



U. S. Department of Justice

Office of the United States Trustee *District of New Mexico*

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IMPORTANT §341 MEETING POLICY CHANGE

To: Debtors Without An Attorney (Self-Represented Debtors)

From: Ron E. Andazola, Assistant United States Trustee

Re: Debtor Identification Program

Reasons: Increased incidence of identity theft and inaccurate social security reporting on debtors' schedules

Date: February 15, 2002

EFFECTIVE MARCH 15, 2002 ALL INDIVIDUAL DEBTORS ARE REQUIRED TO PROVIDE PICTURE IDENTIFICATION AND PROOF OF SOCIAL SECURITY NUMBER TO THE TRUSTEE AT THE §341 MEETING.

Acceptable types of picture identification:

Valid state driver licence, state issued picture identification card, passport or legal resident alien card.

Acceptable proof of social security number ("SSN"):

Social security card, a W-2 form for the most recent tax year or other official document which indicates name and SSN.

Consequences for failure to have required documents:

If a debtor does not have acceptable documents the §341 meeting will be continued to the trustee's next calendar. Failure to produce the documents will result in a Motion to Dismiss filed by the United States Trustee.

Consequences for error in SSN:

If there is an error, you will be required to file an Amended Petition pursuant to Fed. R. Bankr.P. 1009 within ten days from the creditors meeting to correct any incorrect social security number.

Failure to do so will result in a Motion To Dismiss pursuant to 11 U.S.C. §707(a) filed by the United States Trustee.¹

Goal is to protect innocent third parties from intentional and inadvertent use of SSN:

Bankruptcy filings are primarily reported to credit agencies by social security number. The cost and hardship to correct an adverse credit history can be substantial. With your assistance, we should be able to limit the impact on innocent parties of a case which has been filed with an incorrect social security number.

We appreciate your cooperation in implementing this new policy. If you have any questions or suggestions, please contact the Office of the United States Trustee, 505-248-6544.

¹Failure to correct social security number may result in dismissal. See, *In re Riccardo*, 240 B.R.717 (Bankr. S.D.N.Y. 2000)

Proof of ID and SSN

(ORIGINALS ONLY - COPIES ARE NOT PERMISSIBLE)

DEBTORS need to bring both proof of identity and proof of social security number to the creditors' meetings. Acceptable proof is listed below:

A. PICTURE IDENTIFICATION:

- a valid state driver's license
- government-issued picture ID card
- U.S. passport
- government employee photo ID
- military photo ID or legal resident alien card

B. PROOF OF SSN:

- Social Security card or Social Security Statement
- a form W-2 for the most recent tax year
- recent payroll tax stub
- health card or other official documentation which indicates name and SSN

Any other form of proof must be approved by the U.S. Trustee.

If the debtor does not have the required proof, or if the trustee determines from the proof presented that the name or Social Security number on the petition is incorrect, the §341 meeting must be adjourned and continued to the trustee's next calendar date. In addition, in those cases in which the petition is incorrect, Debtor and/or Debtor's Attorney will be asked by the trustee and/or the U. S. Trustee to take further appropriate action.

If you have any questions about this process or acceptable forms of proof call:
Office of the U. S. Trustee, 505-248-6544.

THE DISCHARGE IN BANKRUPTCY

Public Information Series of the Bankruptcy Judges Division
May 2002

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as a substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, both of which may be reviewed at local libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel. For additional copies of this publication, please contact the Bankruptcy Judges Division, Administrative Office of the United States Courts (202) 502-1900.

The bankruptcy discharge varies depending on the type of case a debtor files: chapter 7, 11, 12, or 13. This Public Information Series pamphlet attempts to answer some basic questions about the discharge available to individual debtors under all four chapters including:

- What is a discharge in bankruptcy?
- When does the discharge occur?
- How does the debtor get a discharge?
- Are all the debtor's debts discharged?
- Does the debtor have a right to a discharge or can creditors object to the discharge?
- Can the debtor receive a second discharge in a later chapter 7 case?
- Can the discharge be revoked?
- May the debtor pay a discharged debt after the bankruptcy case has been concluded?
- What can the debtor do if a creditor attempts to collect a discharged debt after the case is concluded?
- May an employer terminate a debtor's employment solely because the person was a debtor or failed to repay a discharged debt?

What is a discharge in bankruptcy?

Under the federal bankruptcy statute, a discharge is a release of the debtor from personal liability for certain specified types of debts. In other words, the debtor is no longer required by law to pay any debts that are discharged. The discharge operates as a permanent order directed to the creditors of the debtor that they refrain from taking any form of collection action against the debtor on discharged debts, including legal action and communications with the debtor, such as telephone calls, letters, and personal contacts.

Although a debtor is relieved of personal liability for all debts that are discharged, a valid lien (*i.e.*, a charge upon specific property to secure payment of a debt) that has not been avoided (*i.e.*, made unenforceable) in the bankruptcy case will remain after the bankruptcy case. Therefore, a secured

creditor may enforce the lien to recover the property secured by the lien through procedures such as foreclosure and repossession.

When does the discharge occur?

The timing of the discharge varies, depending on the chapter under which the case is filed. In a chapter 7 (liquidation) case, for example, the court usually grants the discharge promptly on expiration of the time fixed for filing a complaint objecting to discharge and the time fixed for filing a motion to dismiss the case for substantial abuse (60 days following the first date set for the meeting of creditors). Typically, this occurs about four months after the date the debtor files the petition with the clerk of the bankruptcy court. In chapter 11 (reorganization) cases, the discharge occurs upon confirmation of a chapter 11 plan. In cases under chapter 12 (adjustment of debts of a family farmer) and 13 (adjustment of debts of an individual with regular income), the court grants the discharge as soon as practicable after the debtor completes all payments under the plan. Since a chapter 12 or chapter 13 plan may provide for payments to be made over three to five years, the discharge typically occurs about four years after the date of filing.

How does the debtor get a discharge?

Unless there is litigation involving objections to the discharge, the debtor will automatically receive a discharge if the requirements of the chapter under which the case is filed are satisfied. The Federal Rules of Bankruptcy Procedure provide for the clerk of the bankruptcy court to mail a copy of the order of discharge to all creditors, the United States trustee, the trustee in the case, and the trustee's attorney, if any. The debtor and the debtor's attorney also receive copies of the order of discharge. The order of discharge is not specific as to those debts determined by the court to be non-dischargeable, *i.e.*, not covered by the discharge. The order of discharge informs creditors generally that the debts owed to them have been discharged and that they should not attempt any further collection. They are cautioned in the order that continuing collection efforts could subject them to punishment for contempt. Any inadvertent failure on the part of the clerk to send the debtor or any creditor a copy of the discharge order promptly within the time required by the rules does not affect the validity of the order granting the discharge.

Are all of the debtor's debts discharged or only some?

Not all debts are discharged. The debts discharged vary under each chapter of the Bankruptcy Code. Section 523(a) of the Code specifically excepts various categories of debts from the discharge granted to individual debtors. Therefore, the debtor must still repay those debts after bankruptcy. Congress has determined that these types of debts are not dischargeable for public policy reasons (based either on the nature of the debt or the fact that the debts were incurred due to improper behavior of the debtor, such as the debtor's drunken driving).

There are 18 categories of debt excepted from discharge under chapters 7, 11, and 12. A more limited list of exceptions applies to cases under chapter 13. Generally speaking, the exceptions to discharge apply automatically if the language prescribed by section 523(a) applies. The most common types of non-dischargeable debts are certain types of tax claims, debts not included by the

debtor on the lists and schedules the debtor must file with the court, debts for spousal or child support or alimony, debts for willful and malicious injuries to person or property, debts to governmental units for fines and penalties, debts for most government funded or guaranteed educational loans or benefit overpayments, debts for personal injury caused by the debtor's operation of a motor vehicle while intoxicated, and debts for certain condominium or cooperative housing fees.

The types of debts described in sections 523(a)(2), (4), (6), and (15) (obligations affected by fraud or maliciousness or certain debts incurred in connection with property settlements arising out of a separation agreement or divorce decree) are not automatically excepted from discharge. Creditors must ask the court to determine that these debts are excepted from discharge. In the absence of an affirmative request by the creditor and subsequent granting of the request by the court, the types of debts set out in sections 523(a)(2), (4), (6), and (15) will be discharged.

A broader discharge of debts is available to a debtor in a chapter 13 case than in a chapter 7 case. As a general rule, the chapter 13 debtor is discharged from all debts provided for by the plan except certain long-term obligations (such as a home mortgage), debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. Although a chapter 13 debtor generally receives a discharge only after completing all payments required by the court-approved (*i.e.*, "confirmed") repayment plan, there are some limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. Such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control.

The scope of a chapter 13 "hardship discharge" is similar to that in a chapter 7 case with regard to the types of debts that are excepted from the discharge. A hardship discharge also is available in chapter 12 if the failure to complete plan payments is due to "circumstances for which the debtor should not justly be held accountable."

Does the debtor have the right to a discharge or can creditors object to the discharge?

In chapter 7 cases, the debtor does not have an absolute right to a discharge. An objection to the debtor's discharge may be filed by a creditor, by the trustee in the case, or by the United States trustee. Creditors receive a notice shortly after the case is filed that sets forth important information, including the deadline for objecting to the discharge. A creditor who desires to object to the debtor's discharge must do so by filing a complaint in the bankruptcy court before the deadline set out in the notice. Filing of a complaint starts a lawsuit referred to in bankruptcy as an "adversary proceeding." A chapter 7 discharge may be denied for any of the reasons described in section 727(a) of the Bankruptcy Code, including the transfer or concealment of property with intent to hinder, delay, or defraud creditors; destruction or concealment of books or records; perjury and other fraudulent acts; failure to account for the loss of assets; violation of a court order; or an earlier discharge in a chapter 7 or 11 case commenced within six years before the date the petition was filed. If the issue

of the debtor's right to a discharge goes to trial, the objecting party has the burden of proving all the facts essential to the objection.

In chapter 12 and chapter 13 cases, the debtor is entitled to a discharge upon completion of all payments under the plan. The Bankruptcy Code does not provide grounds for objecting to the discharge of a chapter 12 or chapter 13 debtor. Creditors can object to confirmation of the repayment plan, but cannot object to the discharge if the debtor has completed making plan payments.

Can a debtor receive a second discharge in a later chapter 7 case?

A discharge will be denied in a later chapter 7 case if the debtor has been granted a discharge under chapter 7 or chapter 11 in a case filed within six years before the second petition is filed. The debtor will also be denied a chapter 7 discharge if he or she previously was granted a discharge in a chapter 12 or chapter 13 case filed within six years before the date of the filing of the second case unless (1) all the "allowed unsecured" claims in the earlier case were paid in full, or (2) payments under the plan in the earlier case totaled at least 70 percent of the allowed unsecured claims and the debtor's plan was proposed in good faith and the payments represented the debtor's best effort.

Can the discharge be revoked?

A discharge can be revoked under certain circumstances. For instance, a trustee, creditor, or the United States trustee may request that the court revoke the debtor's discharge in a chapter 7 case based on allegations that the debtor obtained the discharge fraudulently; the debtor failed to disclose the fact that he or she acquired or became entitled to acquire property that would constitute property of the bankruptcy estate; or the debtor committed one of several acts of impropriety described in section 727(a)(6) of the Bankruptcy Code. In a chapter 13 case, if confirmation of a plan or the discharge is obtained through fraud, the court can revoke the discharge.

Typically, a request to revoke the debtor's discharge must be filed within one year after the granting of the discharge or, in some cases, before the date that the case is closed. It is up to the court to determine whether such allegations are true and, if so, to revoke the discharge.

May the debtor pay a discharged debt after the bankruptcy case has been concluded?

A debtor who has received a discharge may *voluntarily* repay any discharged debt. A debtor may repay a discharged debt even though it can no longer be legally enforced. Sometimes a debtor agrees to repay a debt because it is owed to a family member or because it represents an obligation to an individual for whom the debtor's reputation is important, such as a family doctor.

What can the debtor do if a creditor attempts to collect a discharged debt after the case is concluded?

If a creditor attempts collection efforts on a discharged debt, the debtor can file a motion with the court reporting the action and asking that the case be reopened to address the matter. The bankruptcy court will often do so to ensure that the discharge is not violated. The discharge constitutes a permanent statutory injunction prohibiting creditors from taking any action, including

the filing of a lawsuit, designed to collect a discharged debt. A creditor can be sanctioned by the court for violating the discharge injunction. The normal sanction for violating the discharge injunction is civil contempt, which is often punishable by a fine.

Can an employer terminate a debtor's employment solely because the person was a debtor or failed to repay a discharged debt?

The law provides express prohibitions against discriminatory treatment of debtors by both governmental units and private employers. A governmental unit or private employer may not discriminate against a person *solely* because the person was a debtor, was insolvent before or during the case, or has not paid a debt that was discharged in the case. The law prohibits the following forms of governmental and private] discrimination: terminating an employee and discriminating with respect to hiring. In addition, a governmental unit is prohibited from] denying, revoking, suspending, or declining to renew a license, franchise, or similar privilege.

Liquidation Under The Bankruptcy Code - Chapter 7

Public Information Series of the Bankruptcy Judges Division
May 2002

Alternatives to Chapter 7

Debtors should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individual debtors who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. Indeed, the court may dismiss a chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts if the court finds that the granting of relief would be a substantial abuse of the provisions of chapter 7. 11 U.S.C. § 707(b). A number of courts have concluded that a chapter 7 case may be dismissed for substantial abuse when the debtor has the ability to propose and carry out a workable and meaningful chapter 13 plan.

Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing.

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Background

The potential chapter 7 debtor should understand that a straight bankruptcy case does not involve the filing of a plan of repayment as in chapter 13, but rather envisions the

bankruptcy trustee's gathering and sale of the debtor's nonexempt assets, from which holders of claims (creditors) will receive distributions in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, under chapter 7, the individual debtor is permitted to retain certain "exempt" property. The debtor's remaining assets are liquidated by a trustee. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

In order to qualify for relief under chapter 7 of the Bankruptcy Code, the debtor must be an individual, a partnership, a corporation, or a qualified multilateral clearing organization. 11 U.S.C. §§ 101(41), 109(b). Relief is available under chapter 7 irrespective of the amount of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or the debtor voluntarily dismissed the previous case after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d)-(e).

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a “fresh start.” The discharge has the effect of extinguishing the debtor’s personal liability on dischargeable debts. In a chapter 7 case, however, a discharge is available to individual debtors only, not to partnerships or corporations. 11 U.S.C. § 727(a)(1). Although the filing of an individual chapter 7 petition usually results in a discharge of debts, an individual’s right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

How Chapter 7 Works

A chapter 7 case begins with the debtor’s filing a petition with the bankruptcy court.¹ The petition should be filed with the bankruptcy court serving the area where the individual lives or where the business debtor has its principal place of business or principal assets. 28 U.S.C. § 1408. In addition to the petition, the debtor is also required to file with the court several schedules of assets and liabilities, a schedule of current income and expenditures, a statement of financial affairs, and a schedule of executory contracts and unexpired leases. Bankruptcy Rule 1007(b). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the internet at www.uscourts.gov/bankform/. They are not available from the court.)

In order to complete the Official Bankruptcy Forms which make up the petition and schedules, the debtor(s) will need to compile the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor’s income;
3. A list of all of the debtor’s property; and
4. A detailed list of the debtor’s monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

Currently, the courts are required to charge a \$155 case filing fee, a \$30 miscellaneous administrative fee, and a \$15 trustee surcharge (a total of \$200). The fees should be paid to the clerk of the court upon filing or may, with the court’s permission, be paid by individual debtors in installments. 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. Bankruptcy Rule 1006(b) limits to four the number of installments for the filing fee. The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. Bankruptcy Rule 1006(b). The \$30 administrative fee and the \$15 trustee surcharge may be paid in installments in the same manner as the filing fee. If a joint petition is filed, only one filing fee, one administrative fee, and one trustee surcharge are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 707(a).

The filing of a petition under chapter 7 “automatically stays” most actions against the debtor or the debtor’s property. 11 U.S.C. § 362. This stay

arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors normally receive notice of the filing of the petition from the clerk.

One of the schedules that will be filed by the individual debtor is a schedule of “exempt” property. Federal bankruptcy law provides that an individual debtor² can protect some property from the claims of creditors either because it is exempt under federal bankruptcy law or because it is exempt under the laws of the debtor’s home state. 11 U.S.C. § 522(b). Many states have taken advantage of a provision in the bankruptcy law that permits each state to adopt its own exemption law in place of the federal exemptions. In other jurisdictions, the individual debtor has the option of choosing between a federal package of exemptions or exemptions available under state law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. Legal counsel should be consulted to determine the law of the state in which the debtor lives.

A “meeting of creditors” is usually held 20 to 40 days after the petition is filed. If the United States trustee or bankruptcy administrator³ designates a place for the meeting that is not regularly staffed by the United States trustee or bankruptcy administrator, the meeting may be held no more than 60 days after the order for relief. Bankruptcy Rule 2003(a). The debtor must attend this meeting, at which creditors may appear and ask questions regarding the debtor’s financial affairs and property. 11

U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee also will attend this meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The trustee is required to examine the debtor orally at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy, including the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. In some courts, trustees may provide written information on these topics, at or in advance of the meeting, to ensure that the debtor is aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors. 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to either a chapter 11 reorganization case or a case under chapter 13,⁴ as long as the debtor meets the eligibility standards under the chapter to which the debtor seeks to convert, and the case has not previously been converted to chapter 7 from either chapter 11 or chapter 13. 11 U.S.C. § 706(a)-(d). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

Role of the Case Trustee

Upon the filing of the chapter 7 petition, an impartial case trustee is appointed by the United States trustee (or by the court in Alabama and North Carolina) to administer the case and

liquidate the debtor's nonexempt assets. 11 U.S.C. §§ 701, 704. If, as is often the case, all of the debtor's assets are exempt or subject to valid liens, there will be no distribution to unsecured creditors. Typically, most chapter 7 cases involving individual debtors are "no asset" cases. If the case appears to be an "asset" case at the outset, however, unsecured creditors⁵ who have claims against the debtor must file their claims with the clerk of court within 90 days after the first date set for the meeting of creditors. Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed. 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim. If the trustee later recovers assets for distribution to unsecured creditors, creditors will be given notice of that fact and additional time to file proofs of claim. Although secured creditors are not required to file proofs of claim in chapter 7 cases in order to preserve their security interests or liens, there may be circumstances when it is desirable to do so. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

The commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an "asset" case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. To accomplish this, the trustee attempts to liquidate the debtor's nonexempt property (i.e., property that the debtor owns free and clear of liens), and the debtor's property which has market value above the amount of any security interest or lien and any exemption that the debtor holds in the property. The trustee also pursues causes of action (lawsuits) belonging to the debtor and pursues the trustee's own causes of action to recover money or property under the trustee's "avoiding powers." The trustee's avoiding powers include the power to set aside preferential transfers made to creditors within 90 days before the petition; the power to undo security interests and other prepetition transfers of property that were not properly perfected under nonbankruptcy law at the time of the petition; and the power to pursue nonbankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the bankruptcy court may authorize the trustee to operate the debtor's business for a limited period of time, if such operation will benefit the creditors of the estate and enhance the liquidation of the estate. 11 U.S.C. § 721.

The distribution of the property of the estate is governed by section 726 of the Bankruptcy Code, which sets forth the order of payment of all claims. Under section 726, there are six classes of claims, and each class must be paid in full before the next lower class is paid anything. The debtor is not particularly interested in the trustee's disposition of the estate

assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The debtor's major interests in a chapter 7 case are in retaining exempt property and in getting a discharge that covers as many debts as possible.

Discharge

A discharge releases the debtor from personal liability for most debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The bankruptcy law regarding the scope of a chapter 7 discharge is complex, and debtors should consult competent legal counsel in this regard prior to filing. As a general rule, however, excluding cases which are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a complaint has been filed objecting to the discharge or the debtor has filed a written waiver, the discharge will be granted to a chapter 7 debtor relatively early in the case, that is, 60 to 90 days after the date first set for the meeting of creditors. Bankruptcy Rule 4004(c).

The grounds for denying an individual debtor a discharge in a chapter 7 case are very narrow and are construed against a creditor or trustee seeking to deny the debtor a chapter 7 discharge. Among the grounds for denying a discharge to a chapter 7 debtor are that the debtor failed to keep or produce adequate books or financial records; the debtor failed to explain satisfactorily any loss of assets; the debtor committed a bankruptcy crime such as perjury; the debtor failed to obey a lawful order of the bankruptcy court; or the debtor fraudulently transferred, concealed, or destroyed property that would have become

property of the estate. 11 U.S.C. § 727; Bankruptcy Rule 4005.

In certain jurisdictions, secured creditors may retain some rights to seize pledged property, even after a discharge is granted. Depending on individual circumstances, a debtor wishing to keep possession of the pledged property, such as an automobile, may find it advantageous to "reaffirm" the debt. A reaffirmation is an agreement between the debtor and the creditor that the debtor will pay all or a portion of the money owed, even though the debtor has filed bankruptcy. In return, the creditor promises that, as long as payments are made, the creditor will not repossess or take back the automobile or other property. Because there is a disagreement among the courts concerning whether a debtor whose debt is not in default may retain the property and pay under the original contract terms without reaffirming the debt, legal counsel should be consulted to ensure that the debtor's rights are protected and that any reaffirmation is in the debtor's best interest.

If the debtor elects to reaffirm the debt, the reaffirmation should be accomplished prior to the granting of a discharge. A written agreement to reaffirm a debt must be filed with the court and, if the debtor is not represented by an attorney, must be approved by the judge. 11 U.S.C. § 524(c). The Bankruptcy Code requires that reaffirmation agreements contain an explicit statement advising the debtor that the agreement is not required by bankruptcy or non-bankruptcy law. In addition, the debtor's attorney is required to advise the debtor of the legal effect and consequences of such an agreement, including a default under such an agreement.

The Bankruptcy Code requires a reaffirmation hearing only if the debtor has not been represented by an attorney during the negotiating of the agreement. 11 U.S.C. § 524(d). The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists. 11 U.S.C. § 524(f).

Most claims against an individual chapter 7 debtor are discharged. A creditor whose unsecured claim is discharged may no longer initiate or continue any legal or other action against the debtor to collect the obligation. A discharge under chapter 7, however, does not discharge an individual debtor from certain specific types of debts listed in section 523 of the Bankruptcy Code. Among the types of debts which are not discharged in a chapter 7 case are alimony and child maintenance and support obligations, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for criminal restitution orders under title 18, United States Code. 11 U.S.C. § 523(a). To the extent that these types of debts are not fully paid in the chapter 7 case, the debtor is still responsible for them after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, and debts

arising from a property settlement agreement incurred during or in connection with a divorce or separation are discharged unless a creditor timely files and prevails in an action to have such debts declared excepted from the discharge. 11 U.S.C. § 523(c); Bankruptcy Rule 4007(c).

The court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the United States trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee. 11 U.S.C. § 727(d).

NOTES

1. An involuntary chapter 7 case may be commenced under certain circumstances by the filing of a petition by creditors holding claims against the debtor. 11 U.S.C. § 303.

2. Each debtor in a joint case (both husband and wife) can claim exemptions under the federal bankruptcy laws. 11 U.S.C. § 522(m).

3. United States trustees and bankruptcy administrators are responsible for establishing a panel of private trustees to serve as trustees in chapter 7 cases and for supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code. Bankruptcy administrators serve in the judicial districts in the states of Alabama and North Carolina.

4. A fee is charged for converting, on request of the debtor, a case under chapter 7 to a case under chapter 11.

The fee charged is the difference between the filing fee for a chapter 7 and the filing fee for a chapter 11. Currently, that fee is \$645. There is no fee for converting from chapter 7 to chapter 13.

5. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize pledged property on default, in addition to the debtor's ability to pay.

Individual Debt Adjustment Bankruptcy - Chapter 13

Public Information Series of the Bankruptcy Judges Division
April 2002

Background

Chapter 13 is designed for individuals with regular income who desire to pay their debts but are currently unable to do so. The purpose of chapter 13 is to enable financially distressed individual

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as a substitute for reference to the United States Bankruptcy Code (title 11, United States Code) and the Bankruptcy Rules, both of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by each bankruptcy court. Finally, this fact sheet should not substitute for the advice of competent legal counsel. For additional copies of this publication, please contact the Bankruptcy Judges Division, Administrative Office of the United States Courts (202) 502-1900.

debtors, under court supervision and protection, to propose and carry out a repayment plan under which creditors are paid over an extended period of time. Under this chapter,

debtors are permitted to repay creditors, in full or in part, in installments over a three-year period, during which time creditors are prohibited from starting or continuing collection efforts. A plan providing for payments over more than three years must be "for cause" and be approved by the court. In no case may a plan provide for payments over a period longer than five years. 11 U.S.C. § 1322(d).

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$290,525 and secured debts are less than \$871,550. 11 U.S.C. § 109(e). A corporation or partnership may not be a chapter 13 debtor. Id.

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the court or comply with orders of the court, or was voluntarily dismissed after creditors sought relief from the bankruptcy court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d) and (e).

How Chapter 13 Works

A chapter 13 case begins with the filing of a petition with the bankruptcy court serving the area where the debtor has a domicile or residence. Unless the court orders otherwise, the debtor also shall file with the court: (1) schedules of assets and liabilities, (2) a schedule of current income and expenditures, (3) a

schedule of executory contracts and unexpired leases, and (4) a statement of financial affairs. Bankruptcy Rule 1007(b). A husband and wife may file a joint petition or individual petitions. 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the Internet at www.uscourts.gov/bankform/. They are not available from the court.)

Currently, the courts are required to charge a \$155 case filing fee and a \$30 miscellaneous administrative fee (a total of \$185). The fees should be paid to the clerk of the court upon filing or may, with the court's permission, be paid in installments. 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b); Bankruptcy Court Miscellaneous Fee Schedule, Item 8. Bankruptcy Rule 1006(b) limits to four the number of installments for the filing fee. The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition. Bankruptcy Rule 1006(b). The \$30 administrative fee may be paid in installments in the same manner as the filing fee. If a joint petition is filed, only one filing fee and one administrative fee are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case. 11 U.S.C. § 1307(c)(2).

In order to complete the Official Bankruptcy Forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.

When a husband and wife file a joint petition or each spouse files an individual petition, the above detailed data must be gathered for both spouses. So that financial responsibilities can be accurately assessed when only one spouse files, the income and expenses of the non-filing spouse should be included in the debtor's schedules and statement of financial affairs.

Upon the filing of the petition, an impartial trustee is appointed to administer the case. 11 U.S.C. § 1302. If the number of cases so warrants, the United States trustee may appoint a standing trustee to serve in all chapter 13 cases in a district. 28 U.S.C. § 586(b). A primary role of the chapter 13 trustee is to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors. 11 U.S.C. § 1302(b).

The filing of the petition under chapter 13 "automatically stays" most collection actions against the

debtor or the debtor's property. 11 U.S.C. § 362. As long as the "stay" is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors receive notice of the filing of the petition from the clerk or the trustee. Further, chapter 13 contains a special automatic stay provision applicable to creditors. Specifically, after the commencement of a chapter 13 case, unless the bankruptcy court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who is liable with the debtor. 11 U.S.C. § 1301(a). Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose. 11 U.S.C. § 101(8).

By virtue of the automatic stay, an individual debtor faced with a threatened foreclosure of the mortgage on his or her principal residence can prevent an immediate foreclosure by filing a chapter 13 petition. Chapter 13 then affords the debtor a right to cure defaults on long-term home mortgage debts by bringing the payments current over a reasonable period of time. The debtor is permitted to cure a default with respect to a lien on the debtor's principal residence up until the completion of a foreclosure sale under state law. 11 U.S.C. § 1322(c).

The debtor must file a plan of repayment with the petition or within fifteen days thereafter, unless extended by the court for cause. Bankruptcy Rule 3015. The chapter 13 plan must provide for the full payment of all claims entitled to priority under section 507¹ (unless the holder of a particular claim agrees to different treatment of the claim); if the plan classifies claims, provide the same treatment for each claim within each class; and provide for the submission of such portion of the debtor's future income to the supervision of the trustee

as is necessary for the execution of the plan. 11 U.S.C. § 1322. Other plan provisions are permissive. *Id.* Plans, which must be approved by the court, provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims. If the trustee or a creditor with an unsecured claim² objects to confirmation of the plan, the debtor is obligated to pay the amount of the claim or commit to the proposed plan all projected "disposable income" during the period in which the plan is in effect. 11 U.S.C. § 1325(b). Disposable income is defined as income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as excluding those amounts which are necessary for the payment of ordinary operating expenses. 11 U.S.C. § 1325(b)(2)(A) and (B).

A meeting of creditors is held in every case, during which the debtor is examined under oath. It is usually held 20 to 50 days after the petition is filed. If the United States trustee or bankruptcy administrator³ designates a place for the meeting which is not regularly staffed by the United States trustee or bankruptcy administrator, the meeting may be held no more than 60 days after the order for relief. Bankruptcy Rule 2003(a). The debtor must attend the meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and the proposed terms of the plan. 11 U.S.C. § 343. If a

husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee will also attend the meeting and question the debtor on the same matters. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending. 11 U.S.C. § 341(c). If there are problems with the plan, they are typically resolved during or shortly after the creditors' meeting. Generally, problems may be avoided if the petition and plan are complete and accurate and the trustee has been consulted prior to the meeting.

In a chapter 13 case, unsecured creditors who have claims against the debtor must file their claims with the court within 90 days after the first date set for the meeting of creditors. Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed. 11 U.S.C. § 502(b)(9).

After the meeting of creditors is concluded, the bankruptcy judge must determine at a confirmation hearing whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code. 11 U.S.C. §§ 1324, 1325. Creditors, who will receive 25 days' notice of the hearing, may object to confirmation. Bankruptcy Rule 2002(b). While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated, or that the debtor's plan does not commit all of the debtor's projected disposable income for the three-year period of the plan.

Within thirty days after the filing of the plan, even if the plan has not yet been approved by the court, the debtor must start making payments to the trustee. 11 U.S.C. § 1326(a)(1). If the plan is confirmed by the bankruptcy judge, the chapter 13 trustee commences distribution of the funds received in accordance with the plan "as soon as practicable." 11 U.S.C. § 1326(a)(2). If the plan is not confirmed, the debtor has a right to file a modified plan. 11 U.S.C. § 1323. The debtor also has a right to convert the case to a liquidation case under chapter 7.⁴ 11 U.S.C. § 1307(a). If the plan or modified plan is not confirmed and the case is dismissed, the court may authorize the trustee to retain a specified amount for costs, but all other funds paid to the trustee are returned to the debtor. 11 U.S.C. § 1326(a)(2).

On occasion, changed circumstances will affect a debtor's ability to make plan payments, a creditor may object or threaten to object to a plan, or a debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation. 11 U.S.C. §§ 1323, 1329. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor. 11 U.S.C. § 1329(a).

Making the Plan Work

The provisions of a confirmed plan are binding on the debtor and each creditor. 11 U.S.C. § 1327. Once the court confirms the plan, it is the responsibility of the debtor to make the plan succeed. The debtor must make regular payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. Alternatively, the debtor's employer can withhold the amount of the payment from the debtor's paycheck and transmit it to the chapter

13 trustee. Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur any significant new credit obligations without consulting the trustee, as such credit obligations may have an impact upon the execution of the plan. 11 U.S.C. §§ 1305(c), 1322(a)(1), and 1327.

A debtor may consent to the deduction of the plan payments from the debtor's paycheck. Experience has shown that this practice increases the likelihood that payments will be made on time and that the plan will be completed. In any event, failure to make the payments in accordance with the confirmed plan may result in dismissal of the case or its conversion to a liquidation case under chapter 7 of the Bankruptcy Code. 11 U.S.C. § 1307(c).

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has recently undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

The chapter 13 debtor is entitled to a discharge upon successful completion of all payments under the chapter 13 plan. 11 U.S.C. § 1328(a). The discharge has the effect of releasing the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Those creditors who were provided for in full or in part under the chapter 13 plan may no longer initiate or continue any

legal or other action against the debtor to collect the discharged obligations.

In return for the willingness of the chapter 13 debtor to undergo the discipline of a repayment plan for three to five years, a broader discharge is available under chapter 13 than in a chapter 7 case. As a general rule, the debtor is discharged from all debts provided for by the plan or disallowed, except certain long term obligations (such as a home mortgage), debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. 11 U.S.C. § 1328(a). To the extent that these types of debts are not fully paid pursuant to the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded.

The Chapter 13 Hardship Discharge

After confirmation of a plan, there are limited circumstances under which the debtor may request the court to grant a "hardship discharge" even though the debtor has failed to complete plan payments. 11 U.S.C. § 1328(b). Generally, such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor, after creditors have received at least as much as they would have

received in a chapter 7 liquidation case and when modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are nondischargeable in a chapter 7 case. 11 U.S.C. § 523.

NOTES

1. Section 507 sets forth nine categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.

2. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay. In contrast, secured debts are those for which the extension of credit was based upon not only the creditor's evaluation of the debtor's ability to pay, but upon the creditor's right to seize pledged property on default.

3. Bankruptcy Administrators, rather than U.S. trustees, serve in the judicial districts in the states of Alabama and North Carolina.

4. A fee of \$15 is charged for converting a case under chapter 13 to a case under chapter 7.



**United States Bankruptcy Court
District of New Mexico
Office of the Clerk
Norman H. Meyer, Jr., Clerk of Court**

EXEMPTIONS

The following is provided by the Office of the Clerk, United States Bankruptcy Court for the District of New Mexico, **for general informational purposes only** as part of the court's packet of information available to self-represented bankruptcy petition filers.

Under section 522 of the United States Bankruptcy Code, each individual debtor (i.e., not a corporation or partnership) is allowed to claim certain property exempt. This means that the debtor(s) may keep the property free from the claims of any creditors except secured creditors that may hold a lien on the property. A claim of exemption has no effect on valid liens. This means that, for example, a home mortgage or a car loan is still valid when the house or car is claimed exempt.

The Bankruptcy Code allows debtors to choose their exempt property either from a federal list of exemptions or a state list of exemptions. Mixing federal and state exemptions is not permitted. In other words, the exemptions must be all state or all federal. Additionally, if husband and wife file jointly, both must claim federal exemptions or both must claim state exemptions.

Exemptions are claimed on Schedule C. Creditors, the case trustee, or other party in interest may file with the court an objection to an exemption claimed by the debtor. Objections to the list of property claimed exempt must be filed within 30 days of the conclusion of the first meeting of creditors. The Bankruptcy Code states that if no party in interest objects to the list of exempt property, it is exempt.

FEDERAL EXEMPTIONS - with dollar amounts adjusted effective April 1, 2001

The federal exemptions are contained within sections 522(d)(1) through 522(d)(11) of the United States Bankruptcy Code. The dollar amounts provided here are effective as of April 1, 2001. These amounts may be adjusted in 2004 and every three years thereafter. [See 11 U.S.C. §104.](#)

522(d): The following property may be exempted ...

(1) The debtor's aggregate interest, not to exceed \$17,425 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed \$2,775 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed \$450 in value in any particular item or \$9,300 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed \$1,150 in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value \$925 plus up to \$8,725 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed \$1,750 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unexpired life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value \$9,300 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unexpired life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive -

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to -

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed \$17,425, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

NEW MEXICO EXEMPTIONS

The New Mexico exemptions are contained in sections 42-10-1 through 42-10-13 of the New Mexico Statutes.

42-10-1. Exemptions of married persons or heads of households. Personal property in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person supporting another person is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-2. Exemptions of persons who support only themselves. Personal property other than money in the amount of five hundred dollars (\$500), tools of the trade in the amount of fifteen hundred dollars (\$1,500), one motor vehicle in the amount of four thousand dollars (\$4,000), jewelry in the amount of twenty-five hundred dollars (\$2,500), clothing, furniture, books, medical-health equipment being used for the health of the person and not for his profession and any interest in or proceeds from a pension or retirement fund of every person

supporting only himself is exempt from receivers or trustees in bankruptcy or other insolvency proceedings, executors or administrators in probate, fines, attachment, execution or foreclosure by a judgment creditor. Property exempted shall be valued at the market value of used chattels.

42-10-3. [Life, accident and health insurance benefits.] The cash surrender value of any life insurance policy, the withdrawal value of any optional settlement, annuity contract or deposit with any life insurance company, all weekly, monthly, quarterly, semiannual or annual annuities, indemnities or payments of every kind from any life, accident or health insurance policy, annuity contract or deposit heretofore or hereafter issued upon the life of a citizen or resident of the state of New Mexico, or made by any such insurance company with such citizen, upon whatever form and whether the insured or the person protected thereby has the right to change the beneficiary therein or not, shall in no case be liable to attachment, garnishment or legal process in favor of any creditor of the person whose life is so insured or who is protected by said contract, or who receives or is to receive the benefit thereof, nor shall it be subject in any other manner to the debts of the person whose life is so insured, or who is protected by said contract or who receives or is to receive the benefit thereof, unless such policy, contract or deposit be taken out, made or assigned in writing for the benefit of such creditor.

42-10-4. [Benefits from benevolent associations.] Any beneficiary fund not exceeding five thousand dollars [(\$5,000)], set apart, appropriated or paid, by any benevolent association or society, according to its rules, regulations or bylaws, to the family of any deceased member, or to any member of such family, shall not be liable to be taken by any process or proceedings, legal or equitable, to pay any debts of such deceased member.

42-10-5. [Life insurance proceeds.] The proceeds of any life insurance are not subject to the debts of the deceased, except by special contract or arrangement, to be made in writing.

42-10-6. Personal property used as a security under the Uniform Commercial Code is not exempt. A secured creditor who has personal property of the debtor as security as provided by the Uniform Commercial Code [Chapter 55 NMSA 1978] may proceed according to the terms of the security instrument and the Uniform Commercial Code. The debtor cannot exempt personal property given to a secured creditor as security unless there be more property than is necessary to pay the debt to the secured creditor. The debtor may claim an exemption out of the surplus.

42-10-7. Taxes and garnishment excepted. This article is not applicable to taxes or garnishment.

42-10-8. Repealed.

42-10-9. Homestead exemption. Each person shall have exempt a homestead in a dwelling house and land occupied by him or in a dwelling house occupied by him although the dwelling is on land owned by another, provided that the dwelling is owned, leased or being purchased by the person claiming the exemption. Such a person has a homestead of thirty thousand dollars (\$30,000) exempt from attachment, execution or foreclosure by a judgment creditor and from

any proceeding of receivers or trustees in insolvency proceedings and from executors or administrators in probate. If the homestead is owned jointly by two persons, each joint owner is entitled to an exemption of thirty thousand dollars (\$30,000).

42-10-10. Exemption in lieu of homestead.

A. Any resident of this state who does not own a homestead shall in addition to other exemptions hold exempt real or personal property in the amount of two thousand dollars (\$2,000) in lieu of the homestead exemption.

B. Where the resident does not own a homestead, the sheriff or any other person or officer seeking to attach, execute or foreclose by judgment on property shall provide the resident with written notification of the resident's right to exemption in lieu of homestead as described in Subsection A of this section, together with a simple form by which the resident may designate that he is aware of the exemption and does or does not desire to claim the exemption. Where the resident refuses to make the election provided for in this section, the sheriff, other person or officer shall proceed to attach, execute or foreclose on the resident's property. Where the resident claims his exemption in lieu of homestead, the sheriff, other person or officer making attachment, execution or foreclosure by judgment shall file as part of his return a description, including the resident's stated value, of the property claimed as exempt bearing the resident's signature witnessed by the sheriff, other person or officer seeking to attach, execute or foreclose.

42-10-11. When homestead exemption does not apply. The provisions of this article [42-10-9 to 42-10-12 NMSA 1978] do not apply or extend to taxes, garnishment, recorded liens of mortgagees or lessors or recorded liens of laborers or materialmen for labor or materials furnished for the construction or repair of the dwelling house.

42-10-12. Repealed.

42-10-13. Claim of exemption or priority. Any person desiring to claim that property is exempt from execution or is subject to execution only after other property is used to satisfy a debt under the provisions of Sections 40-3-10 and 40-3-11 NMSA 1978 shall file his claim of exemption or priority in the appropriate court, or the right to claim such exemption is waived as between a spouse and the creditor.

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11 U.S.C.	Dollar Amount to be Adjusted	New (Adjusted) Dollar Amount
Section 109(e) - allowable debt limits for filing bankruptcy under Chapter 13	\$290,525 (each time it appears) \$871,550 (each time it appears)	\$307,675 (each time it appears) \$922, 975 (each time it appears)
Section 303(b) - minimum aggregate claims needed for the commencement of an involuntary bankruptcy		
(1) - in paragraph (1)	\$11,625	\$12, 300
(2) - in paragraph (2)	\$11,625	\$12, 300
Section 507(a) - priority claims		
(1) - in paragraph (3)	\$4,650	\$4,925
(2) - in paragraph (4)(B)(i)	\$ 4,650	\$4,925
(3) - in paragraph (5)	\$ 4,650	\$4,925
(4) - in paragraph (6)	\$2,100	\$2,225
Section 522(d) - value of property exemptions allowed to the debtor		
(1) - in paragraph (1)	\$17,425	\$18,450
(2) - in paragraph (2)	\$ 2,775	\$ 2,950
(3) - in paragraph (3)	\$ 450 \$ 9,300	\$ 475 \$ 9,850
(4) - in paragraph (4)	\$ 1,150	\$ 1,225
(5) - in paragraph (5)	\$ 925 \$ 8,725	\$ 975 \$ 9,250
(6) - in paragraph (6)	\$ 1,750	\$ 1,850
(7) - in paragraph (8)	\$ 9,300	\$ 9,850
(8) - in paragraph (11)(D)	\$17,425	\$18,450
Section 523(a)(2)(C) - “luxury goods and services” or cash advances obtained by the consumer debtor within 60 days before the filing of a bankruptcy petition, which are considered nondischargeable	\$1,150 (each time it appears)	\$1,225 (each time it appears)



Bankruptcy Information Packet for Persons Filing Bankruptcy Without a Lawyer

After the Petition is Filed

Once the petition is filed, the Clerk's Office will send a "NOTICE OF BANKRUPTCY CASE, MEETING OF CREDITORS AND DEADLINES" to all addressees on the mailing list submitted with the petition. This notice informs creditors of the filing of the bankruptcy petition and the date, time and place¹ of the meeting² of creditors, which the debtor and joint debtor, if any, are required to attend.

The notice also gives creditors and other parties in interest notice of important deadlines. One important date is the deadline to file an adversary complaint (like a civil suit in bankruptcy court) in a chapter 7 case asking the court to deny the debtor a right to discharge of any debts. The deadline is 60 days from the date first set for the meeting of creditors. Another important date for creditors is the deadline to file proofs of claim (90 days from the date first set for the meeting of creditors) and adversary complaints to determine dischargeability of a specific debt (60 days from the date first set for the meeting of creditors) in a chapter 13 case. You may find it beneficial to read the public information series articles included in this packet regarding the discharge in bankruptcy, chapter 7 liquidation case, and chapter 13 individual debt adjustment case.

In a chapter 7 case, when no adversary complaint objecting to discharge is timely filed, the court will issue a discharge order after the 60-day deadline if all fees due from the debtor have been paid and the meeting of creditors has been adjourned and there are no outstanding motions that might preclude issuance of the discharge. If the case is a no asset chapter 7 case, the Clerk's Office will close the case almost simultaneously with the issuance of the discharge order.

A debtor may amend his petition, schedules or statements as long as the case is open. **The debtor is responsible for providing a copy of every document filed by the debtor to the United States trustee and the case trustee.** The debtor should also keep a copy for the debtor's personal records of every document filed in the case.

Copies of court documents may be obtained from the Clerk's Office at 505-348-2500 or toll free 866-291-6805. The copy fee is \$0.50 per page. The Clerk's Office is located at 500 Gold Avenue SW, 10th Floor, Albuquerque NM 87102.

¹The location of the meeting is determined by the debtor's residence address city.

²The meeting of creditors in a chapter 7 case is conducted by the chapter 7 trustee for the case. The meeting in a chapter 13 case is conducted by the chapter 13 trustee for the District. The notice of the meeting gives the name, address, and telephone number of the trustee.