

## FREQUENTLY ASKED QUESTIONS

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The following are answers to frequently asked questions about bankruptcy in general and are not to be considered legal advice. Moreover, while the information presented below is believed to be accurate as of the date of publication, it should not be cited or relied upon as legal authority. Note also that the information is intended to reflect changes in the law applicable to cases filed on and after October 17, 2005 and concentrates primarily on bankruptcy cases filed under chapters 7 and 13 of the United States Bankruptcy Code.

**It is highly recommended that you obtain legal advice from an attorney or legal association experienced in the practice of bankruptcy law.**

### GENERAL INFORMATION ABOUT BANKRUPTCY

#### What is bankruptcy?

"Bankruptcy" refers to a federal code of laws and set of rules which are designed to help a debtor, whether an individual or a business, who is facing more debt than he, she, or it can afford to pay, achieve a fresh start. Bankruptcy permits the debtor to work out a plan to repay some or all of the debt, or to have some of the debt forgiven. The bankruptcy laws give the debtor protections and benefits that are not available outside of bankruptcy. Most notably, ***bankruptcy laws may provide for some debt forgiveness and typically require that creditors stop all collection efforts against the debtor while the debtor is working out a plan and/or awaiting a discharge of debts.*** The bankruptcy laws require that the debtor make full disclosure of all assets, liabilities and other financial information, and that the debtor either (1) surrender non-exempt assets for liquidation and distribution to creditors or (2) formulate and follow through on a plan of reorganization and debt repayment that provides creditors with at least as much as they would receive if the debtor's assets were liquidated and distributed to creditors. Bankruptcy cases are adjudicated by the bankruptcy court, a federal court which is a unit of the U.S. District Court in each jurisdiction.

#### Who can file a bankruptcy petition?

A bankruptcy case is commenced by the filing of a "bankruptcy petition," a formal request for relief under the bankruptcy laws. An individual, a partnership or a

corporation (defined as including a qualifying business trust) may file a bankruptcy petition.

### **What is a joint petition?**

A joint petition is the filing of a single bankruptcy petition by an individual and the individual's spouse. Only people who are married on the date they file the bankruptcy case may file a joint petition. Unmarried persons, corporations and partnerships do not qualify to file joint petitions. And, although married debtors *may* file a joint petition, they are not required to do so.

### **What are the different chapters in bankruptcy?**

**Chapter 7** is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases may be filed by an individual, a corporation (defined as including a qualifying business trust) or a partnership. Under chapter 7, a trustee is appointed to collect and sell all property that is not fully encumbered by a lien and is not exempt and to use any proceeds to pay creditors. When the debtor is an individual, the debtor is allowed to claim certain property as exempt. The individual debtor usually receives a discharge, which means that he or she is relieved of the obligation to pay certain types of debts. Corporations and partnerships are not eligible to receive discharges. For more detailed information on chapter 7, click here: [Chapter 7 Liquidation Under the Bankruptcy Code](#)

**Chapter 9** is only for municipalities and governmental units, such as school and water districts. For more information on chapter 9, click here: [Chapter 9 Municipality Bankruptcy](#)

**Chapter 11** is the reorganization chapter available to businesses and individuals who have assets and/or income for use in restructuring and repaying their debts. Creditors vote on whether to accept or reject a plan of reorganization, which must be approved by the Bankruptcy Court. While the debtor typically remains in control of the assets, the Court, in some circumstances, can order the appointment of a trustee to run the business. In addition to the filing fee paid to the Clerk, the debtor must pay a quarterly fee to the U.S. Trustee based on the debtor's revenues. For more information on chapter 11, click here: [Chapter 11 Reorganization Under the Bankruptcy Code](#)

**Chapter 12** offers bankruptcy relief to those who qualify as a family farmer or fisherman. There are debt limitations for chapter 12, and a certain portion of the debtor's income must come from the operation of a farming or fishing business. Family farmers or fishermen must propose a plan to repay their creditors over a period of time from future income, and the plan must be approved by the Bankruptcy Court. Plan payments are made through a chapter 12 trustee, who also monitors the debtor's business operations while the case is pending. For more information on chapter 12, click here: [Chapter 12 Family Farmer or Family Fisherman Bankruptcy](#)

**Chapter 13** is the debt repayment chapter for individuals (including those who operate businesses as sole proprietorships) who have regular income, whose secured debts do not exceed \$1,010,650 and whose unsecured debts do not exceed \$307,675. *(Note that these debt limitations change from time to time.)* Chapter 13 is not available to corporations or partnerships. Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future disposable income. The chapter 13 debtor proposes a repayment plan which must be approved by the Bankruptcy Court. The debtor pays the amounts set forth in the plan to the chapter 13 trustee, who distributes the funds to creditors in return for a small fee. The chapter 13 debtor receives a discharge of most debts after the debtor completes the payments required under the plan. For more information on chapter 13, click here: [Chapter 13 Individual Debt Adjustment](#)

**Chapter 15** provides an effective mechanism for dealing with cases of cross-border insolvency. For more information on chapter 15, click here: [Chapter 15 Ancillary and Other Cross-Border Cases](#)

## **INFORMATION ABOUT BANKRUPTCY LAWS AND RULES**

### **What is the Bankruptcy Code (or ACT)?**

The Bankruptcy Code is Title 11 of the United States Code. It is a federal law that provides help for persons or businesses in financial difficulty. The Bankruptcy Code is divided into several chapters. Chapters 1, 3 and 5 apply to all Bankruptcy cases and contain very important provisions regarding general rights and responsibilities of debtors, creditors and trustees in every bankruptcy case. Chapters 7, 11, 12 and 13 each offer debtors a different set of options for dealing with their creditors.

### **What are the Federal and Local Bankruptcy Rules?**

The [Federal Rules of Bankruptcy Procedure](#) (the “Bankruptcy Rules”) and the [Local Bankruptcy Rules of the United States Bankruptcy Court, District of Massachusetts](#) (the “Local Rules”) describe the procedures that debtors, creditors, parties in interest, and their attorneys must follow during the bankruptcy process. The Bankruptcy Rules and the Local Rules contain very important information, including the time limits for filing certain documents, who must receive copies of documents filed with the Bankruptcy Court, what information certain motions and other documents must contain and how certain documents should be formatted. It is very important that all parties read the Bankruptcy Rules and the Local Rules carefully, since failure to follow the rules may negatively impact their rights under the Bankruptcy Code.

## **What is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)?**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 represents the largest overhaul of the Bankruptcy Code since its enactment in 1978. The intent of Congress was to improve bankruptcy law and practice with a long-term goal of restoring personal responsibility and integrity in the bankruptcy system. Most of the new provisions concerning consumer debtors became effective on October 17, 2005.

The 2005 Act has the greatest impact upon consumer bankruptcies, but also contains provisions affecting corporations, family farmers, fishermen and small businesses. The 2005 Act also has many new and important provisions for privacy, taxes, healthcare and employee benefits, and consumer credit disclosures. BAPCPA changes to the Bankruptcy Code are found in versions of the Code dated 2006 and later.

## **Who is a bankruptcy trustee? Who is the United States Trustee? What is the difference?**

A bankruptcy trustee is appointed in all chapter 7, 12, and 13 cases and in some chapter 11 cases. The trustee administers the bankruptcy estate and ensures that creditors get as much money as possible. The trustee also presides at the first meeting of creditors (also called the "section 341 meeting" because 11 U.S.C. § 341 of the Bankruptcy Code requires that the meeting be held). In a chapter 7 case, the trustee liquidates the debtor's assets by collecting and selling non-exempt estate property. In a chapter 13 case, the trustee collects money from the debtor and distributes it to creditors according to the debtor's repayment plan. The trustee can require the debtor to provide information and documents either before, after, or at the section 341 meeting. Debtors must cooperate with the trustee - failure to cooperate with the trustee is grounds for a denial of the debtor's discharge.

Trustees are not necessarily lawyers, and they are not paid by the Bankruptcy Court. They are appointed by the United States Trustee. The trustees report to the Bankruptcy Court, but their fees are paid from the bankruptcy filing fees or, if the estate has assets, from the assets of the estate.

The United States Trustee's Office is part of the United States Department of Justice. It is completely separate from the Bankruptcy Court. The United States Trustee's Office is a watchdog agency, charged with monitoring all bankruptcies, appointing and supervising all trustees, and identifying fraud in bankruptcy cases. The United States Trustee's Office cannot give legal advice, but it can give information about the status of a case. Debtors may also contact the United States Trustee's Office if they are having a problem with an individual trustee, or if there is evidence of any fraudulent activity.

In monitoring cases, the United States Trustee reviews all bankruptcy petitions and pleadings filed in cases. He or she participates in many proceedings affecting the case, but the United States Trustee does not administer the case itself. The United States Trustee may file motions in a bankruptcy case, such as, for example, a motion to dismiss the case or to deny the debtor's discharge.

### **Where can I get a copy of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and Massachusetts Local Bankruptcy Rules?**

Copies of the United States Bankruptcy Code and the [Federal Rules of Bankruptcy Procedure](#) (Bankruptcy Rules) are available for review in any Clerk's Office location and in legal libraries. These materials are not available for purchase from the Bankruptcy Court. Make sure that you have the version that includes the changes made after October 17, 2005.

The Local Rules and Official Bankruptcy Forms are available on the Court's web site at [www.mab.uscourts.gov](http://www.mab.uscourts.gov).

### **Where can I find more general information on Bankruptcy?**

"Bankruptcy Basics," published by the Administrative Office of the United States Court, provides basic information on bankruptcy that may be of use to debtors, creditors, court personnel, the media and the general public. Some of the information contained in this website can be found within the "Bankruptcy Basics," but that site includes additional important information that is not included on this website. "Bankruptcy Basics" may be accessed at the following link: [Bankruptcy Basics](#)

Be careful that you refer to the correct version of the "Bankruptcy Basics", since there are two versions posted on the website. One version describes the bankruptcy process for cases filed *before* October 17, 2005. The other version incorporates the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (the "BAPCPA") which made substantial changes to the Bankruptcy Code and generally applies to cases filed *on or after* October 17, 2005. (Scroll down the page to see the two versions.)

## **INFORMATION ABOUT THE COURT**

### **What does the Clerk's Office do?**

The Clerk's Office provides a variety of services to the bankruptcy judges, attorneys and the public. The Clerk's Office staff supports the Bankruptcy Court by filing and maintaining case-related papers, collecting authorized fees, sending notices, entering judgments and orders, and setting hearings.

The Clerk's Office also supports attorneys and the public. The staff responds to requests for information and makes copies of papers in Bankruptcy Court files. Although Clerk's Office staff cannot give legal advice, the Bankruptcy Court is a source for many forms and local rules which must be filed in order to commence a bankruptcy case and throughout the duration of the case.

### **When are the federal holidays on which the Bankruptcy Court will be closed?**

The Bankruptcy Court, as well as the Clerk's Office, will be closed on the following holidays:

New Year's Day  
Birthday of Martin Luther King, Jr.  
Presidents' Day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans' Day  
Thanksgiving Day  
Christmas Day

### **What is the automatic stay?**

Filing a bankruptcy petition "automatically stays" (stops) most collection actions against the debtor or the debtor's property. See section 362(a) of the Bankruptcy Code. The stay arises by operation of law and requires no judicial action. But there are several exceptions to this general stay listed in section 362(b) of the Bankruptcy Code. The most common exceptions are criminal proceedings, collection of certain alimony and child support obligations and governmental actions to protect the public. In addition, the automatic stay is temporary and will end as to the debtor when discharge is granted (at which time the discharge protects the debtor) or denied, when the case is dismissed or closed, or if the Bankruptcy Court grants a creditor or other party relief from the automatic stay for the reasons set forth in section 362(d) of the Bankruptcy Code. See also other limitations on the automatic stay set forth below. As long as the stay is in effect, creditors generally may not initiate or continue lawsuits, wage garnishments, or even telephone calls demanding payments, without the approval of the bankruptcy court.

## What is a discharge?

A bankruptcy discharge is a court order that relieves a debtor from personal liability for some specific types of debts. The discharge order permanently prohibits creditors from taking action to collect discharged debts from the debtor and, with very limited exceptions, against income and property that the debtor acquires after the bankruptcy filing. When a debt has been discharged, the creditor can no longer seek repayment.

***The discharge is the primary benefit most debtors obtain from bankruptcy.*** It is, however, important to understand that not all debts are dischargeable and creditors may still seek repayment for debts that are not discharged. Moreover, a debtor's discharge may be denied or revoked. For more information on discharge in bankruptcy, click here: [The Discharge in Bankruptcy](#)

## Are all debts discharged in bankruptcy?

No. The following two categories of debts will generally not be discharged.

**Secured Debts:** The discharge does not affect a creditor's lien against collateral (e.g., a home mortgage or automobile loan), so it does not prevent a creditor who holds a lien from enforcing that lien after the automatic stay (discussed above) terminates or is lifted by the Court. Unless the debtor reaffirms the secured debt or redeems the collateral, the secured creditor can seize the collateral, sell it, and use the proceeds to satisfy its claim. But this is all the secured creditor can do. Unless the secured debt is also a nondischargeable debt (as discussed below), the discharge prohibits the secured creditor from collecting the balance (sometimes called a "deficiency claim") if the collateral is worth less than the claim.

**Nondischargeable Debts:** A discharge order does not apply to certain kinds of debts. These differ according to the chapter under which the bankruptcy petition is filed.

**In a chapter 7, 11, or 12 case,** nineteen categories of debts are excepted from the discharge. See section 523(a) of the Bankruptcy Code for the full list. Most of these debts are automatically excepted from discharge, without the creditor having to take any action. The most common of such nondischargeable debts are:

- (1) many tax debts
- (2) alimony and child support obligations, as well as debts to a spouse or former spouse that arose from a divorce or separation agreement, court order or determination by a governmental agency
- (3) student loans, unless repayment would impose an undue hardship on the debtor or his or her dependents

Some debts are excepted from discharge only if the creditor timely files a separate complaint, called an adversary proceeding, objecting to the discharge of the debt and the Bankruptcy Court issues an order to that effect. These include:

- (1) debts arising from fraud or false representations
- (2) debts for embezzlement, larceny, or the mishandling of funds that the debtor held as a trustee or fiduciary
- (3) debts for willful and malicious injury

**In a chapter 13 case**, the discharge available is slightly broader. Some of the debts not dischargeable in a chapter 7 case may be dischargeable in a chapter 13 case. See section 1328(a) of the Bankruptcy Code for comparison to section 523(a) of the Code.

### **Is a discharge guaranteed/automatic or may interested parties, including 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. In order to object to a debtor's discharge, a creditor must file a complaint called an adversary proceeding before the deadline set out in the notice. Once the deadline to object to a debtor's discharge passes, and if no objections have been filed, the Bankruptcy Court will grant the chapter 7 debtor his or her discharge. This will typically occur approximately three months after the meeting of the creditors, which is approximately four months after the debtor files the bankruptcy petition.

The Bankruptcy Court may deny a chapter 7 discharge for any of the reasons described in section 727(a) of the Bankruptcy Code, including failure to complete a course on personal financial management; failure to cooperate with the Trustee's investigation of pre-petition financial affairs; concealment of property within one year prior to the bankruptcy or after the case is filed; making of a false statement under oath in the bankruptcy case; presentation or use of a false claim; or refusal to obey a lawful order of the court.

**In chapter 12 and 13 cases**, the debtor is usually entitled to a discharge upon completion of payments under the plan. Most plans take between three to five years to complete, so that is also about how long the chapter 12 or 13 debtor will wait for the discharge order. As in chapter 7, a discharge may not occur in a chapter 13 case if the debtor fails to complete a required course on personal financial management. A debtor is also ineligible for a discharge in chapters 7 and 13 if he or she received a prior discharge in another case commenced within the time frames discussed below.

## **What if I have filed a bankruptcy petition in the past? Will a later discharge be affected by a previous discharge?**

**In a chapter 7 case**, a debtor will be ineligible for a discharge if he or she received a discharge under a prior chapter 7 or 11 case that was filed within eight years of the later chapter 7 case. A chapter 7 debtor will also be ineligible for a discharge if he or she received a discharge under a chapter 12 or 13 case that was filed within six years of the later chapter 7 case. However, in the latter instance, a chapter 7 debtor may still be eligible for a discharge if, in the earlier chapter 12 or 13 case, the debtor paid at least (A) 100 percent of the allowed unsecured claims in such a case, or (B) 70 percent of the allowed unsecured claims and the plan was proposed by the debtor in good faith, and was the debtor's best effort at repaying those claims.

**In a chapter 13 case**, a debtor will be ineligible for a discharge if he or she received a discharge under a chapter 7, 11, or 12 case that was filed within four years of the later chapter 13 case. A chapter 13 debtor will also be ineligible for a discharge if he or she received a discharge under a prior chapter 13 case that was filed within two years of the later chapter 13 case.

## **What is the difference between a denial of discharge and a determination that a debt is non-dischargeable?**

A denial of a discharge affects the debtor's entire discharge--and therefore **all** dischargeable debts – while a determination of nondischargeability affects only a **particular** debt. When a discharge is denied, the debtor gets no discharge at all and remains liable for the full repayment of all of his or her debts. The Bankruptcy Court can deny a debtor's discharge for various reasons, the most common being that the debtor failed to take the required financial management course; concealed property within one year prior to the bankruptcy or after the case is filed; made a false statement under oath in the bankruptcy case; presented or used a false claim; or refused to obey a lawful order of the court.

On the other hand, a determination of nondischargeability excepts only a particular debt from the discharge. If the Bankruptcy Court determines a particular debt is not dischargeable, then the debtor is obligated to pay that particular debt, but the remaining dischargeable debts are discharged.

## **BEFORE A BANKRUPTCY PETITION IS FILED**

### **I. What should be considered BEFORE filing for bankruptcy**

## **What are the consequences of filing a bankruptcy petition?**

There are many consequences to filing a bankruptcy petition. Some are positive and some are negative. How a bankruptcy filing will affect a debtor depends on many factors, including the nature and extent of the debtor's assets and liabilities. Specific questions as to the effect of a bankruptcy filing on a debtor's assets should be addressed to an attorney with knowledge and experience in bankruptcy law whenever possible.

Generally, those considering bankruptcy should be aware of the following:

1. Filing for bankruptcy protection is not free, except for those debtors who can demonstrate very low income and accompanying hardship. For the most recent filing fees and information on fee waivers, see [Bankruptcy Filing Fees Chapter 7 Fee Waiver Provisions and Application Official Form 3B \(pdf\)](#)
2. Not all debts can be discharged. Some examples of debts that are not discharged in a chapter 7 case include: child and spouse support obligations, most tax debts and most educational loans (i.e., "student loans"). Please refer to section 523 of the Bankruptcy Code for further information or see the above discussion on a bankruptcy discharge.
3. Secured creditors retain some rights which may permit them to seize the debtor's property, even after the debtor receives a discharge.
4. Failure to timely file the required documents, such as the matrix of creditors, a certificate of credit counseling (discussed below), the bankruptcy schedules or the bankruptcy statements, may result in dismissal of the bankruptcy case. Failure to file these documents may also result in the debtor being barred from filing another bankruptcy petition for 180 days.
5. It is extremely important that all information submitted to the Bankruptcy Court, the trustee appointed to the case, and the United States trustee is complete and accurate.
6. Fraudulent information from and acts of concealment by the debtor are grounds for denial of a discharge and may be punishable as a criminal offense.
7. Debtors who have been awarded a discharge in a previous bankruptcy case may not be eligible for a discharge in a later case, depending on the time that has elapsed between the filing of the two. See the above discussion on debtors who have received prior discharges.
8. Debtors who have had a previous bankruptcy case dismissed may have the automatic stay limited to only thirty days or have no stay at all, depending on the

number of pending cases within the year prior to filing the newest case. See the discussion below on the impact of a prior dismissed case on the applicability of the automatic stay.

### **How will filing for bankruptcy affect my credit?**

Filing for bankruptcy will show up on a debtor's credit report for several years and will likely make obtaining credit more difficult or expensive, but not impossible.

### **How many years will a bankruptcy show on my credit report? Will I be able to obtain credit after filing for bankruptcy?**

The fact that a debtor filed a bankruptcy petition can remain on the debtor's credit report for ten years under provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681. If the debtor successfully completes a chapter 13 plan, many credit reporting agencies will report that information for only seven years.

The decision to grant or deny credit in the future is strictly up to each creditor and will vary, depending on the type of credit requested. There is no law to prevent anyone from extending credit to a debtor immediately after the filing of a bankruptcy; nor is there any law that requires a creditor or potential lender to extend credit to a debtor.

### **How do I get a bankruptcy removed from my credit report?**

The law states that credit reporting agencies may not report a bankruptcy case on a person's credit report after ten years from the date the bankruptcy case is filed. The Bankruptcy Court has no jurisdiction over credit reporting agencies. The Fair Credit Reporting Act, 15 U.S.C. Section 1681, is the law that controls credit reporting agencies. If you believe that there is an error in your credit report and want to correct it, you should contact the credit reporting agencies.

Further information may be obtained from the Federal Trade Commission website at "[How to Dispute Credit Report Errors](#)".

The Federal Trade Commission, Bureau of Consumer Protection, Education Division, Washington, D.C. 20580 may also be contacted. The toll-free telephone number is (877) 382-4357. That office can provide further information on reestablishing credit and addressing credit problems.

### **How will filing a bankruptcy petition affect my landlord's judgment for possession?**

The filing of a bankruptcy petition operates as an immediate and automatic stay (further discussed above) of the commencement or continuation of any judicial proceedings against the debtor. This usually includes any efforts by the landlord to evict or otherwise recover real property leased by the debtor. **However**, the automatic stay does not apply to the continuation of an eviction action by a landlord of residential property in which the debtor resides under a lease and where the landlord has obtained, before the debtor filed a bankruptcy petition, a judgment for possession of the property. Accordingly, if the landlord obtains a judgment for possession of the property *before* the debtor files bankruptcy, the automatic stay will not apply. In these cases, the landlord does not need to file a motion to obtain a relief from the automatic stay. Instead, the automatic stay does not apply to the landlord, and the landlord is free to continue pursuing its eviction rights under state law. However, there is a significant limitation to landlords' rights under this new provision:

The automatic stay will apply for the first 30 days of the bankruptcy case if: (1) the debtor includes with the bankruptcy petition a certificate stating that the debtor would be allowed to cure the default under the state law; (2) the debtor deposits with the Bankruptcy Court at the time the case is filed any rent that would become due during the first 30 days of the case; and (3) within 30 days after the case is filed, the debtor cures all monetary defaults giving rise to the eviction action.

The landlord, however, still has the option to object to the debtor's certificate. In that case, the Bankruptcy Court will hear the matter within 10 days after the landlord files the objection. If the Court upholds the landlord's objection, the automatic stay will immediately terminate, and the landlord will be allowed to continue the eviction process.

Additionally, if the landlord's eviction action is based on endangerment of the property or the illegal use of controlled substances on the property and the landlord files a certificate stating that the landlord has filed an eviction action or that the debtor, during the 30-day period preceding the filing of the certification, has endangered the property or illegally used a controlled substance on the property, then the automatic stay will terminate 15 days after the landlord files its certificate unless the debtor objects. The debtor may file an objection to the landlord's certificate within 15 days after the certificate is filed and the Bankruptcy Court will hold a hearing within 10 days after the debtor files the objection. If the debtor demonstrates to the Bankruptcy Court that the events alleged by the landlord did not exist or have been remedied, then the stay will remain in effect. Otherwise, the stay will automatically terminate, and the landlord will be free to continue or begin the eviction action.

### **How will the Bankruptcy Court protect identification information about me, my minor children, and other personal information contained in documents filed with the court?**

Personally identifiable information is a term that is defined in the Bankruptcy Code to broadly include: names, addresses, telephone numbers, birth dates, and social security

numbers. The Bankruptcy Code aims to protect personally identifiable information to the extent reasonable possible. For instance, the trustee's ability to sell property of the estate is restricted if it might include personally identifiable information about individuals who are not debtors but are connected to the debtor in some business transaction or otherwise. In some cases, the Bankruptcy Court may order the appointment of a consumer privacy ombudsman. The ombudsman will assist the Bankruptcy Court by providing information concerning any personally identifiable information that might be involved in the sale of property of the bankruptcy estate.

If a debtor is required to furnish information about a minor child, the debtor is only required to disclose the name of such child in a *nonpublic* record, and the Bankruptcy Court and court officers *will not* disclose the child's name. Furthermore, the Bankruptcy Court has the discretion to protect an individual from disclosure of information that might expose that individual to identity theft or some other type of unlawful injury. The Bankruptcy Code does require that notices to creditors give the debtor's full social security number. When a creditor is being added to schedules later in a case, that creditor shall also be provided with the debtor's full social security number.

Upon request of a creditor or the trustee, the bankruptcy court may order a debtor to file copies of tax returns with the court. If a debtor is required to file tax returns with the court, it is the debtor's responsibility to redact personal information from the tax return, such as social security numbers, children's names, dates of birth, and financial account numbers. The bankruptcy court is not responsible for deleting personal information from the tax documents. Guidelines for filing required tax information are available on the U.S. Court's website at [Director's Interim Guidance Regarding Tax Information Under 11 U.S.C. § 521 in the Interim Guidance Regarding Tax Information \(pdf\)](#)

### **Which chapter is right for me?**

Debtors may choose the chapter of the Bankruptcy Code which they believe suits their needs. Whether to file a bankruptcy case, and under which chapter to file, are extremely important matters that must be evaluated according to the particular circumstances of each debtor. No simple statement can spell out all the different issues to consider. It is highly recommended that these decisions be made only with competent legal advice from an attorney experienced in bankruptcy law. The Clerk's Office staff and "bankruptcy petition preparers" (discussed below) (including typing services and paralegals who can assist in filling out bankruptcy forms, but who are not attorneys) are prohibited from giving legal advice. Only a lawyer can give legal advice.

### **Do I need an attorney to file for bankruptcy?**

A debtor may file a bankruptcy petition without hiring an attorney. However, filing the petition itself merely starts the bankruptcy process. The relief available to a debtor and the obligations imposed upon a debtor in bankruptcy can be complex and burdensome

to many debtors. Hiring a competent attorney is highly recommended and is truly in a debtor's best interest.

### **What if I cannot afford to hire an attorney?**

While paying for legal services may appear unaffordable for some, the benefits of having legal representation often more than justifies the cost. In a chapter 7 case, attorney fees are usually paid by the debtor before the case is filed. Under a chapter 13 case, these fees are sometimes paid through the debtor's repayment plan. There are also legal service organizations that may be able to help with navigating a bankruptcy case and state and local bar associations often provide lawyer referral services. Most of these legal services can be found through any of the search engines available on the internet.

### **What services can a "bankruptcy petition preparer" provide?**

A "bankruptcy petition preparer" is a person or firm that *is not qualified to act as an attorney*, but who fills out bankruptcy petitions and related forms for a fee. Bankruptcy petition preparers can only type the forms. *They may not provide legal advice to the debtor in any way.* Their services are subject to various statutory requirements and limitations. Bankruptcy petition preparers are not authorized to sign any document on the debtor's behalf. Therefore, the debtor must personally sign all documents that require his or her signature. Petition preparers must also sign all documents which they prepared, in addition to the debtor(s)' signature, but they cannot sign on behalf of a debtor.

Bankruptcy petition preparers are prohibited by law from collecting or receiving any court fees connected with the filing of a debtor's case. The debtor should personally pay all court fees connected with the filing of his or her case, including the filing fee and miscellaneous administrative fees. The debtor should immediately notify the United States Trustee and any trustee appointed to the case if a bankruptcy petition preparer fails to comply with the law.

## **II. How to prepare a bankruptcy petition**

### **What must I do BEFORE I file for bankruptcy?**

The most effective way to sufficiently prepare for a bankruptcy is to meet with a competent attorney experienced in bankruptcy law. An attorney will counsel the debtor on whether and when to file a petition, the appropriate chapter, organize the debtor's assets and liabilities so that the bankruptcy forms and schedules can be properly completed; counsel the debtor on the appropriate exemptions available; and be the debtor's guide as he or she proceeds through the bankruptcy process. It is important

that a proper evaluation of the debtor's assets be performed, so that the maximum amount of exemptions available are claimed. Specifically - if a debtor owns and resides in real estate in Massachusetts - he or she should ensure that a Declaration of Homestead has been properly filed in the appropriate registry of deeds. Recent amendments to the Bankruptcy Code also set forth new requirements for debtors which must be completed prior to filing a bankruptcy petition, or else the debtor will risk having his or her case dismissed. For example, there is a new credit counseling requirement that must be completed at some point during the 180-day period prior to filing a bankruptcy petition. The failure to fulfill this requirement will typically result in the dismissal of the bankruptcy case. There are also new requirements pertaining to certain tax documents and wage information that must be filed by the debtor with the trustee in order to proceed with the bankruptcy case. Please read on for more information on each of these stated requirements and more pre-bankruptcy planning considerations.

### **What are exemptions?**

Exempt assets are protected by law from liquidation and distribution to a debtor's unsecured creditors.

Section 522(b) of the Bankruptcy Code allows an individual debtor to exempt real, personal, or intangible property from the property of the estate. Typically, exempt assets include (among other things) the value of a vehicle up to a certain dollar amount, the equity in a home up to a certain amount, and tools of the trade. Exemptions are claimed in Schedule C. As with all schedules, it is important to be complete and accurate and to provide all of the information requested in Schedule C. If no one objects to the exemptions claimed by the debtor, those assets will not be a part of the bankruptcy estate and will not be liquidated and used to pay unsecured creditors.

In Massachusetts, each debtor must choose between Massachusetts state law exemptions and the federal exemptions provided under section 522(d) of the Bankruptcy Code. This choice is extremely important. Deciding which assets are exempt and how to protect certain assets from creditors is one of the more important and difficult aspects of a bankruptcy case. It is extremely important to consult an attorney with any questions regarding the availability of exemptions.

### **What is a Massachusetts declaration of homestead?**

The Massachusetts homestead law is Chapter 188 of the Massachusetts General Laws. It allows homeowners to protect some of the equity in their home from creditors. In Massachusetts, the homestead protection is not automatic. To obtain the benefit of the homestead protection in a bankruptcy case, a homeowner **MUST** execute a declaration of homestead and record it with the appropriate registry of deeds **PRIOR** to filing a bankruptcy petition. It is extremely important to consult an attorney *before* filing a bankruptcy petition with any questions regarding the homestead exemption. A declaration of homestead will not be valid unless it is completed and filed properly.

Furthermore, a debtor who used the Massachusetts homestead exemption may not use the exemptions set forth in section 522(d) of the Bankruptcy Code.

### **What is the new credit counseling requirement, how do I comply with it, and where do I find an approved credit counseling agency?**

As of October 17, 2005, in order to be eligible to file for bankruptcy, individual debtors must, subject to specific exceptions set forth below, receive credit counseling within 180 days prior to filing a bankruptcy petition. Specifically, the law requires the debtor to receive, from an approved agency, a briefing to outline the opportunities available for credit counseling and creation of a financial management plan. This may be done in an individual or group session and may be completed in person, on the phone, or even via the Internet.

The Bankruptcy Code provides very limited exceptions to the credit counseling requirement.

1. The requirement may be **temporarily** deferred, subject to approval by the Bankruptcy Court, if the debtor is able to describe exceptional circumstances that prevented him or her from obtaining the approved credit counseling service during the 5-day period prior to the date that the petition was filed. If the Court is satisfied with the debtor's statement, the credit counseling requirement *must be completed* by the debtor within 30 days after the petition was filed. The Bankruptcy Court may also extend this 30-day period, by motion, for another 15 days if the debtor demonstrates good reason for the extension. See [Local Form 9: Request for Extension to File Credit Counseling Certificate](#).
2. The credit counseling requirement is waived with respect to debtors who are either incapacitated, disabled, or on active military duty in a military combat zone. That determination is made by the Bankruptcy Court upon request of the debtor.

A list of court-approved credit counselors is available on the U.S. Trustee's website or from this hyperlink: [Approved Credit Counseling Agencies](#).

### **What documents do I need to start a bankruptcy case?**

1. Debtors must file the following Official Bankruptcy Forms (see discussion below on how to file documents with the Bankruptcy Court):

- [Form 1 - Voluntary Petition](#)
- [Form 6 - Schedules A through J, Summary, and Declaration](#)
- [Form 7 - Statement of Financial Affairs](#)
- [Form 8 - Statement of Intention](#)
- [Form 22A - Statement of Current Monthly Income and Means Test Calculation](#)

2. Debtors must file the following local forms, available on the Court's website at [www.mab.uscourts.gov](http://www.mab.uscourts.gov):

- [Creditor Matrix](#) (a list of people owed money by the debtor, with complete addresses)
- [Verification of Creditor Matrix](#)

3. Individuals filing a chapter 7 or 13 bankruptcy petition must file a certificate from the approved non-profit budget and credit counseling agency that verifies the debtor's compliance with the credit counseling requirement and describes the services provided to the debtor and a copy of the debt repayment plan, if any, developed by the debtor and the credit counseling agency. In the event that a debtor requires an extension of time to file the credit counseling certificate, the debtor must file [Local Form 9: Request for Extension to File Credit Counseling Certificate](#).

4. Individuals filing a petition whose debts are primarily consumer debts shall file either:
- a. a certificate from the attorney or bankruptcy preparer (if there is one) indicating that the debtor received a notice describing different bankruptcy chapters and the services available from the credit counseling agencies as well as a statement specifying that anyone who knowingly or fraudulently conceals assets or makes false statements under oath is subject to fine, imprisonment or both, or
  - b. if no one assisted the debtor, then the debtor must file a certificate that such notice was received from the Bankruptcy Court and read by the debtor

5. Debtors filing under chapter 13 must also file a Chapter 13 Plan

**Chapter 13 debtors must file a plan, which is a proposal to repay debts. The Massachusetts Local Bankruptcy Rules include an official form for a chapter 13 plan which is required in this jurisdiction.** (See link: [Local Form Chapter 13 Plan](#).) The schedules, statements and plan must contain responses to every question. If an answer is "none" or "not applicable," make sure to indicate that in writing. Use continuation pages if more space is needed. Make sure to sign each form where required. If filing a joint petition, make sure that the spouse also signs. Prepare the creditor matrix (a mailing list of your creditors) according to the matrix format instructions or the Clerk's Office will not be able to scan it into the computer. These instructions can be found under the "[Required Papers and Proper Form of Pleadings](#)" section of this web page.

*NOTE: Failure to file all of the required schedules within 45 days of the date that the petition is filed shall result in the automatic dismissal of a debtor's bankruptcy case unless an extension of time to file required documents is requested. The Bankruptcy Code may also prevent a debtor from filing a new case for 180 days if he or she fails to file the additional required documents on time (or fails to obtain an extension of time to do so).*

**What are the minimum required documents that can be submitted to the Bankruptcy Court when filing a petition? When must the remainder of the documents be filed?**

If a debtor needs to start a bankruptcy case quickly, he or she may file only the Voluntary Petition (Form 1), the Creditor Matrix with the accompanying Verification and the filing fee. This is called a “skeleton filing.” If the matrix is not filed with the petition, the Bankruptcy Court will issue an order requiring that it be filed within three days to avoid dismissal of the bankruptcy case. *The remaining required documents (the Schedules and Statements) must be filed within fifteen days after filing the petition or the Court may dismiss the bankruptcy case.* Short extensions can be granted by the Bankruptcy Court for good cause shown and upon timely request by the debtor. Please click on the following link to access this Court’s specific instructions on filing both a full petition and a “skeleton filing” under each chapter:

[http://www.mab.uscourts.gov/Filingfee.htm#Filing\\_of\\_Req\\_Papers](http://www.mab.uscourts.gov/Filingfee.htm#Filing_of_Req_Papers)

**Where can I find the Forms needed to file for bankruptcy?**

The required forms can be obtained at any Clerk’s Office or on this website by clicking the following link: [Official Forms and Official Local Forms](#)

**What is the “means test”?**

On or after October 17, 2005, individual debtors with primarily consumer debts who file a petition for bankruptcy under chapters 7, 11 or chapter 13 must complete an income-based “means test.” The means test calculates the difference between a debtor’s current monthly income (CMI) and his or her allowed expenses (see explanation of these terms below). The means test is intended to determine whether a debtor has the “means” to repay some percentage of his or her nonpriority unsecured debts. This is important because, under chapter 7, most - if not all - of a debtor’s nonpriority unsecured debts will be discharged. In order to report and calculate a debtor’s CMI and allowed expenses for the completion of the means test, official form B22A has been created for chapter 7 debtors, B22B for individual chapter 11 debtors and B22C for chapter 13 debtors . Forms B22B and B22C are used in order to determine the appropriate payments plans for debtors in chapters 11 and 13. Each form is available for downloading on the Bankruptcy Court’s website at [www.mab.uscourts.gov](http://www.mab.uscourts.gov) or from the following link. (Official Forms [B22A](#), [B22B](#) and [B22C](#))

**The means test, and its corresponding presumption of abuse, is inapplicable to debtors who earn below the median family income, which is an amount set forth by the United States Department of Justice and that varies from state to state and is calculated based on the debtor’s family size.**

The following are the current median family income values for Massachusetts.

1 person household	-	\$47,176
2 person household	-	\$55,291
3 person household	-	\$71,416
4 person household	-	\$85,157
* add \$6,300 for each person in excess of four		

Please note that these amounts are subject to change. Click on [Census Bureau Median Family Income By Family Size](#) for the most recent figures.

### **Current Monthly Income (CMI)**

Current Monthly Income (CMI) is a term defined by the Bankruptcy Code in section 101(10A). A debtor's CMI refers to the monthly average of certain income that the debtor (and in a joint case, the debtor's spouse) received in the six calendar months preceding the date of the bankruptcy filing. The definition includes (1) income from all sources, whether or not it is taxable, and (2) any amount paid by an entity other than the debtor (or the debtor's spouse in a joint case) on a regular basis for household expenses, the debtor's dependents, and the debtor's spouse. The definition excludes benefits received under the Social Security Act and certain payments to victims of terrorism, war crimes, and crimes against humanity.

### **Allowed Expenses or Deductions**

There are certain expenses that the Bankruptcy Code recognizes as necessary for all debtors. These expenses are derived from three different types of standardized amounts, which are issued by the Internal Revenue Service (IRS). First, the IRS National Standards cover the following expenses: food costs, housekeeping supplies, apparel and laundry, personal care products and services, and a small amount for miscellaneous expenses. Second, the IRS Local Standards cover housing, utilities, and transportation. Transportation includes automobile payments, insurance, maintenance, fuel, parking, as well as public transportation. In Massachusetts, a debtor's allowed transportation expenses will vary, depending on whether the debtor resides within or outside of the Boston Metropolitan Region. Finally, the IRS Other Necessary Expenses include a variety of expenses that are listed in both Forms B22A (chapter 7) and B22C (chapter 13). Included in these expenses are taxes that are incurred monthly, such as income tax (but not real estate or sales tax), life insurance, childcare, health care, and student loans. Additionally, a chapter 13 debtor may include the administrative expenses associated with funding his or her repayment plan as an Other Necessary Expense. (This, of course, is irrelevant to the chapter 7 means test). The IRS website allows users to navigate through the different standard deduction amounts, which are based on a location that the user is able to specify. This site may be accessed at the following link: [Means Testing Census Bureau, IRS Data and Administrative Expenses Multipliers](#). This website is helpful in filling out both Forms B22A and B22C.

## **Presumption of Abuse**

If the difference between the CMI and allowed monthly expenses reflected in a completed Form B22A statement times the number 60 (the maximum length of a Chapter 13 plan) either (i) equals or exceeds \$10,000 or (ii) equals or exceeds \$6,000 and that amount would pay at least 25% of the debtor's nonpriority unsecured claims, abuse of the bankruptcy laws will be "presumed" if the debtor continues under Chapter 7. In other words, it will be presumed that the chapter 7 debtor is abusing the bankruptcy system by avoiding repayment of debts that he or she could actually afford to repay under chapter 13. The practical effect of such a presumption if unrebutted (see below) is that the chapter 7 case may be dismissed or, with the debtor's consent, converted to chapter 13, where a larger percentage of nonpriority unsecured debts will be paid out of the debtor's disposable income through a repayment plan.

A debtor may rebut, or contest, a presumption of abuse by showing that "special circumstances" exist that entitle the debtor to proceed under chapter 7. It will be the debtor's burden to prove the existence of special circumstances, such as a serious medical condition, or a call to active duty in the armed forces. The debtor may also show why his or her circumstances justify a higher expense allowance or an adjustment of his or her CMI. If the debtor successfully proves such special circumstances, he or she may proceed with the bankruptcy under chapter 7. However, if the debtor has not met his or her burden, the case will either be dismissed or converted to chapter 13.

## **How do I know if a debt is secured, unsecured, priority, or administrative in order to fill out my schedules correctly?**

The type of debt owed depends on the agreement or circumstances which gave rise to the debt. In bankruptcy, debts are divided into four categories: secured, priority, administrative, and general unsecured debts.

**Secured Debt:** A secured debt is a debt that collateralized by the debtor's property. A creditor whose debt is secured has a right to take its collateral to satisfy the debt. For example, most people who buy new cars on credit give the lender a "security interest" (often called a "lien") in the car. This means that the debt is a secured debt – it is "secured" by the car and the lender can take (repossess) the car if the borrower fails to make payments on the loan. A home mortgage is another example of a secured debt.

**Priority Debt:** A priority debt is a debt entitled to priority in payment, ahead of most other debts, in a bankruptcy case. A listing of priority debts is given, in general terms, in 11 U.S.C. § 507 of the Bankruptcy Code. Examples of priority debts are some taxes, wage claims of employees, and alimony, maintenance or support of a spouse, former spouse, or child.

**Administrative Debt:** An administrative debt is also a priority debt and is one created when someone provides goods or services to the debtor's bankruptcy estate (obviously, after the bankruptcy case is filed). Examples of an administrative debt are the fees generated by the trustee in representing the bankruptcy estate or by a Chapter 13 debtor's attorney.

**Unsecured Debt:** A debt is unsecured if the debtor owes someone a sum of money, but the creditor has no lien on the debtor's property with which to satisfy the debt. The debt is said to be "generally unsecured" if the claim is also not entitled to any priority of payment under the Bankruptcy Code. For example, the amount owed on a credit card is most often a general unsecured debt.

### **What is a fraudulent transaction, and how will it affect my bankruptcy?**

There are numerous potential adverse consequences of a finding that a debtor has committed fraud prior to or in connection with a bankruptcy case.

A fraudulent transfer occurs when the debtor conveys property with intent to hinder, delay or defraud his or her creditors, or when property is transferred for less than reasonably equivalent value without regard to the debtor's actual intent. In general, the bankruptcy trustee may avoid transfers made by the debtor within two years before the bankruptcy filing, and state law allows the trustee to avoid fraudulent transfers made within four years prior to bankruptcy. The recipient of the fraudulent transfer may be required to either return the fraudulently transferred property or pay damages to the bankruptcy estate. The trustee may also seek to avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the bankruptcy petition if the transfer was made to a self-settled trust (a trust that is funded with money that comes directly from the beneficiary of the trust), if the transfer was made by the debtor, the debtor is the beneficiary of the trust, and the debtor made the transfer with the actual intent to hinder, delay or defraud his creditors.

If the court finds that a debtor has committed certain fraudulent acts, such as an intentional fraudulent transfer, has made a false oath in connection with the case, has failed to explain satisfactorily any loss of assets, has refused to obey an order of the court, the debtor's discharge will be denied.

Certain fraudulent acts by the debtor, such as a false oath in connection with the bankruptcy case, attempted bribery, or concealment of assets, may also lead to criminal penalties, including fines and imprisonment as provided in Title 18 of the United States Code.

### **III. How to file a bankruptcy petition**

#### **Where do I file my bankruptcy petition, schedules, and other documents?**

The United States Bankruptcy Court for the District of Massachusetts has two locations where the bankruptcy forms may be filed – Boston or Worcester – depending on the county in which the debtor resides. The Bankruptcy Courts' addresses are found in [Appendix 5 of the Massachusetts Local Bankruptcy Rules](#).

### **How do I “file” documents with the Bankruptcy Court?**

Pro se parties (persons not represented by an attorney and doing their own filing) may file bankruptcy petitions, pleadings, and other papers by mail or in person at the Clerk's Office public counters in Boston or Worcester. Some pleadings may also be filed by facsimile machine (see “Which documents can I file via facsimile?” below).

Absent extraordinary circumstances, all documents must be filed during business hours - Monday through Friday between the hours of 8:30 A.M. and 4:30 P.M. See “What are emergency or expedited motions and how do I file one” below for how to file a pleading when extraordinary, compelling circumstances require delivery of a document to the Clerk's Office after hours.

After completing and assembling the original and all copies of the bankruptcy petition, mail or deliver them to the appropriate Clerk's Office accompanied by the filing fee payment. If the debtor cannot afford to pay the entire fee at once, he or she may complete an application to pay the filing fee in installments. (See “Must I pay all at once?” below.) For some debtors with limited income and demonstrating extreme hardship, the filing fee may even be waived. See [Application for Waiver of the Chapter 7 Filing Fee](#). The Clerk's Office will file stamp and return one copy of the bankruptcy petition to the debtor. If the bankruptcy petition is filed by mail, the debtor must include a self-addressed envelope with sufficient postage and of sufficient size to obtain his or her file-stamped copy.

**Attorneys** must now file all documents electronically through CM-ECF, the Bankruptcy Court's online filing system. CM-ECF runs 24 hours a day, 7 days a week so attorneys may file pleadings at any time during any day. This website provides information on how an attorney registers for his or her *required* training on how to use CM-ECF. Click the following links for the [ECF Training Schedule](#) and [ECF Login/Password Application](#).

**Creditors** may also register in order to obtain limited access to the CM-ECF system for the sole purpose of filing proofs of claim. This website provides information on how a creditor may register for that authority. [Application for Limited ECF Access](#)

### **What are emergency or expedited motions and how do I file one?**

Sometimes events arise while a debtor is in bankruptcy that require immediate, or expedited, attention by the Bankruptcy Court. Examples would include an eviction by a landlord or a foreclosure sale that is scheduled to take place in a matter of days. Or, from a creditor's perspective, the destruction or transfer of collateral. An emergency motion is one that requires a hearing before the Court within 2 days; an expedited motion requires a hearing within 7 days.

**Pro se parties** may file an emergency pleading before 8:30 a.m. or after 4:30 p.m. on court days or on weekends or holidays *only in emergency circumstances*, which must be approved by the Clerk. The party must make prior arrangements for an emergency filing by contacting the Clerk.

For Eastern Division cases, you should contact the Clerk's Office in Boston at **(617) 565-8950** during business hours.

For Western Division cases, you should contact the Clerk's Office in Worcester at **(508) 770-8900** during business hours.

At all other times, parties for both divisions should contact the Clerk or his or her designee by calling **beeper no. (800) 759-8888 and entering PIN # 1309280**.

**Attorneys** file emergency or expedited pleadings through CM-ECF, the Bankruptcy Court's electronic 24-hour filing system, just as he or she would file any other document with the Court.

### **Which documents can I file via facsimile (fax)?**

Only (i) pro se parties and (ii) attorneys who have been granted prior permission by the Clerk to file documents at a time when their computers or the court's CM-ECF system is disabled may transmit those documents by facsimile machine or similar device. Even in those limited instances, the following documents may not be filed, absent prior permission of the Clerk, the Chief Deputy Clerk or their designees (see [Local Rule 5005-4](#)):

1. documents constituting a pleading for which a filing fee is required
2. documents which exceed 35 pages, exclusive of the certificate of service

The Bankruptcy Court deems documents filed via facsimile to be an original filing within the meaning of [Federal Rule of Civil Procedure 5\(e\)](#) and [Federal Rule of Bankruptcy Procedure 9011](#). Therefore, a subsequent original document of one that was already filed by facsimile SHOULD NOT be filed.

The Bankruptcy Court deems documents received by facsimile after 4:30 p.m. as being received on the following court day.

The facsimile machine telephone numbers can be found on this website at: [Court Telephone Numbers](#).

**What are the court's filing fees for filing a bankruptcy petition? Must I pay the fees all at once? Can the fees be waived?**

Please refer to the "[Filing and Fee Requirements](#)" section on this website for current filing fees.

The filing fee may be paid by cash, money order or certified bank check. The Clerk's Office does not accept personal checks.

If you cannot afford to pay the entire fee all at once, or are seeking a fee waiver, you must file the appropriate application with the Bankruptcy Court. Both applications are available at the Clerk's Office or may be downloaded from this web site. The Court may approve a fee waiver or installment payments under certain limited circumstances. To qualify for a waiver of the filing fee the debtor's annual household income must fall below 150% of the poverty guidelines last published by the United States Department of Health and Human Services and the debtor must demonstrate hardship. [Poverty Guidelines](#).

#### **IV. What happens AFTER the commencement of a bankruptcy case**

##### **How do I change or correct information on the petition, schedules, and statements that I have already filed with the Clerk's Office?**

The information contained in a bankruptcy petition and the related forms is signed under the penalty of perjury. Therefore, you must be certain that the information is correct when you sign these documents. If you later discover that something is inaccurate, you may correct the documents by filing a motion to amend the appropriate document.

##### **What is a motion?**

A motion is a written formal request in which a party asks a court to take action. It sets forth the request, together with the grounds for the action requested. In most instances, if an interested party wants an order from the court regarding the bankruptcy case, or if an interested party wants the court to act on a case (e.g., schedule a hearing), a motion must be filed. Certain requests for relief (those listed in [Federal Rule of Bankruptcy Procedure 7001](#) must be made by the filing of a complaint in the Bankruptcy Court to commence an "adversary proceeding." Great care must be paid in distinguishing which requests must be filed by motion and which must be filed by an adversary proceeding.

Note that the Bankruptcy Court does not rule on letters (see [Local Rule 9013-1](#) ). Therefore, interested parties should not write a letter to the Court requesting advice or asking the Court to grant relief.

**A motion may be ruled on by the court with or without a hearing as is appropriate under the circumstances of the particular request and case. The court may direct the moving party to notify interested parties of an objection deadline and court hearing. The movant must comply with the court's directions, and prove proper notification of interested parties by the filing of a certificate of service.**

## **What is a certificate of service?**

When you file a motion or other document with the Court, you must serve it on interested parties and file a certificate of service. A certificate of service is simply your written statement that you have provided a copy of the document, to which the certificate of service is attached, to the proper parties. A certificate of service must list the name and address of each person who was served with the document. Service on an attorney must also provide the name of the party or parties whom that attorney represents. If [Federal Rule of Bankruptcy Procedure 2002](#) requires that you serve all creditors, the certificate of service must specifically state whether all creditors have been served and must list the names and addresses of the parties served (see [Local Rule 9013-3](#)). You should also indicate by what means you forwarded a copy of the pleadings to the other parties - for example, whether the document was sent via first class postage pre-paid mail, personal delivery, overnight mail, facsimile, etc. .

***Filing a certificate of service with your pleadings is very important. The Bankruptcy Court may deny the relief you seek in a pleading if you do not file a certificate of service.***

## **What is an adversary proceeding and when is an adversary complaint required?**

An adversary proceeding is a civil action within the bankruptcy case where a plaintiff sues one or more defendants. An adversary proceeding, as opposed to a motion, is required when a party seeks certain types of relief, such as a restraining order and injunction, denial of or exception to discharge, or for turnover of property. An adversary proceeding requires a filing fee, currently in the sum of \$250. The court will issue a summons which the plaintiff must serve on the defendant, who must respond to the complaint. The parties will conduct discovery, and the court will determine how to dispose of the complaint, either by summary disposition or after a trial.

## **How do I protect property that is collateral for one of my secured debts from being repossessed?**

The automatic stay (see discussion above) protects a debtor's property from repossession for a limited time. However, where a Chapter 7 debtor has granted a creditor a security interest to secure payment of consumer debt, the debtor must indicate in the [Statement of Intentions \(Official Form 8\)](#) whether he or she intends to surrender collateral to the creditor or whether he or she plans to redeem the property or reaffirm the debt. If a debtor decides to either redeem or reaffirm the debt, the redemption or reaffirmation agreement must be filed with the Bankruptcy Court within 30 days of the first meeting of creditors. If the debtor does not exercise either of these options, the automatic stay will terminate with respect to that collateral and the property will no longer be considered part of the bankruptcy estate. In other words, failure to follow through with the intention to redeem or reaffirm may have the same effect as surrendering that

collateral because, like a creditor who is granted relief from the automatic stay, the creditor here may initiate proceedings to seize its collateral.

### **What is a reaffirmation agreement?**

A reaffirmation agreement is an agreement by which a chapter 7 debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. In order to be effective and enforceable, the agreement must be filed in the debtor's bankruptcy case. If the reaffirming debtor is not represented by an attorney, the Bankruptcy Court will hold a hearing on the agreement. In some instances, the Court will hold a hearing even where the debtor is represented by counsel. The debtor must appear in person at the hearing. The judge will ask questions to determine whether the reaffirmation agreement imposes an undue burden on the debtor or on his or her dependents, and whether it is in the debtor's best interest. Since reaffirmed debts are not discharged, the Bankruptcy Court will normally permit the reaffirmation of secured debts only where the collateral is important to a debtor's daily activities.

*Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. Debtors need not reaffirm a debt in order to repay it; the law does not prohibit a debtor from repaying a discharged debt voluntarily--it only prohibits a creditor from collecting the debt.* But there may be valid reasons for wanting to reaffirm a particular debt. For instance, many debtors do not want to surrender their property - especially a home or a car - but cannot afford the lump sum payoff that is typically required to redeem that property.

If a debtor reaffirms a debt and fails to make the payments as agreed, the creditor can take action against the debtor to recover any property that secures the debt, and the debtor will be personally liable for any remaining debt to that creditor. Because of this, a reaffirmation agreement takes away some of the effectiveness of a debtor's discharge. It is recommended that debtors consult legal counsel before agreeing to a reaffirm a debt. After the debtor signs a reaffirmation agreement, he or she has 60 days after the agreement is filed to change his or her mind and rescind the agreement. However, if the discharge date is more than 60 days after the agreement is filed, a debtor has until that discharge date to rescind the agreement.

### **What does it mean to "redeem" collateral?**

Outside of bankruptcy, a secured creditor can repossess the property that secures its loan in the event that the borrower defaults on the repayment obligation. The property to which a lien attaches is called collateral. The secured creditor has the right to sell its collateral and use the proceeds to satisfy its claim. Generally, bankruptcy leaves a creditor's lien in place. This means that despite the bankruptcy filing, if a secured creditor is granted relief from the automatic stay or if the automatic stay terminates by operation of law (see above) the secured creditor will be able to sell the collateral to satisfy its claim.

The Bankruptcy Code allows a debtor to "redeem" collateral. An individual chapter 7 debtor can keep certain kinds of collateral – tangible, personal property intended primarily for personal, family, or household use – by paying the holder of a lien on the property the amount of its "allowed secured claim." This amount is typically the lesser of the amount still owed to the creditor or the value of the property. Without the option of redemption, a chapter 7 debtor could not keep the collateral without first entering into a reaffirmation agreement and remaining legally obligated on the entire debt - which may exceed the value of the collateral. The option to redeem applies only to property that a debtor has claimed as exempt or that the trustee has abandoned. With redemption, a debtor can often get liens released on personal household possessions for less than the outstanding debt. Unless the creditor consents to payments over time, a debtor must generally pay the redemption amount in one lump-sum payment to the creditor.

### **What is the creditors' meeting? What can I expect to happen there?**

Section 341 of the Bankruptcy Code requires that the United States Trustee convene and preside over a meeting of a debtor's creditors. This "meeting of creditors," which is also referred to as a section 341 meeting, is held in every bankruptcy case. The debtor **must** attend the meeting; in many cases it is the only meeting or hearing that the debtor must attend. The first meeting of creditors usually occurs between twenty and forty days after the date that the bankruptcy petition is filed with the Bankruptcy Court. When the bankruptcy petition is filed, the Clerk's Office sends out a notice that sets the date for the meeting. In chapter 7, chapter 12, and chapter 13 cases, the meeting is conducted by the trustee who the United States Trustee has assigned to the case. No bankruptcy judge is present at the meeting. In chapter 11 cases, where (usually) the debtor is in possession of the business assets and no trustee is assigned, a representative of the United States Trustee's office conducts the meeting. Creditors are not required to attend these meetings and, in general, do not waive their rights by failing to appear.

The meeting of creditors permits the trustee or representative of the United States Trustee's Office to review the debtor's petition and schedules with the debtor face-to-face. The debtor is required to answer questions under penalty of perjury concerning the debtor's conduct, assets, liabilities, financial condition, and any matter that may affect administration of the bankruptcy estate or the debtor's right to a discharge. This information enables the trustee or representative of the United States Trustee's Office to understand the debtor's circumstances and facilitates the efficient administration of the case.

Section 341 meetings are typically short in duration. The trustee or representative of the United States Trustee's Office may continue the meeting if he or she is not satisfied with the information that the debtor provides. It is imperative that the debtor attends the meeting of creditors. *If the debtor fails to appear, the trustee or representative of the United States Trustee's Office may request that the Bankruptcy Court dismiss the bankruptcy case or that the Court order the debtor to cooperate or be held in contempt of court for willful failure to cooperate.*

In addition, debtors are required to file with the trustee at least seven (7) days prior to the Section 341 meeting (i) all payment advices or other evidence of payments received by the debtor within 60 days before filing, made to the debtor from any and all employers; and (ii) their most recent tax returns.

### **What is the required financial management course and where can I find a course?**

Individual chapter 7 debtors and chapter 13 debtors are required to complete a financial management course in order to receive the bankruptcy discharge. The financial management course will be conducted by a non-profit company, and will provide the debtor with instruction on how to manage his or her finances going forward. The Bankruptcy Code provides very limited exceptions to this requirement. For example, if the debtor is disabled, incapacitated, or on active duty in a combat zone the requirement may be excused.

Please note that this requirement is separate from and in addition to the pre-bankruptcy credit counseling requirement. A list of approved financial management course providers is available on this website. [Approved Debtor Education Agencies](#).

### **What can I do if a creditor continues to try to collect on a debt that I owe after I have filed my bankruptcy petition and where the automatic stay applies?**

If the automatic stay applies to a debtor's case and a creditor continues collection actions against the debtor, that creditor is violating the automatic stay. A debtor may request an injunction or monetary sanctions against the creditor and should also inform the United States Trustee and/or the trustee appointed to the case.

### **What can I do if a creditor continues to try to collect on a debt that was discharged in my bankruptcy case?**

The best thing to do will depend on the specific facts involved. It is recommended that a debtor contact an attorney with any questions. The following steps may be taken by the debtor.

First, make sure the creditor is aware that the discharge order entered and that it applies to the creditor's debt. This will often solve the problem.

Second, if the creditor nonetheless persists and seeks a judgment or execution against the debtor in court, the discharge order is a viable defense to the collection action. In the answer to the creditor's complaint, the debtor should inform the court in which the collection action is pending that the debt was discharged through bankruptcy. Be prepared to supply that court with the documents necessary to prove this, especially copies of the schedule with the creditor's name listed, the discharge order, and the docket from the bankruptcy

case. You may wish to obtain certified copies of these documents from the Bankruptcy Court; note that there is a fee for certification of a document.

Third, a motion to reopen the bankruptcy case may be filed with the Bankruptcy Court. If the debtor and the creditor disagree about whether the creditor's claim was discharged, the Bankruptcy Court can be asked to resolve that disagreement. If it is thought that the creditor is simply disregarding the discharge in bad faith, a motion to hold the creditor in contempt (that is, in deliberate violation of the discharge order) may be filed. The debtor may also seek an order from the Bankruptcy Court to enjoin the creditor from taking further collection actions while the issue is being resolved.

These options are not exhaustive or mutually exclusive. In general, if the first option does not work, or if the creditor has commenced legal proceedings against a debtor, it is in that debtor's best interest to seek legal advice from an attorney experienced in bankruptcy law.

### **What are claims? What are proofs of claims?**

**Claims:** In the broadest sense, a claim is any right to payment held by a person or company against the debtor and/or the bankruptcy estate. A claim does not have to be past due and can include sums which will come due in the future. Claims also include rights to payment which are not yet determined, such as an unresolved lawsuit against the debtor or even the right to be paid by the debtor in the future, so long as that right arose before the bankruptcy case was filed. In filling out the bankruptcy schedules, debtors should include any debts owed, past, present, or future, as well as those that are contingent (e.g., some guarantees) or even disputed by the debtor, so long as the creditor claims that the monies are owed by the debtor. Note: Claims which are not listed are, in some cases, not dischargeable.

**Proofs of Claims:** The written statement filed in a bankruptcy case setting forth a creditor's claim is called a proof of claim. Claims should be submitted on a [proof of claim form](#) and should include a copy of the documents on which the claim is based. If the claim is secured, the proof of claim should also include evidence of the secured status of the debt. With limited exceptions, a creditor (other than a governmental unit) in chapter 7, 12, or 13 case must file a proof of claim within ninety (90) days after the first date set for the meeting of creditors. If a creditor files a claim after the deadline for doing so set by the Clerk's Office, the debtor may object to the claim as being untimely filed.

### **How do I object to a creditor's claim?**

If the trustee or a chapter 11, 12, or 13 debtor believes that the debt is not owed or believes the claim misrepresents the amount or kind of debt (e.g., secured or priority) owed, they may file an objection to the claim. In some circumstances, an objection to claim can be initiated by filing an objection to the claim in the Bankruptcy Court; in other

circumstances, it must be initiated by filing an adversary proceeding. If a debtor anticipates objecting to claims, he or she should seek the advice of an attorney as soon as possible because the objection process can be complicated and time sensitive.

### **What if I disagree with an order that was entered in my case?**

There are two options: a motion to reconsider the order may be filed with the Bankruptcy Court, or the order may be appealed. The deadline for taking either action is 10 days from entry of the contested order. If any party debtor decides to appeal a Bankruptcy Court order, he or she must file a notice of appeal with the Bankruptcy Court. When an appeal is filed, the matter is referred to the Bankruptcy Appellate Panel (BAP) or (at the election of any party to the appeal) to the United States District Court. A filing fee, currently in the sum of \$255, must be paid when the notice of appeal is filed. At various stages in the appellate proceedings, the debtor will be required to file additional documents.

### **What should I do if I cannot make my chapter 13 payment?**

If the debtor cannot make a chapter 13 payment on time according to the terms of the confirmed plan, the debtor should contact the chapter 13 trustee and explain the problem. If it is a temporary problem and the payments can be made up, the debtor should advise the trustee of the time and manner in which the debtor will make up the payments. Significant changes in the debtor's circumstances may require that the plan be formally amended by motion of the debtor. If the problem is permanent and the debtor is no longer able to make payments under the plan, the trustee may request that the Bankruptcy Court dismiss the case or convert the case to one under another chapter.

### **Can creditors be added after the discharge order is entered?**

In general the schedules may be amended to add creditors which existed as of the date of the filing of the bankruptcy petition. This requires a motion to amend the appropriate schedules and the creditor matrix. A filing fee must be paid when the motion to amend is filed. **In addition, a chapter 13 debtor may amend the schedules to include certain post-bankruptcy consumer debt.**

### **What should I do if I realize that I inadvertently failed to list a creditor in my schedules after my bankruptcy case is closed?**

An attorney experienced in bankruptcy law should be consulted because the answer depends on the specific facts of the case. However, in general, a debtor may file a motion to reopen the case and then may file a motion to amend the appropriate schedules and the creditor matrix. It will be the debtor's responsibility to serve the added

creditor(s), in addition to all other creditors, the United States Trustee, and any trustee appointed to the case, with notice of the motion to reopen the case.

### **Is it possible to convert my case from one chapter under the Bankruptcy Code to another?**

Yes. A debtor, or any other party in interest, may file a motion to convert the case to any other chapter under which the debtor is eligible to be a debtor. While conversion from one chapter to another is usually automatic, the Bankruptcy Court may deny conversion depending on the circumstances of the case.

### **What does it mean if a case is dismissed?**

A dismissal order ends the bankruptcy case before a discharge order enters. When the Court dismisses the case, the automatic stay ends and creditors may start to collect debts again. An order of dismissal does not free the debtor from any debt. The most common reason for dismissing a case is because the debtor has failed to do something that he or she is required to do (such as appear for the meeting of creditors or timely file all required documents). Unless the debtor appeals the order or seeks reconsideration of the order of dismissal within 10 days, the Clerk will automatically close the case.

### **Note to debtors who have had a bankruptcy case dismissed in the past:**

Debtors who have had cases dismissed in the past may have only limited protection by automatic stay or may have no automatic stay of creditors' collection actions at all!

- The automatic stay will be *limited to 30 days* if a chapter 7, 11, or 13 debtor has had 1 other bankruptcy case pending within one year of the filing of the later bankruptcy petition and that first case was dismissed.
- The automatic stay *shall not go into effect* in a bankruptcy case filed by an individual debtor who has had 2 or more bankruptcy cases pending within 1 year of the filing of a later bankruptcy petition and those prior cases were dismissed.

In order to obtain the full protection of the automatic stay in each of the foregoing instances, the debtor must file a motion with the Bankruptcy Court detailing the reasons for the previous case dismissal(s) and any changes of circumstances since that time which would justify the extension or imposition of the automatic stay.

**Exception:** These limitations do not apply where the former case(s) was filed under chapter 7 and was dismissed under section 707(b) for abuse of the Bankruptcy Code, but the later case is filed under a chapter other than chapter 7. This means, for example, that a prior chapter 7 case dismissed under the means test will not effect the automatic stay of a later bankruptcy case that is filed under a different chapter, such as chapter 13.

## **How can I get a case reopened?**

Any party in interest may file a motion to reopen a bankruptcy case, with the applicable [filing fee](#). The bankruptcy judge will determine whether or not to reopen the case and may hold a hearing on the matter.

## **INFORMATION ABOUT PENDING BANKRUPTCY CASES**

### **What information does a case number provide?**

A bankruptcy case number consists of the year of filing, five additional digits, and the initials of the judge assigned to the case. Example: 97-00000-JNF is a case filed in 1997, followed by a five-digit case number, assigned to the Honorable Joan N. Feeney.

### **How can I get information about a pending bankruptcy case?**

You may obtain case information by mail, via the telephone, via the internet, or in person at the Clerk's Office.

#### **A. Obtaining Case Information By Mail**

To obtain case information by mail, send a written request containing the case number, the case name, the information you request, your name, address, a telephone number where you can be reached during business hours, and the best time to call, with a self-addressed, stamped envelope. Send your request to the [Bankruptcy Court Clerk's Office](#). Your written request for information requiring a physical search of the Court's records must be accompanied by a cashier's check, certified check, or money order sufficient to cover the applicable [search fee](#).

#### **B. Obtaining Case Information By Telephone**

The telephone number for the Clerk's Office in Boston is (617) 565-8950; the telephone number for the Clerk's Office in Worcester is (508) 770-8900. The Clerk's Office has an automated system that provides 24-hour access to case information. The Voice Case Information System, or VCIS, uses a computer-generated synthesized voice device to read case summary information directly from the Bankruptcy Court's computer in response to touch-tone telephone inquiries. VCIS is provided free of charge. To use VCIS, call either (617) 565-6025 or 888-201-3572.

#### **C. Obtaining Case Information through the Internet**

The Public Access to Court Electronic Records, or PACER, information system allows you to access case information with your computer. Using PACER, you can access lists

of newly filed cases, case summary information, and docket entries. To use PACER, you must obtain a login identification number and password from the San Antonio billing center by calling 1-800-676-6856 or online at the [PACER Service Center](#). You must also pay a fee to access the PACER system. You may access the WEBPACER system from this web site. You may obtain basic case information that you are unable to access using an automated system free of charge by calling the Clerk's Office.

#### **D. Obtaining Case Information in Person**

As a general rule, all documents in the Bankruptcy Court's case files and all court dockets are public records and are available to the public for inspection. You may view files and dockets at the Clerk's Office public counters during business hours. Under no circumstances may you remove files from the Clerk's Office. The Clerk's Office is the keeper of the court's records and is responsible for maintaining the accuracy and integrity of the files. You may also obtain information free of charge through the public PACER terminal at the Clerk's Office.

Files on closed cases are stored at the Federal Records Center in Waltham, Massachusetts. The Clerk can recall files and dockets stored at the Federal Records Center. Please call the Clerk's Office for assistance with this process. For more information about the Federal Records Center in Waltham, visit the National Archives and Records Administration web site at [NARA's Northeast Region Boston](#). You may call or visit the Federal Records Center to review a file and obtain copies, but you must obtain the necessary file storage location information from the Clerk's Office beforehand.

#### **How are certified copies of documents obtained from the Clerk's Office?**

You should call or come to the Clerk's Office to ascertain the appropriate fee. Please be sure to have the case number, filing date, and title of the specific documents you wish to have certified.

### **CREDITOR QUESTIONS**

#### **How does a creditor obtain relief from the automatic stay?**

The automatic stay, even when applicable, is of limited duration (see discussion above). If a creditor desires to take any action covered by the automatic stay prior to its termination, such as foreclosing on a mortgage or pursuing a lawsuit against a debtor, a creditor must file a motion for relief from the automatic stay. The grounds for granting relief are set forth in section 362(d) of the Bankruptcy Code.

[Local Bankruptcy Rule 4001-1](#) prescribes the procedures for filing a motion for relief from the automatic stay. [Local Rules Appendix 1, Rule 13-16](#) lists additional requirements for motions for relief from stay in chapter 13 cases.

**A company or individual has filed for bankruptcy and owes me money. What do I do?**

In most cases, the creditor needs to file a proof of claim, but the answer depends on many factors, including what chapter the debtor selected for the bankruptcy case. A creditor should consult an attorney about how best to protect his, her, or its interests. It is also important to remember that there are often strict deadlines for filing a proof of claim. (See discussion above.) A proof of claim form may be obtained from any Clerk's Office location, or it may be downloaded from this website [Proof of Claim](#). Copies of documentation supporting the claim should be attached to the proof of claim.

The trustee assigned to the case will be able to answer questions regarding the time when a dividend on a claim will be paid. The trustee's name and telephone number are on the section 341 meeting of creditors notice.

**I am a creditor in a case that has converted to another chapter. Is it necessary for me to file another Proof of Claim?**

No. Once a proof of claim has been filed with the Bankruptcy Court, a creditor does not need to re-file proof of that claim after conversion of the case to another chapter.

**I am a creditor in a chapter 7 asset case. How long before I can expect a dividend payment?**

There is no simple answer to that question. The length of time before a dividend is received depends on the circumstances of the individual case because assets must be liquidated and claims evaluated prior to distribution. Creditors should contact the chapter 7 trustee and inquire when he or she expects to issue checks to creditors. The chapter 7 trustee's name and telephone number are on the notice of the section 341 meeting of creditors.

**I have received a Notice and Summary of the chapter 7 trustee's Final Report and Account. How long will it be before I receive payment on my claim?**

Once the trustee has filed his or her Final Report and Account, the Bankruptcy Court must hold the Report and Account for possible objections and, if an objection is filed, may hold a hearing on it. The trustee cannot distribute the funds to creditors until the objection is resolved. Typically, the trustee will distribute money to creditors approximately six to eight weeks after creditors receive the Notice and Summary of the

Trustee's Final Report and Account, but the period may be longer. Further questions should be directed to the chapter 7 trustee, whose name and telephone number are on the notice of the section 341 meeting of creditors.

**I am a creditor in a Chapter 11 case and the Plan of Reorganization has been approved. When will I receive a check?**

The answer to this questions varies from case to case, depending on the terms of the Plan of Reorganization. The attorney for the debtor-in-possession or the chapter 11 trustee should be contacted for information regarding payments under a confirmed plan.

**What is a domestic support creditor?**

A domestic support creditor is a spouse, former spouse, child of the debtor, or such child's parent, legal guardian or responsible relative or governmental unit to whom a debt is owed before, on, or after the date of the order for relief in the nature of alimony, maintenance or support or an obligation arising from a separation agreement, court order or government determination. Domestic support obligations are excepted from discharge in chapter 7 and to a more limited extent in chapter 13.

If there is a claim for a domestic support obligation in a case, it is now the responsibility of the chapter 7 or chapter 13 trustee to provide written notice to: (1) the holder of the claim, and (2) the applicable State Child Support Enforcement Agency. A notice is required both at the time of filing and at the time of discharge.

Contact information for the Massachusetts Child Support Enforcement Agency can be found on the Bankruptcy Court's website [External Links](#) or from this link [Department of Revenue, Child Support Enforcement](#).

**I am a child support creditor. How can I determine whether my child support debt is nondischargeable?**

Child support debts are excepted from discharge. If the nondischargeability of the debt is disputed by the debtor, the child support creditor may file an adversary proceeding to have the Bankruptcy Court determine whether the debt is, in fact, nondischargeable.

**My ex-spouse has filed bankruptcy. He/she has listed me as a co-signer on a scheduled debt. What can I do? Does my divorce decree protect me?**

If liable with a former spouse/debtor on a debt, the non-debtor former spouse should seek competent legal advice for a thorough explanation of his or her rights and obligations in this area as soon as he or she learns that the ex-spouse has filed a bankruptcy petition.