact, it is a safe assumption that the chapter 13 trustee will require some type of certification by the chapter 13 debtor confirming that the debtor has completed the debtor education, prior to receiving a discharge.

Finally, if the debtor previously filed for bankruptcy relief, the time between discharges must satisfy the following statutory criteria.⁴³ The debtor may not receive a chapter 13 discharge if the debtor received a discharge in a chapter 7, 11, or 12 case within four years preceding the date of the order of relief entered in the chapter 13 case or if the debtor received a discharge in a chapter 13 case during the two year period preceding the current chapter 13 case.

2. New Exceptions to Discharge

The changing attitude towards bankruptcy can be seen in the discharge arena in chapter 13 cases. Prior to the enactment of the BAPCPA, chapter 13 debtors enjoyed what was commonly known as the “super discharge,” a discharge that was much broader than the discharge received by chapter 7 debtors. One reason for the more expansive discharge was to encourage individuals seeking bankruptcy relief to choose the chapter 13 where debt is restructured and creditors receive more. Under BAPCPA, chapter 13 debtors receive, what has been referred to as the “super light discharge”. Prior to the enactment of BAPCPA, most of the

⁴¹ 11 U.S.C. §1328(a) (2005).

⁴² 11 U.S.C. §1328(g) (2005).

⁴³ 11 U.S.C. §1328(f) (2005).

laundry list of exceptions to discharge located in section 523(a), were applicable in all of the chapters, except for chapter 13.

11 U.S.C. §1328(a) has been amended regarding the types of debts that are discharged and now certain types of debts are non-dischargeable, including:

- a. Debts that extend beyond the life of the plan;
- b. Priority debts defined in 11 U.S.C. §507(a)(8);
- c. Debts defined in 11 U.S.C. §§ 523(a)(1)(B), (1)(C)(2), (3), (4), (5), (8), or (9);
- d. Debts involving restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime;
- e. Debts that are unlisted;
- f. Debts owed based on fiduciary fraud/defalcation
- g. DSO obligations
- h. Debts based on willful OR malicious personal injury

One of the most significant changes to the discharge exceptions is contained in section 523(a)(15). Prior to the enactment of BAPCPA, it was not possible to discharge any debt owed to:

[a] spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement, but not to the extent that--

(A) such debt is assigned to another entity, voluntarily, by operation of law, or otherwise (other than debts assigned pursuant to section 408(a)(3) of the Social Security Act, or any such debt which has been assigned to the Federal Government or to a State or any political subdivision of such State); or

(B) such debt includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance, or support.⁴⁴

Based on this language, only those debts that derive from either separation agreement, divorce decree or other order of a court of record, or property settlement agreement were excepted from the discharge. However, pursuant to BAPCPA, new section 523(a)(5) also includes debts that

⁴⁴ 11 U.S.C. §523(a)(5) (old).

“are subject to establishment” in separation agreements, divorce decrees, or other order of a court of record, or a property settlement agreement.⁴⁵ Finally, debts owed arising from the above that are assigned to a governmental unit, such as a state support enforcement agency, are also now excepted from discharge pursuant to new section 523(a)(5).⁴⁶

One of the most sweeping changes under BAPCPA related to DSOs is new section 523(a)(15). Section 523(a)(15) deals with the nondischargeability of debts that arise during the course of a separation or divorce or arise from a divorce decree or other court order that relates to the division of property rather than support obligations. Prior to the enactment of BAPCPA, debts that were not support obligations but which were “incurred by the debtor in the course of a divorce or separation or in connection with a separation agreement, divorce decree or other order of a court of record, a determination made in accordance with State or territorial law by a governmental unit” were nondischargeable unless either (A) the debtor lacks the ability to pay the debt or (B) discharging the debt would result in a benefit to the debtor that outweighs the detrimental consequences to the spouse, former spouse or child of the debtor.⁴⁷

With the enactment of BAPCPA, Congress has deleted parts (A) and (B) to section 523(a)(15), getting rid of what used to be considered the defenses to exceptions to discharge for support obligations. With the removal of these defenses, the exception to discharge for all support obligations is extremely broad, typically preventing the discharge of any debt not constituting a DSO but arising out of a divorce, property settlement, separation agreement or divorce order. It might be fair to say that all marital property settlement obligations not in the nature of support are considered nondischargeable under new section 523(a)(15). Because of this change to section 523(a)(15), a creditor holding a DSO no longer has the obligation to file a complaint to determine dischargeability. The bankruptcy court no longer has exclusive jurisdiction with respect to section 523(a)(15) debts. Under the old code, section 523(a)(15) debts were covered by 11 U.S.C. §523(c), which provided that a debtors would be discharged from a debt of a kind described in section 523(a)(15) unless a creditor holding such debt, and after notice and a hearing, the court determined such debt was to be excepted from discharge under section 523(a)(15). This section meant that the federal district and bankruptcy courts had

⁴⁵ 11 U.S.C. §523(a)(5) and 5 COLLIER ON BANKRUPTCY, *supra* note 5, ¶ 523.11.

⁴⁶ *Id.*

⁴⁷ 11 U.S.C. §523(a)(15) (old).

exclusive jurisdiction to determine the dischargeability of debts arising from a divorce but not in the nature of support, which state courts shared concurrent jurisdiction over alimony, maintenance and support debts. By amending section 523(c), section 523(a)(15) is removed from the list of exclusive jurisdiction exceptions.

3. Debts Remaining Dischargeable

- a. Willful AND Malicious Injury to Property
- b. Debts incurred to pay taxes
- c. Certain spousal property settlement agreements

E. Post-Confirmation Reporting

1. Tax returns filed during pendency of case

In addition to the documents required to be filed by the debtor prior to confirmation of his chapter 13 plan, a debtor may also be required to file with the court a copy of the federal income tax return for a tax year ending during the time the case is pending, at the same time it is filed with the taxing authority, upon the request of the court, the United States trustee, or a party in interest.⁴⁸

2. Post-petition statements of monthly income, expenditures and calculation

Section 521(f) also requires, at the request of the court, the United States trustee, or party in interest, the filing of annual statements of income and expenditures in chapter 13 cases. If required to file such documents, the documents must be accompanied with a sworn statement of income and expenditures in the preceding year and of the monthly income of the debtor, showing how the numbers are calculated by the debtor. The sworn statements must disclose the amounts and sources of income, the identity of any person who contributes to the household of the debtor, and the amounts contributed.

F. Post-Confirmation Plan Modifications

11 U.S.C. §1329 provides that after confirmation, a plan may be modified upon the request of the debtor, the trustee, or the holder of an unsecured claim. The modification may (a) increase or reduce the amount of payments on claims of a particular class provided for by the plan; (b) extend or reduce the time for payments; (c) change the amount of the distribution to a creditor whose claim is provided for in the plan to the extent necessary to take account of any payments of such claim other than under the plan; or (d) reduce amounts to be paid under the

⁴⁸ 11 U.S.C. §521(f) (2005).

plan by the actual amount expended by the debtor to purchase health insurance for the debtor and dependents with certain limitations provided for in 11 U.S.C. §1329(a)(4).

After confirmation of the plan, a debtor may be required pursuant to 11 U.S.C. §521(f)(4) to file with the court copies of his tax returns as well as a statement of income and expenditures of the debtor, and of the monthly income of the debtor, showing how the debtor calculated the income and expenditures. If these documents reflect a substantial change in the debtor's income and/or expenditures, the trustee or a party in interest may file a motion to modify the plan.

IX. Appendix

A. Exhibit A

DATE

Re: Financial/Debt Consultation with LAW FIRM

Dear Mrs. _____:

Thank you for calling us with respect to your bankruptcy options. You have an appointment scheduled in our office for _____ at _____. Directions are attached.

Before we meet, and before we are able to give you any advice with respect to your options, it is necessary for you to receive a briefing conducted by an approved non-profit budget and credit counseling agency. A list of these agencies is attached, including their URLs. We have no financial interest, and are not affiliated in any way, with any of these agencies. You must conduct this briefing prior to our appointment and present proof of that when you arrive.

There are some things that are very important for you to understand as you consider your bankruptcy options. First, under the vast majority of situations, bankruptcy is an entirely voluntary proceeding. That means that you choose to start the process. However, once started, you do not have the same level of choice to end the process. In other words, if you elect to start the process, you may find your options limited, and you may not be able to exit the bankruptcy process at your will. This will depend on the specific facts of your case.

In any event, if you elect to commence bankruptcy proceedings, and later change your mind and are successful in exiting, a subsequent bankruptcy process may be necessary. Your rights may not be identical in the second or later bankruptcy cases as they were in the first. You may find there are limitations to the availability of the relief, depending, again, upon your specific situation.

The availability of bankruptcy relief is founded on two important concepts, honesty and full disclosure. Bankruptcy laws were enacted to provide honest people with an opportunity for a fresh start in life. If you have obtained credit dishonestly, or acted in a fashion that the law does not recognize as entitling you to bankruptcy relief, then you may find your options limited, or non-existent under the law. Attached is a summary list of the kinds of debts that are not discharged (released) in bankruptcy. Please read this list and discuss with your attorney how it applies in your case.

Full disclosure means that you must list, accurately, all of your assets (everything you own), all of your liabilities (everybody you owe), and make truthful disclosures about your recent financial transactions, and your income and expenses.

While bankruptcy is not an exact science, the bankruptcy courts generally apply a zero tolerance policy to material omissions or misstatements in your bankruptcy papers. In addition, you will be signing your bankruptcy papers under oath and under penalty of perjury, and this has the same effect as going into a court and testifying before a judge or a jury. It generally has the same consequences as well, so you need to pay particular attention and be especially careful with respect to your disclosures in bankruptcy cases.

Regarding the disclosure of your assets, people often ask us how they should determine value. The law requires you to utilize a concept known as “replacement value.” Replacement value is what you could replace an item for a similar item. It is not what you would pay for the item brand new, and it is not what you would pay for the item under the most distressed circumstances, such as a garage sale. Usually, replacement value takes into account wear and tear, visual appeal, and other similar common sense notions.

Before you come to our office, please complete the attached forms detailing your assets and liabilities. This will help us in evaluating your situation. In addition, you will need to bring a signed copy of this letter with you to your appointment.

I. Assets

Our experience indicates the following general information will help you in determining the value of your property:

(1) Real estate/market value. This generally will not be derived from the tax assessment provided to you by the city. You should check with a realtor, or go online and see what similar houses in your neighborhood or general area are selling for. This is the best indication of market value.

(2) Automobiles. We have the resources to assist you in determining the value of your automobile. At your appointment, please provide us with the make, model and vehicle identification number (VIN) of the car, including any and all options, any special deferred maintenance, any physical damage, and the current mileage.

(3) Furniture. Furniture retailers tell us that they typically use a three to ten year useful life for various kinds of furniture and appliances. Soft goods have a three-year life, case goods have a five to seven year life, and brown goods an economic useful life of 10 years. What does this mean?

If your furniture is covered with cloth (like a couch or chair) then you may assume it has a three year useful life. In other words, if you paid \$300.00 for a chair, and it is one year old, then its replacement value is probably around \$200.00. While this will depend on your specific furniture, and you should use common sense, this is a good starting point. With respect to furniture, you will need to know the age and original purchase price of the furniture and communicate that information to us.

What if the soft goods are more than three years old? In that case, use your best estimate or replacement value based on the age of the item and its condition, and determine what you would pay for it if you had sufficient time to pursue your options. Again, this is not a garage sale value. Always use common sense to estimate what the items are worth.

What if you are talking about something like a mattress and/or box spring? You should assume these items have only nominal value. This is because health regulations generally prohibit resale of these items without an extensive and expensive sanitation process.

Case goods are made of wood, and do not have cloth. The useful life of case goods is dependent upon the material utilized in their construction. For case goods that are made of fiberboard, or particleboard or have a laminated surface, then you should use a 5 year useful life. For example, if you have a book shelf made from fiberboard, and it is four years old and you originally paid \$1,000.00 for it, then the replacement value is likely to be approximately \$200.00. However, more wood products are being manufactured in China and imported. If your case goods were made in China, then it is more likely that

they are made of solid wood, not particleboard, fiberboard, or veneer. For solid wood case goods, the useful economic life is 7 years.

The third category of goods is called “brown goods.” Brown goods are heavy household appliances such as refrigerators, dishwashers, stoves, washers, dryers, and microwave ovens. Brown goods have a useful economic life of 10 years. So, by way of example, if you purchased a washer for \$1,000 and it is 8 years old, then its replacement value is likely to be in the range of \$200. Again, as noted throughout this letter, please make sure to use common sense in assessing the replacement value of your goods.

Remember, the disclosures that you make are expected to be truthful and honest in every respect.

(4) Clothing and Jewelry. What about your clothing and jewelry? How do you value your clothing? The same standard applies. Its value is not what you originally paid for it, and not what you would pay to brand new items, but what its actual value is in its current condition. Typically, and in most instances and except for designer labels, furs, or other items of inherent value, clothing has a relatively nominal value. The same, however, does not apply to jewelry, other than costume jewelry. If you have fine jewelry, including your wedding or engagement rings, then you must separately list them, and determine their fair market value. Jewelry and precious metals are typically considered fair trade items, and that means they do not decline in value. If you have a question about what your jewelry is worth (except for costume jewelry), then you should take the jewelry to a jeweler, or other certified appraiser, and get an appraisal for the jewelry. You may ask specific questions regarding these kinds of items at your appointment.

(5) Electronic equipment, stereo equipment and computers. Relative to TVs, stereos, VCRs, etc., those items usually have a 7 year useful economic life. However, determining the replacement value may be difficult. In the absence of information, a 7 year projection should be utilized. However, if you see an item identical to or substantially similar to your items on sale at a box retailer such as BestBuy, Circuit City, Target or Wal-Mart, then you should use the retail price for the item and divide it in half to determine a current replacement value of your used electronics and TV goods.

With respect to replacement value of computers, our experience is that a computer declines 50% per year for the first 3 years and in 4th year thereafter the computer has essentially no replacement value. If you paid \$1,000 for a computer and it is 1 year old, the replacement value is probably \$500. If that same computer is 2 years old, the replacement value is roughly \$250, and in year 3 the replacement value is probably \$125.

The same is not true for monitors and keyboards. Those generally have a 5 year useful life, and should be valued using a straight line method. For example, if you have a \$500 monitor that is 2 years old, its replacement value is probably along the lines of \$300.

We believe it is safe to assume that your mouse has little if any replacement value once it is utilized.

As to CDs, they are typically valued at very low rates. However, if your CDs are in good condition, then you should go on the Web and determine what it would cost to legally download the music, and utilize that as the value for your CDs. If your CDs are scratched, skip or otherwise need replacing, then they have no useful replacement value.

(6) Other assets. Usually, the value of other assets is easy to determine. For stocks, bonds, life insurance, retirement accounts, and other bank accounts, you will receive periodic statements or you can go online to get current valuations. Please bring the most recent statements to your appointment.

II. Liabilities

You must disclose all your liabilities. This means everybody you owe. It is important for you to understand that there are no exceptions to this rule. Even debts that cannot be discharged in bankruptcy must be disclosed. You do not have the option of picking and choosing the liabilities that you are going to disclose in your bankruptcy case. Please remember, your bankruptcy papers are signed under oath and under penalty of perjury. That responsibility can have serious consequences. Failure to accurately state your liabilities can result in various problems for you, including a loss of the relief that you are seeking in the bankruptcy case (called a denial of discharge) and, possibly, criminal sanctions. You should obviously avoid this, and since the information is entirely within your control, the expectation is that you will completely, fully and accurately disclose all of your liabilities.

We assume that you have received various letters from your creditors. You should bring those letters to us, so that we help in determining whether or not a creditor has supplied you two written communications, which would include your current account number, directing you to send notices to a specific address. If you have received these notifications, that information must be included in your bankruptcy paperwork in order for the creditor to be affected by your bankruptcy case. Failure to give notice to the creditors at the addresses specified by them may result in a significant limitation of the bankruptcy relief that would otherwise be available to you.

Please make sure to give us complete information with respect to every debt you owe, including the date when the account was opened, the account number, the identity of any person who may be jointly liable with you on the account, and other pertinent information such as the current outstanding balance, whether you are over any established credit limit, and whether you have taken recent cash advances on your credit card. All of this will help us to assist you in determining what bankruptcy option is best available to you, and will also provide us with the necessary information to protect your rights consistent with the law.

Some of your debts may be owed to secured creditors. A secured creditor is a creditor you owe money to that holds a lien or encumbrance on a specific item of your property. Examples of secured creditors include your mortgage company, your auto-finance company, and furniture retailers that took a purchase money security interest in the goods you purchased. Once you file bankruptcy, the law requires that you inform secured creditors whether you are going to surrender the property back to them (that is, return it to them voluntarily), reaffirm the existing debt (sign a new promise to pay on terms and conditions agreed to by the creditor) or redeem personal property by paying cash for it. You must elect one of these three options, and that must be done within forty-five (45) days of your first meeting of creditors. If you fail to do this, the creditor, in all likelihood, will be entitled to exercise its rights to repossess the property. It is, and will remain, our strong recommendation that you assist us in providing the necessary notices to avoid any confusion on this point.

Other important disclosures. You must disclose your income and expenses. In connection with this, you must provide us with your pay stubs for the last six months. You must also provide us with the most recent federal and state income tax returns. Failure to file tax returns on time may cause you to lose the benefit of the bankruptcy filing because you would not be qualified for the relief. The law requires that all debtors must have filed all tax returns for the prior four years. Please remember these disclosures are subject to the same standards as the disclosures of your assets and liabilities. They must be truthful. If they are not, severe sanctions or penalties can be imposed.

The attached forms must be completed. They are designed to show how your monthly net income is calculated, on an itemized basis. Please pay particular attention to completing these forms, and make sure you have receipts that justify each and every line entry. If you do not have receipts, we will expect and must obtain a reasonable explanation as to why the expenditure is appropriate on a going forward basis.

If you expect a change in your job circumstances, especially if you expect a raise, promotion or other good news, you must let us know. This is a mandatory disclosure in bankruptcy cases, and will effect the options available to you. Please note this disclosure does not have any effect on your entitlement to bankruptcy relief in general, but it may affect the kind of relief that is available to you. You will receive an explanation from us detailing the different types of bankruptcies, and you should read that in its entirety to understand this component of our letter more completely.

You must also evaluate your expenses. The initial disclosure of expenses is what you normally spend on things like food, clothing, electricity, gas, cable television, entertainment, and the like. Please refer to the attached form for a list of all line items for your expenses. If you have an extraordinary expense, please note it even if there is no line item for it.

Once we review your actual expenses, we will need to compare to certain statistics prepared by the Department of Labor and the Internal Revenue Service. This will assist us in evaluating the various bankruptcy options available to you. In order to give you good information on this, the raw data you supply must be accurate, and must be readily subject to verification.

Under the law, the services this law firm provides to you constitute services rendered by a debt relief agency. As such, we must perform the services we agree to perform on your behalf, and we are not allowed to make any misrepresentations as to the scope of those services or your responsibility for payment of those services. Similarly, we must, again, advise you that it is important that all of your statements in your bankruptcy case be scrupulously truthful and accurate. During the course of our representation, we will provide you with specific advice and recommendations as to your legal options, and we are not allowed to say we will do something, if we do not in fact do it. Also, we must fully advise you with respect to the benefits and risks attendant to the bankruptcy process. This letter is one in a series of communications you will receive in order to better understand and appreciate those risks.

We are not allowed to advise you to incur debt in connection with an anticipated bankruptcy filing. Please do not ask us for permission to buy a new car, to buy new furniture, or to incur any other indebtedness. We will not give you that permission. However, it is our job as lawyers to answer your questions truthfully and honestly, and we will do that. We will tell you the consequences of your actions and allow you to make the final decision as to whether to move forward or not. That is your right, and our responsibility.

WE ARE A DEBT RELIEF AGENCY. WE HELP PEOPLE FILE FOR BANKRUPTCY RELIEF UNDER THE BANKRUPTCY CODE.

LAW FIRM

By: _____

By signing this, I assert that I have read and understand the above information provided to me.

Client's Name

Date

UNITED STATES BANKRUPTCY COURT

**NOTICE TO INDIVIDUAL CONSUMER DEBTOR UNDER § 342(b)
OF THE BANKRUPTCY CODE**

In accordance with § 342(b) of the Bankruptcy Code, this notice: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings you may commence; and (3) Informs you about bankruptcy crimes and notifies you that the Attorney General may examine all information you supply in connection with a bankruptcy case. You are cautioned that bankruptcy law is complicated and not easily described. Thus, you may wish to seek the advice of an attorney to learn of your rights and responsibilities should you decide to file a petition. Court employees cannot give you legal advice.

1. Services Available from Credit Counseling Agencies

With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days **before** the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. The clerk of the bankruptcy court has a list that you may consult of the approved budget and credit counseling agencies.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before he or she can receive a discharge. The clerk also has a list of approved financial management instructional courses.

2. The Four Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

Chapter 7: Liquidation (\$220 filing fee, \$39 administrative fee, \$15 trustee surcharge: Total fee \$274)

1. Chapter 7 is designed for debtors in financial difficulty who do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a "means test" designed to determine whether the case should be permitted to proceed under chapter 7. If your income is greater than the median income for your state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss your case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

2. Under chapter 7, you may claim certain of your property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay your creditors.

3. The purpose of filing a chapter 7 case is to obtain a discharge of your existing debts. If, however, you are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny your discharge and, if it does, the purpose for which you filed the bankruptcy petition will be defeated.

4. Even if you receive a general discharge, some particular debts are not discharged under the law. Therefore, you may still be responsible for most taxes and student loans; debts incurred to pay nondischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in your bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income (\$150 filing fee, \$39 administrative fee: Total fee \$189)

1. Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in instalments over a period of time. You are only eligible for chapter 13 if your debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

2. Under chapter 13, you must file with the court a plan to repay your creditors all or part of the money that you owe them, using your future earnings. The period allowed by the court to repay your debts may be three years or five years, depending upon your income and other factors. The court must approve your plan before it can take effect.

3. After completing the payments under your plan, your debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in your bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

Chapter 11: Reorganization (\$1000 filing fee, \$39 administrative fee: Total fee \$1039)

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

Chapter 12: Family Farmer or Fisherman (\$200 filing fee, \$39 administrative fee: Total fee \$239)

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

3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

WARNING: Section 521(a)(1) of the Bankruptcy Code requires that you promptly file detailed information regarding your creditors, assets, liabilities, income, expenses and general financial condition. Your bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

Certificate of [Non-Attorney] Bankruptcy Petition Preparer

I, the [non-attorney] bankruptcy petition preparer signing the debtor's petition, hereby certify that I delivered to the debtor this notice required by § 342(b) of the Bankruptcy Code.

Printed name and title, if any, of Bankruptcy Petition Preparer

Social Security number (If the bankruptcy petition preparer is not an individual, state the Social Security number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.) (Required by 11 U.S.C. § 110.)

Address:

X
Signature of Bankruptcy Petition Preparer or officer, principal, responsible person, or partner whose Social Security number is provided above.

Certificate of the Debtor

I (We), the debtor(s), affirm that I (we) have received and read this notice.

Printed Name(s) of Debtor(s)

X
Signature of Debtor Date

Case No. (if known)

X
Signature of Joint Debtor (if any) Date

§527(a) Disclosure

I am considering retaining THE LAW FIRM to represent me in connection with a bankruptcy case that may be filed on my behalf. I understand the following:

(1) All information that I am required to provide with a petition and thereafter during a case under this title must be **complete, accurate and truthful**.

(2) All of my property, whether I possess it or not, and all of my assets and all of my liabilities must be **completely and accurately disclosed** in the documents filed to commence the case, and I must disclose the replacement value of each asset as defined in §506 of the Bankruptcy Code in the documents I file where requested after I have made a reasonable inquiry to establish such value.

(3) My current monthly income, my actual living expenses (the amounts specified in §707(b)(2)), and, in a case under Chapter 13 of this title, all of my disposable income (which will be determined in accordance with §707(b)(2)) must be fully and accurately stated after I have made reasonable inquiry.

(4) I understand that information I provide during my case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including criminal sanctions.

(5) A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under title 11 of the US Code shall be subject to fine, imprisonment; or both.

(6) All information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.

By signing this, I assert that I have read and understand the above information provided to me.

Client

Date

Client

Date

§527(b) Disclosure

IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER

If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend a required first meeting of creditors where you may be questioned by a court official called a “trustee” and by creditors.

If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers can give you legal advice.

By signing this, I assert that I have read and understand the above information provided to me.

Client

Date

Client

Date

SUMMARY LIST OF NON-DISCHARGEABLE DEBTS

1. Certain types of tax debts, including income tax debt
2. Any debt incurred through fraud
3. Undisclosed debt
4. Debt owed for fraud or delfaction while acting in a fiduciary capacity
5. Debt owed to spouse, former spouse or child
6. Debt owed for willful and malicious injury to another or property of another
7. Government fine, penalty or forfeiture
8. Debt owed for death or personal injury due to operating of a vehicle while intoxicated
9. Debt that could have been discharged in another prior case of the debtor, or was denied discharge in a prior bankruptcy case of debtor
10. Debt owed for fraud or delfaction while acting in a fiduciary capacity, associated with a depository
11. Debt owed for malicious or reckless failure to fulfill any commitment owed to a federal depository institution
12. Restitution owed under title 18, United States Code
13. Any debt owed that was incurred in order to pay tax debts
14. Debt related to court costs
15. Student loan debt

LIST OF ASSETS

REAL ESTATE/REAL PROPERTY

Identify each and every parcel of real estate in which you have an interest. IF YOU OWN AN INTEREST IN MORE THAN ONE PARCEL, MAKE MORE COPIES OF THIS SHEET AND PROVIDE THE INFORMATION REQUESTED FOR EACH PARCEL.

Property address: _____

Tax assessed value of property as it appears on your tax bill: _____

PIN (property identification number) as it appears on your tax bill: _____

Provide a copy of the Deed, the Note, and the recorded Deed of Trust (mortgage) for the property.

Are there any co-owners? _____

If yes, provide name, address, and percentage of their ownership of the property:

Name

Address

Is the property occupied by someone other than you?

Name

Relationship? _____

How many Deeds of Trust (mortgages) on the property? _____

Please bring copies of the Deeds of Trust with you to your consultation.

1. What is the total of all **cash** you have on you that is not deposited in an account?

Debtor _____ Spouse _____

2. Identify each and every **account** you have now with the ability to withdraw funds from.

Name of bank: _____

Address of bank: _____

Type of account: _____ Account number: _____

Who owns the account? _____

Balance in this account? _____; as of what date? _____

Name of bank: _____

Address of bank: _____

Type of account: _____ Account number: _____

Who owns the account? _____

Balance in this account? _____; as of what date? _____

3. Identify each and every unrefunded **deposit with public utilities, telephone companies, landlords, and others.**

Name of holder: _____

Address: _____

Type of account, i.e. landlord, utility, lay-a-way, escrow: _____

Who deposited the funds? _____

Balance in this account? _____; as of what date? _____

Name of holder: _____

Address: _____

Type of account, i.e. landlord, utility, lay-a-way, escrow: _____

Who deposited the funds? _____

Balance in this account? _____; as of what date? _____

4. List all **household goods and furnishings, including audio, video and computer equipment.**

LIST LIVING ROOM/DEN FURNISHINGS:

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns i? Circle one: Debtor "D" Spouse "S" Joint "J"
Chairs					D S J
Sofas					D S J
Loveseats					D S J
End Tables					D S J
Coffee tables					D S J
TVs					D S J
VCRs					D S J
DVD players					D S J
Stereo Sets					D S J
Telephones					D S J
Clocks					D S J
Lamps					D S J
Armoires					D S J
Bookcases					D S J
Window dressings/curtains					D S J
Other					D S J

LIST OTHER DECORATIVE ITEMS (rugs, wall hangings, curios, etc.):

ITEM

RESALE VALUE OR OTHER METHOD

_____ \$ _____

D S J

_____ \$ _____

D S J

LIST KITCHEN/DINING ROOM FURNISHINGS:

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns i? Circle one: Debtor "D" Spouse "S" Joint "J"
Kitchen table & chairs					D S J
Dining room table & chairs					D S J
Hutch					D S J
China cabinet/closet					D S J
Washer					D S J
Dryer					D S J
Oven/Range					D S J
Microwave/Convection					D S J

Oven					
Refrigerator					D S J
Freezer					D S J
Window dressings/curtains					D S J
Other items					D S J

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns i? Circle one: Debtor "D" Spouse "S" Joint "J"
Glass Dishes					D S J
China Dishes					D S J
Crystal					D S J
Other items:					D S J
Pots and Pans					D S J

LIST BEDROOM FURNISHINGS:

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns i? Circle one: Debtor "D" Spouse "S" Joint "J"
Beds and bedding					D S J
Night tables					D S J
Dressers					D S J
Chests of drawers					D S J
Window dressings/curtains					D S J
Other items:					D S J

5. List books; pictures and other art objects; antiques; stamp, coin, record, tape, compact disc, and other collections or collectibles.

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns i? Circle one: Debtor "D" Spouse "S" Joint "J"
Books					D S J
Pictures					D S J

Other art objects:					D S J
Antiques:					D S J

LIST Collections (stamp, coin, record, tape, Compact disc, and other collections or collectibles):

_____ \$ _____ D S J

_____ \$ _____ D S J

6. List clothing (**wearing apparel**):

Items	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns it? Circle one: Debtor "D" Spouse "S" Joint "J"
					D S J
					D S J
					D S J
					D S J
					D S J

7. List (**furs and jewelry**):

Item: _____ Original Purchase Price _____ Original Date of Purchase _____ Replacement Value _____
Owner

Wedding rings \$ _____ \$ _____ Debtor

Wedding rings \$ _____ \$ _____ Spouse

List other jewelry:

Items (description)	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns it? Circle one: Debtor "D" Spouse "S" Joint "J"
					D S J
					D S J
					D S J

8. List firearms and sports, photographic, and other hobby equipment.

Items (description)	Quantity	Original Purchase Price	Year of Purchase	Replacement Value	Who owns it? Circle one: Debtor "D" Spouse "S" Joint "J"
					D S J
					D S J

9. List interest in insurance policies. Name of insurance company of each policy, itemize cash surrender value of each policy, indicate whether your policy allows you to change the beneficiary.

Owner of the policy: _____

Name of insurance company: _____

Type of policy: _____

Face value of policy (amount payable upon death): _____

Cash surrender value of policy: _____; as of what date: _____

Is the beneficiary irrevocable? _____

10. Annuities. Itemize and name each issuer.

Owner of annuity: _____

Name of issuer: _____

Account number: _____

Value of annuity: _____; as of what date?

11. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Itemize.

Name and/or type of retirement plan: _____ D or
S

Account number: _____

Is the plan "ERISA" qualified (Employee Retirement Income Security Act of 1974)? _____

(Your employer, trustee, or plan administrator will be able to answer this question)

What is the accumulated value of the plan? \$ _____; as of what date?

Name and/or type of retirement plan: _____ D or
S

Account number: _____

Is the plan "ERISA" qualified (Employee Retirement Income Security Act of 1974)? _____

(Your employer, trustee, or plan administrator will be able to answer this question)

What is the accumulated value of the plan? \$ _____; as of what date?

12. List stock and interests in incorporated and unincorporated businesses.

Name of business: _____ Who owns it? D or
S

What type of business is it (S corp, C corp, LLC, sole proprietorship, etc.)? _____

What is the percentage of your interest in the business? _____

How many shares do you hold? _____

Is the stock publicly traded? _____

If yes, provide trade name and symbol: _____

Replacement value? _____; as of what date? _____

What method did you use to estimate the value? _____

(provide a Balance Sheet if available)

13. Interests in partnerships or joint ventures.

Name of partnership or joint venture: _____ Who owns it? D or S

Type of partnership (general or limited): _____

Percentage of your interest in the partnership: _____

What type of interest do you hold (general or limited)? _____

14. Government or corporate bonds and other negotiable and non-negotiable instruments.

What type of bond? _____ Who owns it? D or S

OR whose Social Security number is on the face of the bond? _____

Face value of the bond: _____

If you cashed it today, what amount would you receive? _____

15. Accounts receivable.

\$ _____; as of what date? _____

16. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.

_____ Who is entitled? D or S

17. Other liquidated debts owing debtor including tax refunds (tax return filed but the refund has not been received). Give particulars.

_____ Debtor

_____ Spouse

_____ Joint

18. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule or Real Property.

_____ Debtor

_____ Spouse

Joint

19. Contingent and non-contingent interest in estate of a decedent, death benefit plan, life insurance policy, or trust.

_____ Debtor

_____ Spouse

_____ Joint

20. Other contingent and unliquidated claims of every nature, including tax refunds (pro rated tax refund), counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.

Possible inheritance Debtor

Possible inheritance Spouse

Any other?

Describe: _____

21. Automobiles, trucks, trailers, and other vehicles and accessories.

Year: _____ Make: _____ Model: _____

VIN: _____ Mileage: _____

Who owns it (whose name is it registered in)? _____

Is there a lien on the vehicle? _____ Was the lien/money used to purchase the vehicle? _____

If there is a lien, provide the name and address of the creditor:

Name: _____

Address: _____

Account number: _____

How much do you owe? _____ Do you intend to keep the vehicle?

Year: _____ Make: _____ Model: _____

VIN: _____ Mileage: _____

Who owns it (whose name is it registered in)? _____

Is there a lien on the vehicle? _____ Was the lien/money used to purchase the vehicle? _____

If there is a lien, provide the name and address of the creditor:

Name: _____

Address: _____

Account number: _____

How much do you owe? _____ Do you intend to keep the vehicle?

22. Boats, motors, and accessories.

Who owns it? _____

Provide a personal property tax bill, if applicable, for a description and the tax assessed value.

If a personal property tax bill is not applicable, provide the year, make, and model of the boat:

Provide a replacement value: _____

Is there a lien on it? _____

If yes, provide the name and address of the creditor/lienholder:

How much do you owe? _____

23. Office equipment, furnishings, and supplies.

Give a description or attach a list: _____

Who owns it? _____

Provide the book value: _____

What method of depreciation did you use? _____

If book value is not applicable, provide a replacement value: _____

25. Animals.

Describe: _____

Are they pets? _____

If the animals are not pets, please describe:

What is the replacement value? _____

What is the basis of the valuation:

26. Other personal property of any kind not already listed. Itemize.

Give a description or provide a list:

Who owns it? _____

Provide the value: _____

Is there a lien? _____

If yes, provide the creditor/lienholder's name and address:

How much do you owe: _____

UNITED STATES TRUSTEE APPROVED CREDIT COUNSELING AGENCIES

Center for Child a Family Service
Inc.
2021 Cunningham Drive
Suite 4001
Hampton, VA 23666
757-826-2227
(In Person)

ClearPoint Financial Solutions, Inc.
8000 Franklin Farms Drive
Richmond, VA 23229
877-422-9046
www.clearpointfinancialsolutions.org
In Person and Telephonic

Consumer Credit Counseling
Service of Greater Atlanta Inc.
100 Edgewood Avenue
Suite 1800
Atlanta, GA 30303
800-251-2227
www.cccsinc.org
In Person (*not available in all
judicial districts*), Telephonic and
Internet

Credit Advisors Foundation
1818 South 72nd Street
Omaha, NE 68124
800-942-9027
www.creditadvisors.org
In Person (*not available in all
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Garden State Consumer Credit
Counseling, Inc.
225 Willowbrook Road
Freehold, NJ 07728
877-892-4557
www.novadebt.org
In Person (may not be available in
all judicial districts) & Telephonic

GreenPath, Inc.
38505 Country Club Drive, Suite
210
Farmington Hills, MI 48331-3429
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Hummingbird Credit Counseling and
Education. Inc.

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Raleigh, NC 27612
800-645-4959
www.hbcce.org
Telephonic & Internet

Institute for Financial Literacy, Inc.
449 Forest Avenue
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866-662-4932
www.financiallit.org
Telephonic & Internet

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B. Check List for Bankruptcy Cases (Involving Assisted Persons)

<u>Task</u>	<u>Performed By:</u>	<u>Date:</u>
Determine if prospective client is an “assisted person” a) primarily consumer debts and b) property less than \$150,000.00		
Advise prospective client that a credit briefing by an approved non-profit agency is required		
Provide prospective client with a list of 4 approved credit briefing agencies		
Check PACER to see if prospective client has filed before and how long ago. Use SSN and name to search.		
Check local general district court and circuit court websites to see if there are any judgments against the prospective client.		
Verify prospective client’s residence for the past 2 years. Ask client. Compare to tax returns.		
Provide written notice required under §342(b), describing chapters 7, 11, 12 and 13, along with the purposes, benefits and costs of filing under each chapter. Include a description of services available by credit counseling agencies and a statement stating that any person that knowingly and fraudulently hides assets or makes a false statement/oath, bears the risk of jail time and/or criminal fines.		
Require the following information to be provided at initial consultation: a. credit briefing certificate b. pay advices (stubs) for the past 6 months c. all paperwork received from any creditors in the past 60 days d. federal and state tax returns for the past 4 years e. verification of insurance for all property, including cars; f. deeds to real estate; deed(s) of trust, year end mortgage statements, recent appraisals		

<u>Task:</u>	<u>Performed By:</u>	<u>Date:</u>
<p>_____</p> <p>g. installment contracts</p> <p>h. contracts/leases on cars, titles, etc. and go to NADA Black/Blue Book for value</p> <p>i. any divorce decree, property settlement agreement</p> <p>j. any discharge order for a prior bankruptcy</p>		
Review the documentation provided		
Determine if client is required to make domestic support payments to spouse, former spouse, or child.		
Determine applicable exemption law.		
Determine if reaffirming would create hardship. Determine whether presumption of hardship could be rebutted.		
Ask for digital photographs of all assets (similar to what would be done for insurance purposes if a hurricane was coming)		
Prepare the engagement letter to be signed within 5 days of initial consultation		
Check income. If less than median income, all options are available to prospective client. If greater than or equal to median income, apply the means test to determine what bankruptcy options are available to prospective client.		
Prepare the petition, bankruptcy schedules and SFA		
Determine if applicable creditors have filed address for notices with Court. Determine proper address for creditors sending address changes or requests.		
Go over the §521 requirements and explain to client the difference between reaffirming, redeeming and returning		
<p>Have the client either sign or initial each page of original petition & schedules.</p> <p>File petition and certificate from credit counseling agency and copy of any debt repayment plan.</p>		
Prepare and file homestead deed		

<u>Task:</u>	<u>Performed By:</u>	<u>Date:</u>
Upon receipt of homestead deed, send copy to client and trustee		
Prepare statement of intention and file with court		
Send letter and statement of intention to appropriate creditors		
File with the court certificate stating that the statement of intention has been mailed to the appropriate creditors		
Certify with the court that the required §342 notices have been made		
Provide 60 days of payment advices and copy of tax returns to Trustee (at least 7 days prior to 341 meeting)		
Prepare client for 341		
Send client letter containing: <ul style="list-style-type: none"> a. questionnaire b. 341 notice c. bankruptcy information sheet d. schedule meeting with client to review and prepare for §341 hearing 		
Post §341 follow up		
Make sure client attends debtor education		
Upon receipt of discharge order, forward to client		
Close file – Send closing letter		