

Chapter 7 Bankruptcy for New Practitioners: A Nuts & Bolts Training



INTRODUCTION TO THE MEANS TEST

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AGENDA

- Role of the United States Trustee
- Should the client file under Chapter 7?
 - Means Test
 - Form B122A
 - Special Considerations
 - Totality of the Circumstances
 - 707(b)(3)
 - Denial of Discharge
 - 727
- Role of the Attorney

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Role of the United States Trustee

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United States Trustee Program

- Component of the Department of Justice
- 21 Regions, 92 field offices

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Mission

“The United States Trustee Program acts in the public interest to promote the efficiency and **to protect and preserve the integrity of the bankruptcy system.**

[The U.S. Trustee Program]. . . **identifies and investigates bankruptcy fraud and abuse.**”

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Bankruptcy “Watchdog”

- United States Trustees “serve as bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena.” H.R. Rep. No. 95-595, at 88 (1977).
- “The role of the UST has been described to be that of a “watchdog,” and “as executives of the bankruptcy network,” Congress has “likened the U.S. trustee’s relation to that of a prosecutor.”
In re Wilson, 413 B.R. 330, 334 (Bankr. E.D. La. 2009)

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Duties in Chapter 7

- Review cases for abuse
 - 11 U.S.C. § 707(a)
 - 11 U.S.C. § 707(b) – Should this case have been filed under Chapter 7?
 - MEANS TEST
 - TOTALITY OF THE CIRCUMSTANCES

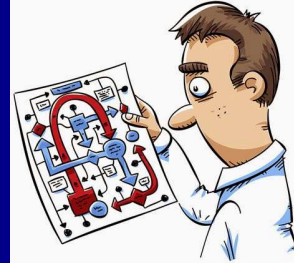
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**Should the client file
under Chapter 7?**

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FORM B122A – “Means Test”

- Three Components
 - B 122A-1
 - Current Monthly Income
 - B 122A-1 Supp
 - Biz Debt
 - Qualifying Mil. Svc.
 - B 122A-2
 - Means Test Calculation



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B 122A-1

Fill in this information to identify your case:

Debtor 1
First Name Middle Name Last Name

Debtor 2
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: _____ District of _____

Case number
(if known) _____

Check one box only as directed in this form and in Form 122A-1Supp:

1. There is no presumption of abuse.

2. The calculation to determine if a presumption of abuse applies will be made under Chapter 7 Means Test Calculation (Official Form 122A-2).

3. The Means Test does not apply now because of qualified military service but it could apply later.

Check if this is an amended filing

Official Form 122A-1
Chapter 7 Statement of Your Current Monthly Income 12/19

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known). If you believe that you are exempted from a presumption of abuse because you do not have primarily consumer debts or because of qualifying military service, complete and file Statement of Exemption from Presumption of Abuse Under § 707(b)(2) (Official Form 122A-1Supp) with this form.

Part 1: Calculate Your Current Monthly Income

1. What is your marital and filing status? Check one only.

Not married. Fill out Column A, lines 2-11.

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B 122A-1

■ INCOME CALCULATION

1. What is your marital and filing status? Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
- Married and your spouse is NOT filing with you. You and your spouse are:**
 - Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
 - Living separately or are legally separated.** Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

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B 122A-1

■ INCOME CALCULATION

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).	\$ _____	\$ _____

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Case Example

Pg 1 of 1
10/25/2012

Employee Pay Detail Report

For Pay Date 25-SEP-2012

Last Name: _____ Employee Number: _____
 First Name: _____ Pay Rate: _____
 SSN: XXX-XX-_____ Net Pay: _____

Type	Description	Amount		Hours	
		Current	YTD	Current	YTD
A.EARNINGS:	COMP TIME TAKEN	-345.00	920.00	-6.00	16.00
	EXPENSE REIMBURSEM	0.00	2,418.94	0.00	0.00
	G.T.L. - EXCESS IN	8.60	68.80	0.00	0.00
	MISC. PERSONAL	460.00	460.00	8.00	8.00
	REGULAR EARNINGS	4,485.00	40,020.00	78.00	696.00
	TAXABLE RELOCATION	0.00	4,569.58	0.00	0.00
	Total:	4,608.60	48,457.32	80.00	720.00

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B 122A-1

■ INCOME CALCULATION

4. All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support. Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.

\$ _____ \$ _____

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B 122A-1

■ INCOME CALCULATION

9. **Pension or retirement income.** Do not include any amount received that was a benefit under the Social Security Act.

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B 122A-1

Total current monthly income

Part 2: Determine Whether the Means Test Applies to You

12. Calculate your current monthly income for the year. Follow these steps:

12a. Copy your total current monthly income from line 11. Copy line 11 here → \$ _____
Multiply by 12 (the number of months in a year). x 12
12b. The result is your annual income for this part of the form. 12b. \$ _____

13. Calculate the median family income that applies to you. Follow these steps:

Fill in the state in which you live. _____

Fill in the number of people in your household. _____

Fill in the median family income for your state and size of household. _____ 13. \$ _____

To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. How do the lines compare?

14a. Line 12b is less than or equal to line 13. On the top of page 1, check box 1, *There is no presumption of abuse.*
Go to Part 3.

14b. Line 12b is more than line 13. On the top of page 1, check box 2, *The presumption of abuse is determined by Form 122A-2.*
Go to Part 3 and fill out Form 122A-2.

Link to Means Test data: <http://justice.gov/ust/means-testing>

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B 122A-1

Household Size	2021 Poverty Guideline	200% of 2021 Poverty Guideline	Louisiana Median Family Income*	Pass the Means Test?
1	\$12,880	\$25,760	\$49,719	YES
2	\$17,420	\$34,840	\$61,042	YES
3	\$21,960	\$43,920	\$71,371	YES
4	\$26,500	\$53,000	\$87,472	YES

* As of May 15, 2022

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Special Considerations

■ Non-filing Spouses

1. What is your marital and filing status? Check one only.

- Not married.** Fill out Column A, lines 2-11.
- Married and your spouse is filing with you.** Fill out both Columns A and B, lines 2-11.
- Married and your spouse is NOT filing with you. You and your spouse are:**
- Living in the same household and are not legally separated.** Fill out both Columns A and B, lines 2-11.
 - Living separately or are legally separated.** Fill out Column A, lines 2-11; do not fill out Column B. By checking this box, you declare under penalty of perjury that you and your spouse are legally separated under nonbankruptcy law that applies or that you and your spouse are living apart for reasons that do not include evading the Means Test requirements. 11 U.S.C. § 707(b)(7)(B).

Fill in the average monthly income that you received from all sources, derived during the 6 full months before you file this bankruptcy case. 11 U.S.C. § 101(10A). For example, if you are filing on September 15, the 6-month period would be March 1 through August 31. If the amount of your monthly income varied during the 6 months, add the income for all 6 months and divide the total by 6. Fill in the result. Do not include any income amount more than once. For example, if both spouses own the same rental property, put the income from that property in one column only. If you have nothing to report for any line, write \$0 in the space.

2. Your gross wages, salary, tips, bonuses, overtime, and commissions (before all payroll deductions).

Column A
Debtor 1

Column B
Debtor 2 or
non-filing spouse

\$ _____

\$ _____

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Special Considerations

■ Establishing special circumstances – Form B 122A-2

Part 4: Give Details About Special Circumstances

43. Do you have any special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative? 11 U.S.C. § 707(b)(2)(B).

No. Go to Part 5.
 Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

You must give a detailed explanation of the special circumstances that make the expenses or income adjustments necessary and reasonable. You must also give your case trustee documentation of your actual expenses or income adjustments.

Give a detailed explanation of the special circumstances	Average monthly expense or income adjustment
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

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Special Considerations

■ Consumer v. Business (v. Other?)

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

Part 6: Answer These Questions for Reporting Purposes

16. What kind of debts do you have?

16a. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose."
 No. Go to line 16b.
 Yes. Go to line 17.

16b. **Are your debts primarily business debts?** *Business debts* are debts that you incurred to obtain money for a business or investment or through the operation of the business or investment.
 No. Go to line 16c.
 Yes. Go to line 17.

16c. State the type of debts you owe that are not consumer debts or business debts.

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Special Considerations

- Consumer v. Business (v. Other?)
– Form 122A-1Supp

Part 1: Identify the Kind of Debts You Have

1. **Are your debts primarily consumer debts?** *Consumer debts* are defined in 11 U.S.C. § 101(8) as "incurred by an individual primarily for a personal, family, or household purpose." Make sure that your answer is consistent with the answer you gave at line 16 of the *Voluntary Petition for Individuals Filing for Bankruptcy* (Official Form 101).

No. Go to Form 122A-1; on the top of page 1 of that form, check box 1, *There is no presumption of abuse*, and sign Part 3. Then submit this supplement with the signed Form 122A-1.

Yes. Go to Part 2.

Part 2: Determine Whether Military Service Provisions Apply to You

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The Client Passes the Means Test...What next?

- Case inquiry does not stop with the presumption determination.
 - 11 U.S.C. § 707(b)(3)
 - 11 U.S.C. § 727

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11 U.S.C. § 707(b)(3)

- Section 707(b)(3) applies in individual consumer debt cases where the presumption of abuse:
 - does not arise
 - or
 - is rebutted

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11 U.S.C. § 707(b)(3)

- The Court “shall consider” whether
 - 1. the debtor filed the petition in **bad faith** (§ 707(b)(3)(A)); or
 - 2. the **totality of the circumstances** of the debtor’s financial situation demonstrates abuse (§ 707(b)(3)(B)).

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Case Example

- No presumption of abuse, but, Schedule J discloses:

20. STATEMENT OF MONTHLY NET INCOME	
a. Average monthly income from Line 15 of Schedule I	\$ 8,162.00
b. Average monthly expenses from Line 18 above	\$ 5,844.00
c. Monthly net income (a.-minus b.)	\$ 2,318.00

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11 U.S.C. § 707(b)(3)

- *In re Cortez*, 457 F.3d 448 (5th Cir. 2006)
- Relevant time is granting of discharge
- Therefore, Court can and should consider post-petition events

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11 U.S.C. § 727

- Denial of Discharge
 - Concealing assets (a)(2)
 - Inadequate Record Keeping (a)(3)
 - Lying or bribing (a)(4)
 - Failure to explain loss of assets (a)(5)
 - Failure to obey court order (a)(6)
 - Any of the above in a related case (a)(7)
 - Committing fraud in connection with case (d)(2) – Revocation

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Case Example

- Schedule I, filed 10/29/09

DEBTOR	SPOUSE
Owner	Unemployed
G&G Stucco & Stone Specialist, Inc.	
13 months	
393 Lexington Avenue	
Clifton, New Jersey 07011	

	DEBTOR	SPOUSE
(or projected monthly income at time case filed)		
y, and commissions	\$ 3,250.00	\$ 0.00
hly.)	\$ 0.00	\$ 0.00

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Case Example

■ Schedule I, filed 12/17/09

SCHEDULE I - CURRENT INCOME OF INDIVIDUAL DEBTOR(S)

The column labeled "Spouse" must be completed in all cases filed by joint debtors and by every married debtor, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. Do not state the name of any minor child. The average monthly income calculated on this form may differ from the current monthly income calculated on Form 22A, 22B, or 22C.

Debtor's Marital Status: Married	DEPENDENTS OF DEBTOR AND SPOUSE	
	RELATIONSHIP(S): Daughter, Daughter, Daughter, Daughter	AGE(S): 9, 5, 3, 1 month
Employment:	DEBTOR	SPOUSE
Occupation	Owner	Actress / TV Personality
Name of Employer	G&G Stucco & Stone Specialist, Inc.	Sirens Media, LLC
How long employed	13 months	1 month
Address of Employer	393 Lexington Avenue Clifton, NJ 07011	8505 Fenton Street Silver Springs, MD 20910

INCOME: (Estimate of average or projected monthly income at time case filed)

	DEBTOR	SPOUSE
1. Monthly gross wages, salary, and commissions (Prorate if not paid monthly.)	\$ 3,250.00	\$ 7,083.33

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Role of the Attorney

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Rule 1.1 Competence

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

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Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

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Rule 1.4 Communication

(b) A lawyer shall give the client sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued.

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Rule 3.3 Candor Toward the Tribunal

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of material fact or law to a tribunal

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BAPCPA PROVISION

- § 707(b)(4) Verification by Debtor's Counsel
 - Reasonable investigation
 - No knowledge after inquiry information is incorrect

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PRIVILEGE

- When information is disclosed for the purpose of assembly into a bankruptcy petition and supporting schedules, there is **no intent for the information to be held in confidence because the information is to be disclosed on documents publicly filed with the bankruptcy court.** *United States v. White*, 950 F.2d 426, 430 (7th Cir.1991).

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FINAL THOUGHT

- Know the forms
- Disclosure, disclosure, disclosure
- Communicate with case trustee AND U.S. Trustee

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Contact Information

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Chapter 7 Bankruptcy for New Practitioners: A Nuts & Bolts Training

CHECKLIST FOR BANKRUPTCY FILING

Prepared by Eric J. Derbes

The views expressed in this seminar are his owns and do not reflect the opinion of the Bankruptcy Court or the Clerk of Court for the United States Bankruptcy Court for the Eastern District of Louisiana.

A. DOCUMENTS AND INFORMATION TO GIVE TO CLIENT AT THE INITIAL MEETING

1. FEE AGREEMENT WITHIN 5 BUSINESS DAYS OF MEETING WITH CLIENT

(a) A debt relief agency shall--

(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously--

(A) the services such agency will provide to such assisted person; and

(B) the fees or charges for such services, and the terms of payment;

(2) provide the assisted person with a copy of the fully executed and completed contract;

(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

(4) clearly and conspicuously use the following statement in such advertisement: "We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code." or a substantially similar statement.

11 U.S.C.A. § 528 (emphasis added).

2. U.S. TRUSTEE'S BANKRUPTCY INFORMATION SHEET

<https://www.justice.gov/ust/bankruptcy-information-sheet-0>

The panel trustee will ask your client if he or she has read the Bankruptcy Information Sheet. It is best to always provide it to and explain it to your client at your first meeting. This will prevent you from having to delay the meeting of creditors in order to give your client an opportunity to read and understand it.

The Bankruptcy Information sheet provides basic information about bankruptcy and bankruptcy requirements. It covers many of the issues that the client is already worrying about. It is in plain language and it provides a good starting point for your conversation with your client.

3. Important Information About Bankruptcy Assistance Services from an Attorney or Bankruptcy Petition Preparer. 11 USC § 527.

- "IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.
- "If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.
- "The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.
- "Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules, and Statement of Financial Affairs, and in some cases a Statement of Intention, need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.
- "If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.
- "If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.
 - Continued on the next slide.

Important Information About Bankruptcy Assistance Services from an Attorney or Bankruptcy Petition Preparer. 11 USC § 527. Continued:

- "If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.
- "Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice."
- (c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—
 - (1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;
 - (2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and
 - (3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.

4. Notice required by 11 USC § 342(b) for Individuals filing Bankruptcy.

- <https://www.uscourts.gov/forms/bankruptcy-forms/notice-required-11-usc-ss-342b-individuals-filing-bankruptcy>
- The Notice explains much of the same information as the Bankruptcy Information Sheet, but in some more detail.
- The Notice also provides the filing fees for each type of bankruptcy.
- The Notice also provides a list of agencies for approved credit counseling agencies and approved debtor education providers.
- “You can obtain the list of agencies approved to provide both the briefing and the instructional course from: <http://www.uscourts.gov/servicesforms/bankruptcy/credit-counseling-and-debtoreducation-courses>.”

5. Credit Counseling and Financial Management

- Ensure that your client is aware of the need to take the credit counselling class prior to filing the bankruptcy. If the client waits to the day of filing, the U.S. Trustee will look to see the time of the class to verify that it was done prior to filing.
- At the first meeting, ensure that your client understands the requirement for the financial management class after filing. When I practiced, I wanted those classes taken prior to the 341 meeting, preferably the weekend after the filing. It would not be good for a client to lose a discharge because of a missed class.

6. STOP INCURRING DEBT NOW.

- Make sure that at the first meeting, the client understands the need to stop using credit cards and running up more debt.

(a) A discharge under section 727, 1141, 1192¹ 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt-- ...

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by--

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition;

(B) use of a statement in writing--

(i) that is materially false;

(ii) respecting the debtor's or an insider's financial condition;

(iii) on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and

(iv) that the debtor caused to be made or published with intent to deceive; or **continued on next slide**

STOP INCURRING DEBT NOW, CONTINUED

- **(C)(i)** for purposes of subparagraph (A)--
- **(I)** consumer debts owed to a single creditor and aggregating more than \$800 [originally "\$500", adjusted effective April 1, 2022]² for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and
- **(II)** cash advances aggregating more than \$1,100 [originally "\$750", adjusted effective April 1, 2022]² that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and
- **(ii)** for purposes of this subparagraph--
- **(I)** the terms "consumer", "credit", and "open end credit plan" have the same meanings as in section 103 of the Truth in Lending Act; and
- **(II)** the term "luxury goods or services" does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor;

11 U.S.C.A. § 523.

7. TELL ME EVERYTHING

- Emphasis with the client to tell you the good, the bad, and the ugly.
- A debt is likely not discharged, if the creditor does not get notice of the bankruptcy prior to the time necessary to file a proof of claim.
- If the client leaves off creditors and a new notice is required, the client is responsible for sending notices to the new creditors. If those creditors were listed originally, the notice would have gone out with the notice sent with the initial filing. It can become very expensive to re-notice.

8. ALL CHECKS HAVE TO CLEAR

- Emphasis to the client the need to have all checks cleared prior to filing. It doesn't happen as often these days with people using ACH and debit cards instead of checks, but your client's bank account balance will be what's reflected on the bank statement on the day of filing. If there are outstanding checks, the client will likely have to pay those checks twice (once to the payee and once to the Chapter 7 Trustee).

REAFFIRMATION AGREEMENTS

Even though it is explained on the Bankruptcy Information Sheet, explain reaffirmations. Determine if there are any encumbered assets that the client wants to retain. Determine if the client has the financial ability to retain the asset. Make sure that the client understands that there is no requirement to retain the asset even if he or she can afford to continue paying the installment. Without a reaffirmation, the client will no longer be legally responsible for the debt. With a reaffirmation, the client will be personally liable for the debt, even after the bankruptcy.

When considering a reaffirmation, remember that some judges will not allow a reaffirmation of a debt with a high interest rate. The purpose of the bankruptcy is a fresh start. High interest rates may not allow for that fresh start.

MEETING OF CREDITORS. 11 USC § 341.

- Explain to the client that there will be a meeting of creditors approximately 20 to 30 (30 to 45 pre-Covid) after the bankruptcy is filed. Since COVID, those meetings have been by telephone. It is good practice to have the client with you at your office for the meeting.
- Prior to COVID, the meetings were at the F. Edward Hebert Building located at 600 S. Maestri Place, Room 111, New Orleans, LA. No weapons are allowed in the building. You will go through a metal detector. It is unclear when the in-person meetings will resume.
- If the client misses the meeting, the case may be dismissed. If the client believes that there will be a problem, he or she should let the attorney know early so that the meeting can be rescheduled.

B. DOCUMENTS TO GET FROM CLIENT PRIOR TO FILING

1. Executed representation agreement.
2. Government issued picture ID. Scan it in or make a copy, in case the client forgets to bring it to the 341 meeting.
3. Social security card. Scan it in or make a copy, in case the client forgets to bring it to the 341 meeting.
4. Last 4 years of the tax returns that were actually filed with the IRS and the state government.
5. Last 6 months of pay stubs.

Continued on next slide.

DOCUMENTS TO GET FROM CLIENT PRIOR TO FILING

6. Last 6 months of bank statements.
7. Last 6 months of retirement account statements.
8. Copies of all vehicle registrations.
9. Current credit report(s). If you use a bankruptcy preparation program like Best Case, the credit reports can be obtained electronically through the program. It currently costs about \$37.00 to use that service. It is very convenient because the creditors load automatically into the client's file. If the client cannot or does not want to afford that option, all of the credit reports can be obtained for free from <https://www.annualcreditreport.com/index.action>.

Continued on next slide.

DOCUMENTS TO GET FROM CLIENT PRIOR TO FILING

10. Copies of any lawsuits or foreclosures in which the client is either a plaintiff or a defendant. When you discuss this with the client, it is a good time to explore whether the client has a claim against anyone or if anyone has a claim against them. It is also a good practice to run the client's name through their parish's court web service. For instance, Orleans Parish is <https://remoteaccess.orleanscivilclerk.com/>, Jefferson Parish is <https://www.jpclerkofcourt.us/jeffnet-login/>, and St. Tammany is <https://www.sttammanyclerk.org/departments/civil/>. Each of these requires a subscription.
 11. While you check the lawsuits, you can check the land records for property owned by the client and for judgment liens and mortgages.
- Continued on next slide.

DOCUMENTS TO GET FROM CLIENT PRIOR TO FILING

12. Copies of any open successions. While you are at this, find out if the client is eligible to inherit from someone or if there is an unopen succession. Make sure the client knows that any property that he or she inherits within 180 days of the filing of the bankruptcy becomes property of the bankruptcy estate.
 13. Copies of any recorded judgments or liens.
 14. Credit counseling certificate prior to filing.
- Continued on next slide.

DOCUMENTS TO GET FROM CLIENT PRIOR TO FILING

15. On the day that you file, have the client bring to you a copy of their current bank balances. The client can either print it from the bank's website or the client can get the printout from an ATM machine. The money in the account belongs to the bankruptcy estate.
16. Copy of the bank statement covering the filing date no later than 7 days prior to the 341 meeting.
17. Financial Management Class Certificate. It is good practice to request it prior to the meeting of creditors.

ERIC J. DERBES was recently appointed as the Chief Deputy Clerk of Court for the United States Bankruptcy Court for the Eastern District of Louisiana. Prior to that he was a member and co-manager of the ten attorney Derbes Law Firm, LLC in Metairie, Louisiana where he practiced in the areas of bankruptcy law, commercial litigation, tax, real estate, and probate. His bankruptcy practice consisted of commercial and consumer cases in Chapters 7, 11, and 13 representing debtors, creditors, and trustees. His tax representation included representing taxpayers before the Internal Revenue Service and the Louisiana Department of Revenue. He recently spoke with at the LSBA seminar "The Bankruptcy Code is 40 Years Old and We Are Still Learning!" He co-presented "Everyone Wants a Discharge... How to Make Sure You Don't Lose it in Your Chapter 7 or 11" in April 2019 and in Domestic Issues in Bankruptcy for LSU's 25th Annual Family Law Seminar. Previously, he practiced as a judge advocate in the 82d Airborne Division from 1990 to 1994. He is a member of the Louisiana State Bar, the State Bar of Texas, the State Bar of Wisconsin, the Federal Bar Association. He was President of the Jefferson Bar Association in 2016. Mr. Derbes received his Bachelor of Science in Business Administration from Washington University in St. Louis and his Juris Doctor from Marquette University, School of Law. He is married with five adult children.

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The views expressed in this seminar are his owns and do not reflect the opinion of the Bankruptcy Court or the Clerk of Court for the Bankruptcy Court for the Eastern District of Louisiana.



The Pro Bono Project Bankruptcy Training Booklet

Bankruptcy is the process by which people and businesses address their debt problems under the Chapters of the United States Bankruptcy Code.¹ The Pro Bono Project helps clients with the Chapter 7 bankruptcy process. We are not able to help with Chapter 13 bankruptcy cases at this time. Generally, in Chapter 7 (also described as liquidation), a debtor/client sells their nonexempt property and distributes the proceeds to their creditors, with any remaining debt discharged.²

Chapter 7 bankruptcy can be the fresh start that many people need to have the freedom to continue living their lives. However, it is a formalized process that takes preparation and attention to detail. It will be important to not only collect and organize the client's information but also to make sure the client understands the process that they are navigating.

The following manual outlines the process and procedure for handling a Chapter 7 bankruptcy case from start to finish, including client intake, the Chapter 7 requirements, and tips for handling client questions.

Preparation for Filing

Step 1 - Client Intake

It is important to explain to the client that Chapter 7 is only available in certain situations based on the requirements detailed in Chapter 7 of the U.S. Bankruptcy Code. To determine if Chapter 7 is a viable option for the client, the client will have to provide detailed information about their financial situation.

The first step in gathering the client's financial information is to have them complete the Consumer Debt Questionnaire attached at the end of this document.

In addition to requesting the completion of the Questionnaire, ensure the client has:

- Recent pay stubs, bank statements, and investment/retirement account statements

¹ <https://www.uscourts.gov/educational-resources/educational-activities/bankruptcy-basics-glossary>

² <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics>

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- At least two years of tax returns Mortgage and car notes
- Credit cards and other billing statements
- Driver's License and Social Security Card

Finally, if the client wants to pursue Chapter 7 bankruptcy, they **must** complete Louisiana Pre-Bankruptcy Credit Counseling. The counseling can be done online or over the phone. This [site](#) has a list of potential options for the client.

Step 2 - Discuss Louisiana Exemptions

One of the biggest benefits of Chapter 7 bankruptcy is the ability to exempt certain property from the bankruptcy process. While most property will be sold to pay off the client's outstanding debts, exempt property is not used to pay off debts in bankruptcy.

Louisiana Law determines what property is exempt from the bankruptcy process. The Louisiana Exemptions are detailed in the Louisiana Revised Statute and include:

- A homestead exemption of up to \$35,000 - La. Rev. Stat. Ann. §20.1
- 75% of disposable earnings - La. Rev. Stat. Ann. §13881(1)(a)
- Tools of the trade - La. Rev. Stat. Ann. §13881(2)
- Certain household goods - La. Rev. Stat. Ann. §13881(4)
- Engagement or wedding rings up to \$5,000 - La. Rev. Stat. Ann. §13881(5)
- Value of motor vehicle up to \$7,500 - La. Rev. Stat. Ann. §13881(7)
- A variety of other specific exemptions listed in La. Rev. Stat. Ann. §13881

The exemptions are intended to remove the value of certain property from the bankruptcy process, but the exemptions do not actually prevent all exempt property from being sold to cover debts in bankruptcy. For example, if the client has a car valued at \$10,000, the motor vehicle exemption will exempt \$7,500 of that car from being used to cover debts in bankruptcy, but the remaining \$2,500 will be used to cover the client's outstanding debts. As a result, the car will be sold, and the client will keep \$7,500, while the creditors receive the remaining \$2,500.

It is important to create a list of applicable exemptions and determine the estimated impact these exemptions will have on the client's outcomes in bankruptcy to help the client better understand their position. Additionally, when filing for bankruptcy, the client will have to list the exemptions they believe apply to their filing.

Step 3 - Is Chapter 7 Viable for the Client?

Before initiating the filing process, the client must ensure they qualify for Chapter 7. To qualify, the client must complete the Louisiana Pre-Bankruptcy Credit Counseling and satisfy the Chapter 7 income requirements.

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If the client's income is less than the [Louisiana Median Income](#) for their size household, the client will satisfy the Chapter 7 income requirements. The client will complete and submit [Form 122A-1](#) to indicate they are below the median income level. If the client's income is above the Median Income, they can still qualify for Chapter 7, but they must pass the means test outlined in [Form 122A-2](#) and submit the form with their bankruptcy filing. If the client doesn't meet the requirements of either form, the client cannot file for Chapter 7 bankruptcy.

Once the client completes the Louisiana Pre-Bankruptcy Credit Counseling and it's determined they satisfy the Chapter 7 income requirements, they can file for bankruptcy under Chapter 7, starting the formal bankruptcy process.

At this point, the client's file should contain:

- The completed Consumer Debt Questionnaire
- Recent pay stubs, bank statements, and investment/retirement account statements
- At least two years of tax returns
- Mortgage and car notes
- Credit cards and other billing statements
- Driver's License and Social Security Card
- A certificate of competition for Louisiana Pre-Bankruptcy Credit CounselingA list of applicable exemptions
- Either Form 122A-1 or 122A-2

Filing

Step 4 - File Official Bankruptcy Forms

To begin the bankruptcy process, the client must file a variety of Official Bankruptcy Forms. Fillable versions of the forms can be found on the [US Courts](#) website. Each form has instructions for completion at the top of the form. The list of forms includes:

- Bankruptcy Petition
- Schedule A/B (List of all client's property)
- Schedule C (List of Exempt Property)
- Schedule E/F (List of unsecured creditors)
- Statement of Intention for Individuals Filing Under Chapter 7 Bankruptcy
- The Creditor Mailing List in Bankruptcy
- Application for Waiver of Chapter 7 Filing Fee

There are three federal jurisdictions in Louisiana, and the client can file in the jurisdiction that they are domiciled in or the jurisdiction they have been living in for the majority of the past 180 days before filing.

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Step 5 - Mail Information to Bankruptcy Trustee

Once the Official Bankruptcy Forms are filed, the client should mail the bankruptcy trustee for the jurisdiction in which they failed a copy of their most recent tax return.

Step 6 - Creditor's Meeting

About 30 days after filing, the client will receive notice and must attend a 341 meeting of creditors. This meeting is really a hearing where the bankruptcy trustee will verify the client's identity and ask them questions under oath about their bankruptcy filing. The creditors listed in the filing will also have a chance to ask the client questions about their filing.

The client should expect to bring two forms of identification and have an understanding of their bankruptcy filing that allows them to accurately answer questions.

If the bankruptcy trustee does not flag the filing for inaccuracies, illegalities, or fraud, the client's bankruptcy file should be passed to the court for the court to resolve the case.

Step 7 - Resolution

After the creditor's meeting, the client's case is not necessarily over. The bankruptcy trustee can request more information and creditors can file objections up to 60 days from the first date of the meeting.

However, about 60 days after the meeting, the court will send the client a written discharge of debts. At this point, the client's nonexempt property has covered a portion of their outstanding debts, and the remainder is discharged, meaning the client has a chance at a fresh start.

Consumer Debt Questionnaire

Complete All Questions. If you are married, include all information for your spouse UNLESS you are living apart AND there is no chance your spouse will file bankruptcy with you.

1. Name and Residence Information:

- A. Your full name: _____ Your spouse's full name: _____
- B. List any other names used by you or your spouse (including maiden name), or other ways you have signed your names to papers and checks during the last eight years:

_____ Have you ever
filed bankruptcy before? _____

If so, in what city was it filed and when was it filed? _____

2. Please list all debts: (if you need more room, please continue on the back)

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1. Source(s) of Income : _____

Amount per month _____

Is your income being garnished, and if so by who and how much per month _____

2. Do you own your home? Yes No

If yes, how much is your home worth? _____

How much do you still owe on your home? _____

3. Do you own any other real estate? If so, how much is it worth?

4. Cash on hand _____

5. Checking and Savings _____

6. Stocks and/or Bonds _____

7. Vehicle: Year _____ Make _____ Model _____ How much do you owe? _____

8. Have you had any property repossessed during the last year? If so, please explain.

9. Are there currently any liens on any of your property? Is so, please explain:

10. List any other valuables, such as jewelry, firearms and artwork, and the estimated value of these assets:

4. Please list all monthly expenses:

Type of Expense

Amount

Rent/Mortgage _____

Electricity _____

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Are you struggling with credit card or other personal debt?

Bankruptcy might be an option to help you get a fresh start.

What does it mean to declare Chapter 7 Bankruptcy?

If you cannot pay your debt and have few or no assets (things you own that are worth money), certain debts can be discharged (wiped away). Declaring bankruptcy will show up on your credit report for 10 years, and you may have to sell assets. To declare bankruptcy, you have to prove that you really cannot pay your debt. If your disposable income is low enough in comparison to your debt, you can file for bankruptcy.

How can I declare Chapter 7 Bankruptcy?

1. Get together all of your financial records.
2. Get credit counseling.
3. File the petition for bankruptcy. It is recommended to hire a lawyer at this step.
4. Meet with your assigned trustee and with creditors.
5. Complete a debtor education course.
6. Get your discharge.

How can I get help?

1. The Pro Bono Project operates a Self-Help Resource Center. On the first Friday of each month from 9 am – 12 pm, volunteers are available via telephone (504-581-4043) and email (bankruptcyselfhelp@probono-no.org) to provide information and to assist filers.
2. The Pro Bono Project accepts Chapter 7 Bankruptcy cases. To apply to be represented, you'll need to submit the following documents, available on our website: Application for Legal Services, the Bankruptcy and Consumer Debt Questionnaire, Proof of Income, and Information About Court Costs and Fees.



For more information, visit probono-no.org or contact the Pro Bono Project at 504-581-4043 or intake@probono-no.org. Special thanks to the American College of Bankruptcy for their funding of our bankruptcy program.

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The following is informational only. The Pro Bono Project is not providing legal advice to the public. The following information, including all files and hyperlinks therein contained, are guides for self-represented litigants. It is not legal advice and should not be considered as legal advice.

The Pro Bono Project will not answer questions about content or how it may pertain to an individual case, except as required by law. Those seeking guidance concerning a legal action should consult with an attorney.

This information does not, is not intended to, shall not be construed to, and may not be relied upon to create or to limit any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal. Do not cite this material in filings with any Court; cite the applicable rules and law.

Warning to Incarcerated or Detained Persons: Please note that some parts of this information will not apply to actions filed by incarcerated or detained persons. Detained litigants are often required to comply with different statutes and Court rules. These rules may include—but are not limited to—the use of Court-approved forms where applicable and the exhaustion of administrative remedies prior to filing suit.

Contact Us

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Struggling with credit card or other personal debt?

**Bankruptcy
might be an
option to help
you get a fresh
start.**

What does it mean to declare Chapter 7 Bankruptcy?

- If you cannot pay your debt and have few or no assets (things you own that are worth money), you may be able to benefit from declaring Chapter 7 Bankruptcy.
- Only certain debts can be discharged (wiped away). These are unsecured debts, that is, debts with no collateral (i.e., debts where the lender can take your property if you don't pay them back, such as a mortgage.) Unsecured debts include medical bills and credit card balances. Some debts cannot be discharged, including debts to the government, child support and alimony, and personal injury debts.
- Declaring bankruptcy will show up on your credit report for 10 years, which may make it hard for you to get loans during that time.
- You may have to sell non-exempt assets in order to repay some of your debt. This may include family heirlooms, second homes, collections, and musical instruments—anything that can be given up without directly affecting your life or profession.
- To declare bankruptcy, you have to prove that you really cannot pay your debt. To do this, you must undergo the US Bankruptcy Court's means test, which compares your income to Louisiana's median income. If yours is below the median, you then have to carefully document the amount of money you spend on essential items. The court will consider your disposable income (that is, what is left over.) If your disposable income is low enough in comparison to your debt, you can file for bankruptcy.

How do I declare Chapter 7 Bankruptcy?

- 1 Get together all of your financial records.
- 2 Get credit counseling. This must be within 180 days before you file, and must be from a government-approved provider.
- 3 File the petition for bankruptcy. It is recommended to hire a lawyer at this step, because representing yourself is risky and there is a lot to know about court rules and procedures.
- 4 Meet with your assigned trustee and with creditors. The creditors are allowed to come ask you and/or the trustee questions.
- 5 Complete a debtor education course.
- 6 Get your discharge.

How can I get help?

- The Bankruptcy Self-Help Resource Center (<http://probono-no.org/self-help-desk-bankruptcy>): The Pro Bono Project operates a Self-Help Resource Center at the U.S. Bankruptcy Court - Eastern District of Louisiana. Due to the pandemic, the Self-Help Resource Center is working remotely - answering questions by phone and email. On the first Friday of each month from 9 a.m. until 12 noon, volunteers are available via a telephone hotline (504-581-4043) and email (bankruptcyselfhelp@probono-no.org) to provide information and to assist filers. Note that volunteers do not provide legal advice or representation. The Pro Bono Project will not answer questions about content or how it may pertain to an individual case, except as required by law. Those seeking guidance concerning a legal action should consult with an attorney.
- The Pro Bono Project accepts Chapter 7 Bankruptcy cases. To apply to be represented by a volunteer attorney, visit <http://probono-no.org/forms>. You'll need to submit the following documents, available on our website: Application for Legal Services, the Bankruptcy and Consumer Debt Questionnaire, Proof of Income, and Information About Court Costs and Fees.