

CONSUMER BANKRUPTCY TRACK 1

1. Consumer Debtor Clients
2. Chapter 7 or Chapter 13?
3. Chapter 11 or Chapter 13?
4. Certification made by Debtor's Counsel
5. Life Cycle of Chapter 7
6. Life Cycle of Chapter 13
7. Exemptions
8. Reaffirmations and Redemption
9. What Can Go Wrong (Dischargeability Issues)

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1. CONSUMER DEBTOR CLIENTS

1. "Debt Relief Agencies"
2. Interviewing
3. Costs and Fees
4. Software
5. Support Staff

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CONSUMER DEBTOR CLIENTS

1. "Debt Relief Agencies"
 - Who is a "debt relief agency?" Debtor's *potential* counsel (Bankruptcy Code § 101(12A)); *Milavetz, Gallop v. U.S.*, 559 U.S. 229 (2010))
 - So what?
 - Certain Restrictions (Bankruptcy Code § 526)
 - Substantial required disclosures (Bankruptcy Code § 527)
 - Additional requirements (Bankruptcy Code § 528)
 - Sanctions (Bankruptcy Code § 526(c))

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CONSUMER DEBTOR CLIENTS

1. "Debt Relief Agencies"

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

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CONSUMER DEBTOR CLIENTS

1. "Debt Relief Agencies" Bankruptcy Code § 528(b) (2):

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

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

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CONSUMER DEBTOR CLIENTS

2. Interviewing

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

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CONSUMER DEBTOR CLIENTS

2. Interviewing

- Discuss Pros and Cons of Bankruptcy
 - Advantages
 - Discharge of most debts and an opportunity for a fresh start
 - Automatic stay of most creditor actions (including repossessions, garnishments, foreclosures, utility shut-offs and evictions)
 - Lien avoidance or modification of certain secured debts
 - Opportunity to repay some or all debts with affordable payments
 - Opportunity to assert claims and defenses to creditor claims

CONSUMER DEBTOR CLIENTS

2. Interviewing

- Discuss Pros and Cons of Bankruptcy
 - Disadvantages
 - Possible loss of nonexempt property
 - Possible loss of secured collateral
 - Impact on credit rating
 - Concern over stigma and moral obligation to pay debts
 - Concern about possible discrimination based on bankruptcy filing

CONSUMER DEBTOR CLIENTS

2. Interviewing

- Discuss Timing of Bankruptcy
 - It may be advisable for the debtor not to file bankruptcy if "judgment proof"
 - The debtor may have had a prior discharge preventing a new discharge
 - The debtor may have had a prior case dismissed, barring refiling or limiting the automatic stay
 - Filing may be delayed for reasons related to the dischargeability of certain debts, such as credit card and tax debts
 - Immediate filing may be needed in order to invoke the automatic stay to stop a foreclosure sale or wage garnishment
 - Preferential transfers occurring within 90 days/one-year of the bankruptcy filing may be avoided
 - The timing of the bankruptcy may affect exemptions that the debtor is entitled to claim based on State of the debtor's domicile

CONSUMER DEBTOR CLIENTS

2. Interviewing

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

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CONSUMER DEBTOR CLIENTS

2. Interviewing

- Frequently Missed Information
 - Property
 - Tax refunds
 - Alimony or support arrearages
 - Security deposits
 - Deposits in dormant savings accounts
 - Pledged goods at pawnbrokers
 - Personal injury or other claims
 - Cash value in whole life insurance policies
 - Pension plans

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CONSUMER DEBTOR CLIENTS

2. Interviewing

- Frequently Missed Information
 - Liabilities
 - Debts of others that client cosigned
 - Deficiencies from auto repossessions
 - Rent-to-own contract damages
 - Lease termination damages
 - Student loans
 - Public benefit overpayments

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CONSUMER DEBTOR CLIENTS

3. Costs and Fees

- The Chapter 7 filing fee is now \$335
 - (\$310 for chapter 13)
- ~\$100 for credit counseling and debtor education
 - (can be cheaper)
- Increase in attorney fees
- Pressure on *pro bono* programs

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CONSUMER DEBTOR CLIENTS

3. Costs and Fees – Waiver

- Chapter 7 filing fees may be waived (28 U.S.C. § 1930(f)(1))
 - The debtor's income must be below 150% of the poverty line, and
 - The debtor must be unable to pay the filing fee in installments ("totality of circumstances" test)
- Application Form 3B may be filed:
 - at initial filing
 - after an installment request (for balance), or
 - after a conversion from Chapter 13 to 7 (for balance)
- Payment of attorney's fees does not preclude the waiver request

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CONSUMER DEBTOR CLIENTS

4. Software (e.g., Best Case, NewHope, EZFiling, etc.)

5. Support Staff

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2. CHAPTER 7 OR CHAPTER 13?

1. Credit Counseling
2. Means Testing
3. Post-Petition Earnings
4. Modification; Cure and Reinstatement
5. Co-Debtor Stay

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CHAPTER 7 OR CHAPTER 13?

1. "Credit Counseling"
 - Who needs it? Bankruptcy Code § 109(h)(1): An individual who wishes to file bankruptcy unless the debtor falls within the
 - Eligible for deferral under Bankruptcy Code § 109(h)(3)
 - Narrow exceptions under Bankruptcy Code § 109(h)(4)
 - When? Bankruptcy Code § 109(h)(1): within 180 days before filing
 - What is it? See Fed. R. Bankruptcy P. 1007(b)(3) (certificate of participation and debt payment plan)
 - So what? Bankruptcy Code § 521(b) (must file certificate and debt payment plan)

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CHAPTER 7 OR CHAPTER 13?

1. "Credit Counseling"
 - When? Bankruptcy Code § 109(h)(3) Deferral: Debtor must file a certification:
 - Describing the exigent circumstances that merit a waiver; and
 - Stating that the debtor requested counseling from an approved agency, but was unable to obtain services during the seven-day period beginning on the date that the debtor made the request
 - Must get required credit counseling within 30 days after filing (Bankruptcy Code § 109(h)(3)(B))

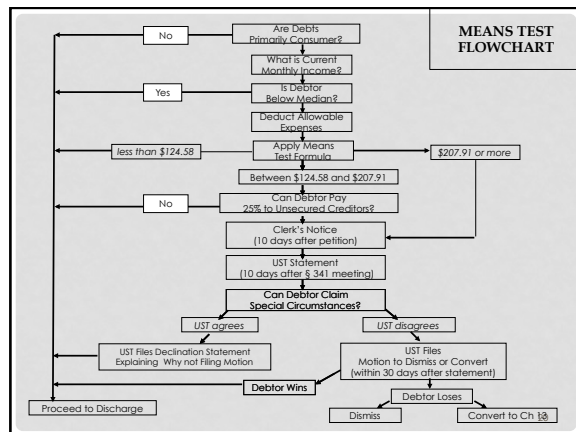
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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

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

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - The monthly average of all income (taxable or not) received by debtor during the six-month period ending on the last day of the calendar month before the bankruptcy was filed (Bankruptcy Code § 101(10A))
 - ✓ Example - if case filed on July 10, the CMI is total income received by debtor from January 1 through June 30 divided by six
 - Does not include payments under the Social Security Act.
 - ✓ Supplemental Security Income (SSI) and other disability benefits; public assistance (TANF) and foster care benefits; and benefits to families under certain social services block grants

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - Does not include payments to victims of war crimes, crimes against humanity and acts of terrorism
 - Includes amounts paid by others to the debtor on "regular basis" for household expenses of the debtor or the debtor's dependents
 - If a married debtor files alone, income of the non-debtor spouse is *not* included as CMI
 - ✓ But income of non-debtor spouse is considered for the median "safe harbor" test unless the debtor files a statement under oath that spouses are separated

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

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

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- Safe harbor for below-median-income debtors
 - But Bankruptcy Code § 707(b)(7) applies the safe harbor test by referencing "household" size
 - ✓ The Census Bureau defines a household as consisting of all the people who occupy a housing unit regardless of their relationship
 - ✓ If a household has more than four members, the highest median income for a family of four is used, plus \$675 per month for each additional member

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- Safe harbor for below-median-income debtors
 - The Census Bureau currently calculates and reports state median income by family size only after each decennial census and not as part of the annual surveys
 - The definition of "median family income" in Bankruptcy Code § 707(k) provides that if no Census Bureau figures are available for the year in which a case is filed:
 - ✓ Use the most recent figures and adjust by the percentage change in the Consumer Price Index for All Urban Consumers "during the period of years occurring after such most recent year and before such current year"

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - Allowable Expenses
 - ✓ IRS National Standards: Food, clothing, and other items
 - ✓ IRS Local Standards: Housing and utilities
 - ✓ IRS Local Standards: Transportation
 - ◊ Operating Expense : Use IRS Standard – Allowable living expenses for transportation: operating costs & public transportation costs (given as "no car," "one car," and "two cars")
 - ◊ Ownership Expense: Use IRS Standard – Allowable living expenses for transportation: ownership costs, first car, and second car (if any)
 - ✓ Actual expenses for IRS categories of other necessary expenses

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - IRS list is non-exclusive and includes:
 - ✓ Federal, state and local taxes
 - ✓ Involuntary payroll deductions (retirement contributions, union dues, uniform costs, etc.)
 - ✓ Life insurance
 - ✓ Health care expenses (not covered by insurance)
 - ✓ Court-ordered payments (alimony, child support, etc.)
 - ✓ Employment education
 - ✓ Internet service and similar expenses
 - ✓ Child care
 - ✓ Expenses to operate business or produce income (e.g., accounting and legal fees)

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - Additional Actual Expenses (Bankruptcy Code § 707(b)):
 - ✓ Health insurance, disability insurance, and health savings account expenses
 - ✓ Expenses to maintain safety from domestic violence
 - ✓ Expenses for care and support of elderly, chronically ill or disabled household member or of debtor's immediate family
 - ✓ Additional expenses over IRS standard for home energy costs
 - ✓ Additional food and clothing expense (up to 5% over IRS standard)
 - ✓ Chapter 13 administrative expenses (up to 10% of projected plan payments)
 - ✓ Education expenses for dependent children under 18 (not to exceed \$156.25 per month per child)
 - ✓ Continued charitable contributions

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - Additional Actual Expenses (Bankruptcy Code § 707(b)):
 - ✓ Payments on account of *secured debts* calculated as follows:
 - ✦ Total of all amounts "scheduled as contractually due" to secured creditors for the 60 months following date of the petition; plus
 - ✦ Additional payments to secured creditors, such as adequate protection and cure payments, needed to be paid under the chapter 13 plan to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of debtor and debtor's dependents
 - ✦ The total is then divided by 60 to determine the monthly expense

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- "Current Monthly Income" (CMI)
 - Additional Actual Expenses (Bankruptcy Code § 707(b)):
 - ✓ Actual expenses for payment of *priority claims*
 - ✦ priority child support and alimony claims, etc.
 - ✓ Chapter 13 *administrative expenses*
 - ✦ projected plan payment x current multiplier

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- Calculation

$$\begin{array}{r}
 + \text{ Current monthly income} \\
 - \text{ Allowable expenses} \\
 = \text{ Net monthly income} \\
 \times \quad \quad \quad 60 \\
 = \text{ Available Income}
 \end{array}$$
- There is a "presumption of abuse" if available Income exceeds
 - \$7,475 or 25% of non-priority unsecured debt, whichever is greater; or
 - \$12,475

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- No abuse if debtor's monthly income after expenses is *less than* \$124.58/month (\$7,475 ÷ 60)
- Abuse presumed if debtor's monthly income after expenses is *greater than* \$207.91 /month (\$12,475 ÷ 60)
- If debtor's monthly income after expenses is *between* \$124.58 and \$207.91/month, there is no abuse if this amount multiplied by 60 is *less than* 25% of debtor's non-priority, unsecured claims

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing

- Means Test Paradox: Since the formula compares income after expenses with unsecured debts, debtors with higher amounts of unsecured debt are more likely to "pass" the means test and are thus permitted to obtain a Chapter 7 discharge

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing – Motions to Dismiss for Abuse

- Creditors may file motions to dismiss debtor's Chapter 7 under
 - The general abuse provisions in Bankruptcy Code § 707(b)(1), and the means test under Bankruptcy Code § 707(b)(2), or
 - If the debtor's income is above the state median family income
- If there is no presumption under the means test, the court is to consider:
 - Whether the "debtor filed the petition in bad faith" or
 - If "totality of the circumstances ... of [the] debtor's financial situation demonstrates abuse"

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CHAPTER 7 OR CHAPTER 13?

2. Means Testing – Much Ado About Nothing?

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

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CHAPTER 7 OR CHAPTER 13?

3. Post-Petition Earnings

- Not property of estate under Chapter 7 but
 - Bankruptcy Code § 1306(a): "(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7"
 - Bankruptcy Code § 1115: (a) in a case in which the debtor is an *individual*, property of the estate includes "(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7"

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CHAPTER 7 OR CHAPTER 13?

4. Modification; Cure and Reinstatement – Compare Loan Modification with Cure & Reinstatement

- Plan Payments:
 - Secured Claims
 - ✓ Property Other Than Residence, “910-day” property, & “1-year” property – bifurcate under Bankruptcy Code § 506(a) and modify
 - ✓ Residence – no bifurcation or modification (Bankruptcy Code §§ 1123(b)(5), 1322(b)(2))
 - ✦ unless last payment due during term of Chapter 13 plan (Bankruptcy Code § 1322(c)(2) *but cf.* Bankruptcy Code § 1325(a)(5)(B))
 - ✓ “910-day” and “1-year” property – no bifurcation (Bankruptcy Code § 1325(a)(5))
 - Cure and Reinstatement – Bankruptcy Code §§ 1123(a)(5)(G), 1322(b)(5), 1322(c)(1)
 - ✓ unless last payment due during term of Chapter 13 plan (Bankruptcy Code § 1322(b)(5))

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CHAPTER 7 OR CHAPTER 13?

5. Co-debtor Stay

- Bankruptcy Code § 1301(a): After debtor files under Chapter 13 a creditor is stayed as under Bankruptcy Code § 362(a) with respect to “any individual that is liable on such debt with the debtor, or that secured such debt, unless–
 - (1) such individual became liable in the ordinary course of such individual’s business; or
 - (2) The case is closed, dismissed or converted to Chapter 7
- Bankruptcy Code § 1301(c): Creditor may move for relief from stay on specified grounds

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Chapter 11 or Chapter 13?

Modification	Chapter 11	Chapter 13
How long does debtor have to pay?	No formal limit	Period of the plan 1322(d)
Modification of home mortgages?	No. 1123(b)(5)	No, unless shorter than plan 1322(c)(2)
Must file bankruptcy before ...	Sale	Sale
Reinstatement	Chapter 11	Chapter 13
Must file bankruptcy before ...	Judgment?	Sale 1322(c)(1)
How long does debtor have to cure?	To effective date of plan, case law	“Reasonable time” after effective date
How much does debtor pay to cure?	State law fixes amount, 1123(d)	State law fixes amount, 1322(e) ³⁹

4. CERTIFICATION

1. Bankruptcy Code § 707(b)(4):

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

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

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CERTIFICATION

2. Bankruptcy Code § 707(b)(4):

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

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5. LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed
2. Creditors Meeting
3. Personal Financial Management Course
4. Discharge

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LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed – Bankruptcy Code § 521(a)(1) and Fed. R. Bank. P. 1007

- List of creditors
- Schedule of assets and liabilities
- Schedule of current income and expenditures
- Schedule of executory contracts and unexpired leases
- Statement of financial affairs
- Copies of all payment advices received from any employer within 60 days
- Statement of monthly net income
- Record of any interest in educational IRA or qualified state tuition program
- Certificate of receipt of Bankruptcy Code § 342(b) notice

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LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed – Bankruptcy Code § 521(a)(1) and Fed. R. Bankruptcy P. 1007

- Statement of compliance with credit counseling requirement
- Statement of intention regarding retention or surrender of property securing debt
- Statement of current monthly income with all calculations and information required in appropriate Official Form
- Statement disclosing any reasonably anticipated increase in income or expenditures over the 12 months following the petition

Forms downloadable at

<http://www.uscourts.gov/research/faqy=bankruptcy+forms+free>
download.kaliitemiscourts.gov/locate.asp

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LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed – Bankruptcy Code § 521(a)(2)

- Statement of intention regarding retention or surrender of property securing debt
 - When? Before the earlier of (i) 30 days after filing or (ii) date of meeting of creditors
 - What? Statement of intention to (i) retain or (ii) surrender such property and to (iii) redeem such property or (iv) reaffirm the debt

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LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed – Bankruptcy Code § 521(a)(6)

- Purchase-Money Security Interests
 - Individual debtor may not retain possession of personal property securing a purchase-money security interest unless enters into a reaffirmation agreement (or redeems) the property within 45 days after meeting of creditors

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LIFE CYCLE OF A CHAPTER 7

1. What Must Be Filed –

- Prepetition Tax Return (Bankruptcy Code § 521(e)(2)(A))
 - When? Not less than seven days before meeting of creditor
 - What? Copy of federal tax return for the most recent year ending before commencement of the case
 - To whom? Trustee and any creditor who asks
- Post-petition Tax Returns (Bankruptcy Code § 521(f)(1))
 - When? Concurrent with filing with tax authority
 - What? Copies of federal tax returns for each tax year while case is pending
 - To whom? At request of Court, United States Trustee, and any party in interest

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LIFE CYCLE OF A CHAPTER 7

2. Creditors Meeting –

- Bankruptcy Code § 341(a): Within a reasonable time after the order for relief the United States Trustee shall convene a meeting of creditors
 - Fed. R. Bankruptcy P. 2003(a) – between 21 and 40 days after filing
 - Fed. R. Bankruptcy P. 2002(a)(1) – at least 21 days' notice by mail
 - Fed. R. Bankruptcy P. 4002(b) – documents debtor must bring
 - Fed. R. Bankruptcy P. 2003(b)(1) – examination of debtor under oath
 - Bankruptcy Code § 341(e) – warnings and admonitions

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LIFE CYCLE OF A CHAPTER 7

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

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LIFE CYCLE OF A CHAPTER 7

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

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LIFE CYCLE OF A CHAPTER 7

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

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LIFE CYCLE OF A CHAPTER 7

3. Personal Financial Management Course

- Bankruptcy Code § 727(a) The court shall grant the debtor a discharge, unless—
 - (1) The debtor fails to complete a personal financial management course
 - Narrow exceptions under Bankruptcy Code § 109(h)(4)
- Who? Fed. R. Bankruptcy P. 1007(b)(7) – individual debtors under Chapters 7, 11, and 13
- What? Official Form 23
- When? Fed. R. Bankruptcy P. 1007(c)
 - Chapter 7 – within 60 days after meeting of creditors
 - Chapters 13 and 11 – no later than final payment under plan

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LIFE CYCLE OF A CHAPTER 7

3. Personal Financial Management Course

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

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LIFE CYCLE OF A CHAPTER 7

4. Discharge

- Bankruptcy Code § 727(b): Except as provided in section 523, a discharge under subsection (a) discharges the debtor from all debts that arose before filing and all claims regardless of whether a proof of claim was filed
- Bankruptcy Code § 524(a)
 - (1) voids any judgment of personal liability on a discharged debt
 - (2) enjoins commencement or continuation of an act or action to collect any discharged debt as a personal liability of the debtor
- Violation of discharge injunction handled as civil contempt matter under Bankruptcy Code § 105

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LIFE CYCLE OF A CHAPTER 13

1. Who is Eligible
2. What Must Be Filed
3. Creditors Meeting
4. Personal Financial Management Course
5. Discharge

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LIFE CYCLE OF A CHAPTER 13

1. Who is Eligible – Bankruptcy Code § 109(e): Only an "individual with regular income . . ."
- Income is sufficiently stable and regular to make payments under Chapter 13 plan (Bankruptcy Code § 101(30))
 - ... whose noncontingent, liquidated, *unsecured* debts are < \$383,175
 - ... whose noncontingent, liquidated, *secured* debts < \$1,149,525
- Self-employed debtors are specifically made eligible under Bankruptcy Code § 1304

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LIFE CYCLE OF A CHAPTER 13

2. What Must Be Filed
 - Same as debtor under Chapter 7 *plus*
 - Plan (Bankruptcy Code § 1321(a))
 - When? With petition or within 14 days (Fed. R. Bankruptcy P. 3015(b))
 - Pre-Confirmation Payments – must commence within 30 days after filing bankruptcy (Bankruptcy Code § 1326(a)(1))
 - Duration
 - ✓ Above-Median-Income Debtors – five years (Bankruptcy Code § 1322(d)(1))
 - ✓ Below-Median-Income Debtors – three(-five) years (Bankruptcy Code § 1322(d)(2))
 - Contents – Bankruptcy Code § 1322(a)
 - Confirmation – Bankruptcy Code § 1325(a) and, if an objection, Bankruptcy Code § 1325(b)

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LIFE CYCLE OF A CHAPTER 13

2. What Must Be Filed during the Plan Payment Period

- Annual statements of income and expenditures (Bankruptcy Code § 521(f)(4))

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LIFE CYCLE OF A CHAPTER 13

3. Creditors Meeting

- Same as debtor under Chapter 7

4. Personal Financial Management Course

- Same as debtor under Chapter 7

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LIFE CYCLE OF A CHAPTER 13

5. Discharge

- Same as debtor under Chapter 7 *except*
 - Does *not* apply to post-petition consumer debt incurred without permission of trustee (Bankruptcy Code § 1328(d))
 - Reduced set of nondischargeable debts (e.g., long-term debts *not* discharged but divorce-related debts (other than support) are dischargeable) (Bankruptcy Code § 1328(a)(2))
 - Early termination "hardship" discharge under exceptional circumstances (Bankruptcy Code § 1328(b))

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7. EXEMPTIONS

1. State vs. Federal Law
2. "Migratory" Limitations
3. Significant Nonbankruptcy Federal Exemptions
4. Exceptions to Exemptions
5. Procedure
6. Lien Avoidance

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EXEMPTIONS

1. State vs. Federal Law – Bankruptcy Code § 522(b)
 - (1) An individual debtor may exempt from property of the estate the property listed in either paragraph (2) or Paragraph (3) of this section
 - (2) Property listed in this paragraph is that specified under subsection (d) [federal exemptions] *unless* applicable state law specifically does not so authorize
 - (3) Property listed in this paragraph is exempt under *nonbankruptcy* federal law or State law
- ~35 States have "specifically not so authorized" and in them debtor may use *only* exemptions created by nonbankruptcy federal law and State law

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EXEMPTIONS

- *Schwab v. Reilly*, 130 S.Ct. 2652 (2010)
- In *Schwab v Reilly*, the Supreme Court held that a trustee does not need to object to a debtor's exemption claim, where the debtor values the asset at the exemption limit when the actual value of the asset exceeds the amount listed. The trustee still retains an interest in the asset beyond the listed value.

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EXEMPTIONS

2. "Migratory" Limitations – Bankruptcy Code § 522(b)(3)

- Debtor can use State-law exemptions of
 - State of domicile for 730 days immediately before filing, but
 - If debtor has not lived in a single State for 730 days before filing, then
 - ✓ State in which debtor was domiciled for 180 days immediately preceding 730 days before filing, or
 - ✓ State in which debtor was domiciled for the greatest portion of the 180 days immediately preceding 730 days before filing

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EXEMPTIONS

3. Some Significant Nonbankruptcy Federal (and Federally Approved) Exemptions

- Property held in tenancy by the entirety (Bankruptcy Code § 522(b)(3)(B))
- IRAs up to \$1,171,650
 - Roll-overs from ERISA-qualified pension and profit-sharing plans are exempt and do not count against IRA cap
- Recall that debtor's interest in ERISA-qualified pension or profit-sharing plans is not property of the estate

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EXEMPTIONS

4. Exceptions to Exemptions

- Limit on State-law homestead exemption – Bankruptcy Code § 522(p)(1): \$155,675 for homestead acquired within 1215 days before filing except
 - No limit on "carry-over" to homestead acquired within 1215 days of exemption from previous homestead in same State

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EXEMPTIONS

5. Procedure – Fed. R. Bankruptcy P. 4003

- (a) Claim of Exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets.
- (b) Objecting to a Claim of Exemptions.
 - (1) A party in interest may file an objection to the list of property claimed as exempt only *within 30 days* after the meeting of creditors
 - (2) The trustee may file an objection up to one year after the case is closed *if* the debtor "fraudulently asserted" the claim
- Don't miss the deadline! (*Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992))

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EXEMPTIONS

6. Lien Avoidance – Bankruptcy Code § 522(f)

- (1) The debtor may avoid a lien that "impairs" an exemption in exempt property if the lien is–
 - (A) A judicial lien (except for a domestic support obligation)
 - (B) Nonpossessory, non-purchase-money security interest in lengthy list of family, personal, and household items
- (2) A lien "impairs" an exemption if (i) this lien plus (ii) all other liens on the property plus (iii) the amount of the exemption > value of debtor's interest minus (iv) all liens

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8. REAFFIRMATIONS AND REDEMPTION

- 1. Statement of Intentions
- 2. Redemption
- 3. Reaffirmation
- 4. "Ride-Through"

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REAFFIRMATIONS AND REDEMPTION

1. Statement of Intentions – Bankruptcy Code § 521(a)(2)

When?

- Debtor must perform intention within 30 days after meeting of creditors (Bankruptcy Code § 521(a)(2)(B)), except
- With respect to property subject to a purchase-money security interest the debtor has 45 days reaffirm or redeem (Bankruptcy Code § 521(a)(6))

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REAFFIRMATIONS AND REDEMPTION

2. Redemption – Bankruptcy Code § 722

Debtor may redeem otherwise exempt tangible personal, family, or household property subject to a purchase-money security interest by paying the lesser of (i) the amount of the debt or (ii) the value of the property

- Must pay in a lump sum unless creditor agrees otherwise
- Replacement Value
- Must be paid from non-estate property

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REAFFIRMATIONS AND REDEMPTION

3. Reaffirmation – Bankruptcy Code § 524(c)

An agreement to reaffirm a dischargeable debt is enforceable only if

- (1) Agreement is made before discharge granted
- (2) Debtor has received written, conspicuous disclosures required by Bankruptcy Code § 524(k)
- (3) Attorney has filed a declaration that debtor entered into agreement "fully informed and voluntarily," reaffirmation does not impose an "undue hardship," and that attorney has "fully advised" debtor of legal effect of reaffirmation
- (4) Debtor has up to 60 days after discharge to rescind
 - Reaffirmation agreement must be filed no later than 60 days after meeting of creditors (Fed. R. Bankruptcy P. 4008)

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REAFFIRMATIONS AND REDEMPTION

4. "Ride-Through" – Failure of debtor to redeem property or reaffirm debt terminates automatic stay. State law determines whether secured creditor has right to repossess property.
 - Consumer protection law in some states permits debtors to retain collateral notwithstanding nonmonetary default so long as payments are maintained
 - Secured creditor may prefer to accept payment rather than repossess

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9. WHAT CAN GO WRONG (DISCHARGEABILITY ISSUES)

- See "Basic Bankruptcy Concepts"

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CONSUMER BANKRUPTCY TRACK 2

1. Contents of the Chapter 13 Plan: Structure
2. Where Does All of This Happen: Jurisdiction, Authority and Venue
3. Rule of Professional Conduct 1.1 – The Competent Consumer Bankruptcy Lawyer?

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1. CONTENT OF THE CHAPTER 13 PLAN: STRUCTURE

1. Determining Disposable Income
2. Restructuring Debt
3. Discriminating Among Creditors
4. Confirming a Plan
5. Modifying a Confirmed Plan

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

1. Determining Disposable Income – Bankruptcy Code § 1325(b)
 - (1) If the trustee or a creditor objects to a Chapter 13 plan, the plan cannot be confirmed unless it
 - (A) Pays 100% on all claims, or
 - (B) Provides that all of debtor's "disposable net income" will be applied to payments to unsecured creditors

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

1. Determining Disposable Income – Bankruptcy Code § 1325(b)
 - (2) "Disposable income" means *current monthly income** less amounts "reasonably necessary" for
 - (A) (i) Support of debtor and dependents and domestic support obligations plus (ii) charitable contributions ≤ 15% of debtor's gross income, and
 - (B) Necessary business expenses if debtor engaged in business

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

1. Determining Disposable Income – Bankruptcy Code § 1325(b)
 - Evaluating "Reasonableness"
 - If CMI > state median family income then reasonableness determined according to Bankruptcy Code § 707(b)(2)(A) & (B)*
 - If CMI ≤ state median family income then reasonableness determined by debtor's actual expenditures

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

2. Restructuring Secured Debt – Bankruptcy Code § 1322(b): The plan may
 - (2) Modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence* ...
 - See "Basic Bankruptcy Concepts" for bifurcation of secured claims under Bankruptcy Code § 506(b)
- Bankruptcy Code § 1325(b) "hanging paragraph:" same anti-bifurcation rule also applies to
 - Purchase-money security interest in motor vehicle purchased for personal use acquired within 910 days of filing
 - Purchase-money security interest in anything else within one year of filing

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

2. Restructuring Secured Debt – Bankruptcy Code § 1322(b): The plan may
 - (2) Modify the rights of holders of secured claims, *other than a claim secured only by a security interest in real property that is the debtor's principal residence* ...
 - Some courts hold that wholly unsecured mortgages (e.g., second or third) mortgages/HELOCs may be modified
 - Cannot modify secured claim after property has been sold at foreclosure sale pursuant to state law (Bankruptcy Code § 1322(c))

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

2. Restructuring Secured Debt – Bankruptcy Code § 1322(b): The plan may

(5) notwithstanding paragraph (2), provide for the *curing* of any default within a reasonable time and *maintenance* of payments on any claim on which the last payment is due after the final payment under the plan

- Duration of plan may be extended for up to five years to enable debtor to cure defaults (Bankruptcy Code § 1322(d)(2))
- Cannot cure default *after* property has been sold at foreclosure sale pursuant to state law (Bankruptcy Code § 1322(c))

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

2. Restructuring Secured Debt – Two Systems Into One

State Law

1. Defines default
2. Authorizes acceleration
3. No cure after acceleration

Bankruptcy

1. Accepts state definition of default
2. Accepts prefilling accelerations, but stays collection
3. Cure after acceleration, conditioned on adequate protection
4. **Modification of repayment schedules**

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

2. Restructuring Secured Debt – Compare Restructuring with Cure & Reinstatement

Modification (rewrite loan)	Cure and reinstatement
Debtor proposes new payment schedule	Debtor returns to original payment schedule
Arrearage is included in payments	Arrearage is paid separately
Interest at <u>market rate</u>	Interest at <u>contract rate</u> on the reinstated payments
Bifurcation,* full payment of secured portion	No bifurcation, full payment of secured and unsecured portions

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

2. Restructuring Other Debt – Bankruptcy Code § 1322(b): The plan may

(3) Provide for the curing or waiving of any default

- E.g., financial and other loan covenants

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

3. Discriminating Among Creditors – Bankruptcy Code § 1322(a): The plan shall

(2) Provide for payment in full (in deferred cash payments) of all claims entitled to priority under Bankruptcy Code § 507 *unless* the claimant agrees otherwise

- See "Basic Bankruptcy Concepts" for discussion of priority claims
- Priority claims include fees of Chapter 13 trustee (Bankruptcy Code § 507(a)(2))

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

3. Discriminating Among Creditors – Bankruptcy Code § 1322(b): The plan may

(1) designate a class or classes of unsecured creditors but may *not* "discriminate unfairly" against any class *except* may treat "differently" consumer debts co-signed or guaranteed by another person

- Most common test of fairness asks whether:
 1. the discrimination has a reasonable basis;
 2. the debtor can carry out a plan without the discrimination;
 3. the discrimination is proposed in good faith; and
 4. the degree of discrimination is directly related to the basis or rationale for the discrimination.

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

4. Confirming a Plan – Bankruptcy Code § 1325(a)

- (1) The plan complies with the requirements of Chapter 13
- (3) The plan was proposed in good faith

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

4. Confirming a Plan – Bankruptcy Code § 1325(a)

- (4) With respect to *unsecured* creditors, the present value of the payments to be made under the plan \geq what they would have received under a Chapter 7 liquidation ("best interests test")
- (5) With respect to *secured* creditors
 - (A) The creditor does not object to the plan, or
 - (C) The debtor surrenders the property subject to the security interest, or

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**CONTENTS OF THE CHAPTER 13 PLAN:
STRUCTURE**

5. Modifying a Confirmed Plan – Bankruptcy Code § 1329(a):

At any time after confirmation but before completion the debtor, Chapter 13 trustee, or unsecured creditor may request modification of the plan

- (1) increase/reduce payments under plan
- (2) extend/reduce duration of plan
- (4) reduce payments to cover actual and documented increased cost of health insurance

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

4. Confirming a Plan – Bankruptcy Code § 1325(a)

(5) With respect to secured creditors

(B) The plan provides that

- (i) The secured creditor retains its lien
- (ii) The secured creditor is paid the present value of its secured claim plus interest
 - For determination of rate of interest see *Till v. SCS Credit Corp.*, 451 U.S. 465 (2004)
- (iii) Plan payments are in equal monthly installments
- (iv) Plan payments provide adequate protection

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CONTENTS OF THE CHAPTER 13 PLAN: STRUCTURE

4. Confirming a Plan – Bankruptcy Code § 1325(a)

- (6) The debtor will be able to make the payments under the plan ("feasibility" test)
- (7) Filing of bankruptcy was in good faith
- (8) Debtor is current on all post-filing domestic support obligations
- (9) Debtor is current with filing all state and federal tax returns

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CHAPTER 7 OR CHAPTER 13?

4. Modification; Cure and Reinstatement – Compare Loan Modification with Cure & Reinstatement

• Plan Payments:

- Secured Claims
 - Property Other Than Residence, "910-day" property, & "1-year" property – bifurcate under Bankruptcy Code § 506(a) and modify
 - Residence – no bifurcation or modification (Bankruptcy Code §§ 1123(b)(5), 1322(b)(2))
 - ✓ unless last payment due during term of Chapter 13 plan (Bankruptcy Code § 1322(c)(2) but cf. Bankruptcy Code § 1325(a)(5)(B))
 - "910-day" and "1-year" property – no bifurcation (Bankruptcy Code § 1325(a)(5))
- Cure and Reinstatement – Bankruptcy Code §§ 1123(a)(5) (G), 1322(b)(5), 1322(c)(1)
 - unless last payment due during term of Chapter 13 plan (Bankruptcy Code § 1322(b)(5))

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2. WHERE DOES ALL OF THIS HAPPEN? JURISDICTION & VENUE

1. Constitutional Background
2. Statutory Middle-Ground
3. Statutory Foreground
4. Venue

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JURISDICTION & AUTHORITY

1. Constitutional Background
 - Art. III of the Constitution Section 1: The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their offices during good Behavior ...
 - Art. 1 of the Constitution Section 8, Clause 4 and 18: The Congress shall have Power To establish uniform Laws on the subject of Bankruptcies ... [and] to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers ...

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JURISDICTION & AUTHORITY

2. Statutory Middle-Ground – 28 U.S.C. § 1334
 - (a) Except as provided in subsection (b), the district courts shall have original and exclusive jurisdiction of all cases under title 11.
 - (b) the district courts shall have original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in or related to* cases under title 11.

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- 28 U.S.C. § 151: In each judicial district, the bankruptcy judges shall constitute a *unit of the district court* to be known as the bankruptcy court for that district.
- 28 U.S.C. § 157
 - (a) Each district court may provide that cases *under title 11 and proceedings arising under, arising in, or related to a case under title 11* shall be referred to the bankruptcy judges

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- 28 U.S.C. § 157
 - (b) (1) Bankruptcy judges may hear and determine all cases *under title 11 and all "core proceedings" arising under or arising in a case under title 11*
 - (2) Core proceedings include but are not limited to [list of 16 matters]
 - (5) Personal injury and wrongful death claims are excluded from list of core proceedings and must be tried in the district court

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- 28 U.S.C. § 157
 - (c) (1) A bankruptcy judge may hear a non-core matter that is nonetheless *related to the case under title 11* and submit proposed findings of fact and conclusions of law to the district court for entry of any final judgment
 - (d) District court may withdraw any case or proceedings from the bankruptcy judge on its own motion or that of a party in interest

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JURISDICTION & AUTHORITY

Cases "under title 11"	
<u>Proceedings</u> - "arising under" & "arising in"	<u>Proceedings</u> - "related to"

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- 28 U.S.C. § 158
 - (a) The district court shall have jurisdiction to hear appeals from orders and judgments of the bankruptcy judge in matters referred under 28 U.S.C. § 157
 - (b) The circuit court of appeals may establish a bankruptcy appellate panel (BAP) composed of bankruptcy judges to handle appeals in lieu of appeal to district court
 - (d) Circuit courts of appeals have jurisdiction of appeals from the district court or BAPs

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- SCOTUS Weighs In: *Stern v. Marshall*, 131 S.Ct. 2594 (2011)
 - Bankruptcy judge does *not* have constitutional authority under Art. III to enter final judgment on debtor's counterclaim against person who had filed a claim in the bankruptcy notwithstanding
 - ✓ Congress's designation of allowance of claims as a "core proceeding" (28 U.S.C. § 157(b)(2)(B))
 - ✓ Congress's designation of counterclaims by estate against claimants as a "core proceeding" (28 U.S.C. § 157(b)(2)(C))
 - For tactical reasons non-debtor parties frequently seek to withdraw reference to bankruptcy courts in light of constitutional uncertainties caused by *Stern*

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- *Stern* opened the door to a number of questions, including (i) whether bankruptcy judges are statutorily authorized under 28 U.S.C. § 157(c) to propose findings of fact and conclusions of law in core proceedings, and (ii) whether Article III allows a bankruptcy court to enter a final judgment on a *Stern* claim, with the consent of the parties.

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- The Supreme Court recently decided *Executive Benefits Insurance Agency v. Arkison*
- In *Arkison*, the Supreme Court held that the reasoning of *Stern v. Marshall* constitutionally prohibits a bankruptcy court to enter final judgment on a bankruptcy "related to" claim (one deemed to be non-core). Section 157(c) nevertheless allows a bankruptcy court to issue proposed findings of fact and conclusions of law to be reviewed *de novo* by the district court.

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JURISDICTION & AUTHORITY

3. Statutory Foreground

- The Supreme Court has not issued a decision in *Wellness Int'l Network v. Sharif*.
- The Court certified two questions for consideration:
 - (i) whether an action brought against a debtor to determine whether property in the debtor's possession is property of the bankruptcy estate stems "from the bankruptcy itself" or whether such an action is outside of the bankruptcy court's constitutional authority to enter a final order; and
 - (ii) whether the parties' consent allows the exercise of Article III judicial power by the bankruptcy courts, and if so, whether implied consent based on a litigant's conduct is sufficient.

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VENUE

4. Venue

- Bankruptcy Case – 28 U.S.C. § 1408(1): The district of the debtor's domicile, residence, principal place of business or assets for 180 days before filing or longer portion of such 180 days than anywhere else
- Bankruptcy Proceedings – 28 U.S.C. § 1409:
 - (a) In district where case is pending (or anywhere else allowed by general venue statutes), except
 - (b) In "smaller" proceedings only in district where defendant resides

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COMPETENCY STANDARDS FOR DEBTORS' COUNSEL

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VENUE

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graph TD
    Abilities[Abilities] --> Results((Results))
    Attitudes[Attitudes] --> Results
    Behaviors[Behaviors] --> Results
    Skills[Skills] --> Results
    Knowledge[Knowledge] --> Results
    
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RULE OF PROFESSIONAL CONDUCT 1.1

- A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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COURT SPECIFIC COMPETENCY STANDARDS

- Requirements that lawyers be familiar with applicable rules of procedure, rules of evidence and substantive law.

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PERCEPTION BY THE COURTS (AND BY LAWYERS) THAT LAWYERS NEED MORE GUIDANCE THAN VAGUE PRONOUNCEMENTS

- Bankruptcy is complex;
- Practiced in many contexts;
- Different types of debtors.



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SPECIALIZATION WITHIN BANKRUPTCY NOT UNUSUAL



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BIG PICTURE CORE COMPETENCIES IN CONSUMER CASES

- Awareness of alternatives to bankruptcy relief;
- Understanding of bankruptcy as a substantive and procedural remedy;
- Knowledge of the bankruptcy process;
- Skills to provide counseling to clients in financial and emotional distress;
- Proficiency in the courtroom;
- Ability to negotiate with multiple parties with adverse interests;
- Judgment to aid a client in decision-making in their best interest;
- Diligence to see an arduous process through to its resolution.

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A LAWYER SHOULD UNDERSTAND AND BE ABLE TO COMMUNICATE THE ADVANTAGES AND DISADVANTAGES OF BANKRUPTCY AS A DEBT RELIEF REMEDY

- Assess the particular facts and circumstances presented by the client:
 - Pre-bankruptcy planning:
 - Exemptions
 - Tax liabilities
 - Pre-petition transactions
 - Prior cases filed;
- Determine appropriate chapter and timing:
 - Statutory debt limits
 - Consumer v. non-consumer debts
 - Exigency v. bankruptcy planning

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A LAWYER SHOULD BE FAMILIAR WITH THE INFORMATION NECESSARY TO PREPARE A BANKRUPTCY CASE. MUST ALSO HAVE DEVELOPED EFFICIENT AND EFFECTIVE SYSTEMS FOR COMMUNICATION AND INFORMATION EXCHANGE.

- Must be able to assemble and evaluate accurate and complete information and necessary documentation from client;
- Must be aware of professional responsibilities and the consequences of aiding or engaging in criminal and fraudulent transactions or behavior;
- Must be aware of evolving case law re: pre-bankruptcy and exemption planning;
- Must make reasonable inquiries to ensure the information supplied by client is accurate and complete.

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A LAWYER SHOULD BE AWARE OF THE BANKRUPTCY CODE PROVISIONS MANDATING DISCLOSURES AND COMMUNICATION BY A LAWYER TO A CLIENT.

- Form notice under § 342(b) and § 527(a)(2) describing bankruptcy's requirements and consequences;
- General information about legal services and the rights of a client;
- Form notice setting forth general information on how to arrive at certain values and information mandated by the official schedules, statements and forms; and
- A fully executed retention letter identifying the services to be provided and the fees and expenses charges for such services;
- Facilitate the client's enrollment in the mandated pre-filing credit counseling course.

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A LAWYER SHOULD KNOW HOW TO EFFICIENTLY AND EFFECTIVELY PREPARE AND FILE A BANKRUPTCY PETITION AND THE RELATED SCHEDULES, STATEMENTS AND OTHER NECESSARY DOCUMENTS

- In order to be able to effectively prepare the necessary petitions, schedules, statements and forms, the lawyer must:
 - Know how to analyze the available and applicable exemptions;
 - Determine the appropriate treatment of collateralized debts;
 - Evaluate priority debts and administrative claims;
 - Assess the debtor's ability to repay creditors from income or assets;
 - If appropriate, prepare a Chapter 13 plan;
 - Be familiar with ECF system and have hardware, software and operating systems that allow for efficient access;
 - Acquire and maintain appropriate technological competency.

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A LAWYER SHOULD UNDERSTAND THE CONSUMER BANKRUPTCY PROCESS AND SYSTEM AND HAVE THE SKILLS TO REPRESENT THE DEBTOR'S INTERESTS DILIGENTLY. A LAWYER MUST KEEP HIS/HER CLIENT INFORMED, PROVIDE ONGOING ADVICE AND RESPOND TO INQUIRIES BY THE CLIENT, THE COURT AND OTHER PROFESSIONALS IN THE CASE.

- Must know and understand both the case facts and the law;
 - Bankruptcy Code and Rules;
 - Title 28 (jurisdiction) & Title 18 (bankruptcy crimes);
 - Local rules and practice customs in relevant jurisdiction;
 - Federal Rules of Evidence;
 - State law property rules, including Article 9 of the U.C.C. and law governing real property title and transfer;
 - State law governing domestic relations.
- If an issue or matter arises outside of lawyer's expertise, (e.g., tax or ERISA) the lawyer must seek counsel from another professional with expertise.

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- A lawyer must be able to:
 - Explain the 341 meeting process so he/she is able to raise defenses and answer questions;
 - Counsel debtor on incurring post-petition debt;
 - Represent his/her client's interests in all proceedings in bankruptcy court:
 - Investigate and defend any avoidance actions;
 - Facilitate the turnover of property & documents at the TIB's request;
 - Appear and represent debtor's interest during a Rule 2004 examination;
 - Take necessary steps to enforce the automatic stay;
 - Review reaffirmation requests and provide counsel and advice.

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- A lawyer must also:
 - Understand and advise a debtor on the extent and limits of the bankruptcy discharge;
 - Represent the debtor's interest in response to objections contesting the discharge or the dischargeability of a particular debt;
 - Provide counsel in the event of a violation of the discharge injunction;
 - Facilitate enrollment in the mandated pre-discharge Personal Financial Management court.

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MAINTAINING COMPETENCE

- Lawyers must be aware of new developments in statutory and case law, changes in Official Forms, changes to federal and local procedural rules, as well as advances in technology;
- Lawyers should participate in relevant continuing education courses;
- Lawyers new to bankruptcy practice should participate in education courses, mentoring, and/or individual instruction which may include working for a time under more experienced attorneys.

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THANK YOU

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