

## INFORMATION FOR PARTIES WHO HAVE NO ATTORNEY

United States Bankruptcy Court for  
the Western District of Tennessee  
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## INFORMATION FOR PARTIES WHO HAVE NO ATTORNEY

**Stop!**

**Before continuing, if you are a debtor thinking of filing a bankruptcy case, first read this,**

### **§ 1. NOTICE TO ALL DEBTORS BEFORE FILING A CASE!**

**Did you (and your spouse, if preparing to file a joint petition) obtain a briefing (also called credit counseling) that outlined the opportunities for available credit counseling and assisted you in performing a related budget analysis within the last 180 days from a United States Trustee approved nonprofit budget and credit counseling agency? See 11 U.S.C. § 109(h)(1) (section 109(h)(1) of the Bankruptcy Code (Title 11, U.S. Code).**

See *Obtaining Credit Counseling* below for information regarding obtaining such credit counseling.

### **WARNING : CONSEQUENCES OF NOT HAVING SUCH CREDIT COUNSELING:**

If you have not completed such credit counseling **before you file your petition (and no earlier than 180 days before you file your petition)** and you do not meet the requirements for an extension to complete the credit counseling after filing (or for being exempted from being required to obtain such a credit counseling), your case will be dismissed and you will **not** receive a discharge of your debts. In some cases, you may not be allowed to file another case for 180 days. Even, if you file another case within one year after your first case was dismissed, your protection under the Bankruptcy Code's automatic stay from your creditors may be limited to thirty (30) days after filing the new case.

Under the bankruptcy laws (see 11 U.S.C. § 109(h)(3)), the Court can only allow you to complete the credit counseling **after filing** if you meet **all** of the following conditions:

- 1) You must have requested the required credit counseling from an approved nonprofit budget and credit counseling agency, but were unable to obtain the required services during the 7-day period beginning on the date on which you made that request; and**
- 2) There are exigent (emergency) circumstances that the court determines merit a waiver of the requirement of obtaining the credit counseling before filing the case; and**
- 3) You must file a certification stating the facts regarding the conditions listed above in paragraphs (1) and (2) with your petition, and the certification must be satisfactory to the court.**

**Please be advised – most debtors will not be able to meet these conditions because credit counseling is readily available in this District.**

The decision to file your petition is up to you, but if you file without having obtained credit counseling, you risk dismissal of your case. The Clerk, Judges, and chambers staff cannot provide legal advice or predict in advance how a judge will decide your request for an extension to complete this requirement.

**Obtaining Credit Counseling.** To locate an approved agency that can provide you pre-bankruptcy credit counseling, obtain from the Clerk's Office a list of U.S. Trustee approved credit counseling agencies or go to the U.S. Trustee website listed below:

[http://www.justice.gov/ust/eo/bapcpa/ccde/cc\\_approved.htm](http://www.justice.gov/ust/eo/bapcpa/ccde/cc_approved.htm)

The Federal Trade Commission's, "Before You File for Personal Bankruptcy: Information About Credit Counseling and Debtor Education," found at:

<http://www.ftc.gov/bcp/edu/pubs/consumer/credit/cre41.shtm>, has more information in this regard.

**Some things to bear in mind:**

You may obtain the counseling through the internet on a computer. If you don't have a computer, your public library may allow you use of their computers. You may also obtain the counseling by telephone, or in person.

Be sure you take credit counseling from a U.S. Trustee approved credit counseling agency and that you make clear to that agency that you need the counseling for purposes of filing a bankruptcy case.

Ask the credit counseling agency for a certificate describing the credit counseling services provided to you, and a copy of any debt repayment plan developed through the agency. You will need to file those in your bankruptcy case. See 11 U.S.C. § 521(b).

The safest way to be sure you got the required type of credit counseling is to obtain a certificate before you file your bankruptcy case. The certificate should be in a form similar to the Example of Credit Counseling Certificate attached below.

Be sure that your certificate reflects that you got your credit counseling within 180 days before you file your petition. If you got the credit counseling more than 180 days ago, that credit counseling is too old and will not satisfy the statutory requirement.

If you obtained so-called debtor education from an approved debtor education provider, that is **not** the same thing as pre-petition credit counseling.

*Note: There are exemptions from this requirement available for persons who are mentally ill, disabled or on military duty in an active combat zone. See 11 U.S.C. § 109(h)(4).*

**EXAMPLE OF A CERTIFICATE OF CREDIT COUNSELING**

CREDIT COUNSELING AGENCY NAME

**CERTIFICATE OF COUNSELING**

I certify that on DATE, at TIME, DEBTOR'S NAME, received from CREDIT COUNSELING AGENCY, an agency approved pursuant to 11 U.S.C §111 to provide credit counseling in the Western District of Tennessee, an individual [or group] briefing that complied with the provisions of 11 U.S.C. §§109(h) and 111.

A debt repayment plan [choose one] was /was not prepared. If a debt repayment plan was prepared, a copy of the debt repayment plan is attached to this certificate.

This counseling session was conducted by [choose one] internet, telephone, or in person.

Date \_\_\_\_\_

By:  
Name:  
Title:

COUNSELOR SIGNATURE  
COUNSELOR NAME PRINTED  
Credit Counselor

Individuals who wish to file a bankruptcy case under Title 11 of the United States Code are required to file with the United States Bankruptcy Court a completed certificate of counseling from the nonprofit budget and credit counseling agency that provided the individual with the counseling services and a copy of the debt repayment plan, if any, developed through the credit counseling agency. See 11 U.S.C. §§109(h) and 521(b).

## § 2. General Warning to All Parties Proceeding Without an Attorney (Proceeding *Pro Se*)

Individuals (but not corporations or partnerships) may appear “*pro se*” (that is, without an attorney) in the bankruptcy court. As discussed more fully under separate topics addressed specifically to debtors and to creditors, bankruptcy can be a very difficult area in which to proceed *pro se*. You may wish to obtain the services of an attorney (see *Find an Attorney, Sometimes Available for Free*). **Only** an attorney is authorized to give you legal advice regarding a bankruptcy case or proceeding:

Ethical rules prohibit the Clerk’s Office personnel and the Judges’ chambers staff from giving legal advice. For example, they cannot:

Explain the meaning of a particular statutory provision or rule

Give an interpretation of case law

Explain the result of taking or not taking action in a case

Help you complete forms, or advise you regarding what is legally required when a form asks for information

Tell you whether jurisdiction is proper in a case

Tell you whether a complaint properly presents a claim

Provide advice on the best procedure to accomplish a particular goal

Apply a rule or statute

Explain who should receive proper notice or service

The Judge in a case cannot give you legal advice or assist you in the case. The Judge’s job is to supervise and administer the entire case and to resolve disputes between the parties. The Judge must remain impartial (not lean in favor of one side). You cannot engage in so-called *ex parte* communications with the Judge (meaning only you communicating with the Judge):

You cannot contact the Judge to have a conversation about the case.

When you file a paper requesting some form of relief from a Judge, you must serve any person who might be adversely affected were the relief granted or who might otherwise be interested in the matter with a copy of the request.

See Federal Rule Bankruptcy Procedure 9003. (The Federal Rules of Bankruptcy Procedure, Official Forms, and the Local Bankruptcy Rules may be accessed at the court’s website, [www.tnwb.uscourts.gov](http://www.tnwb.uscourts.gov).)

So-called “petition preparers” are not authorized to give legal advice. Their role is strictly that of a typing service transcribing for a minimal fee the information a client provides, but not making suggestions regarding what papers are legally appropriate or what information legally is appropriate to include on the papers.

Most of the required forms for both debtors and creditors in a bankruptcy case are available for free on this court’s website, <http://www.tnwb.uscourts.gov/TNW/Forms.aspx> and on the U.S. Courts’ website at <http://www.uscourts.gov/bkforms/index.html>, and many are in pdf-fillable format so that they can be completed using a keyboard. If you do not have a computer you can use for that purpose, check with your public library to see if it has a computer you can use for that purpose. You may obtain hard copies of the forms at the Bankruptcy Court Clerk’s Office Intake Counter, 200 Jefferson Avenue, 4th Floor, Memphis, Tennessee, Monday through Friday, between the hours of 8:30 a.m. and 4:00 p.m.

Given the availability on the internet of pdf-fillable forms, there is little or no reason for a debtor to pay a non-attorney “petition preparer” to obtain the forms. Properly completing those forms, however, may require advice of competent legal counsel. A petition preparer may not give you legal advice.

The information here, i.e., *Information for Parties Who Have No Attorney*, is not a substitute for the advice of competent legal counsel (again, see *Find an Attorney, Sometimes Available for Free*), and should not be cited or relied upon as legal authority. It is intended as only a guide to some basic aspects of bankruptcy law, and is necessarily limited and does not include all of the controlling law (principally the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the court’s Local Bankruptcy Rules, and court decisions interpreting those documents).

### **§ 3. Special Warning to a Debtor**

#### **Thinking of Filing a Bankruptcy Petition**

Before you file a bankruptcy petition, you need to stop and make sure that you have met the Bankruptcy Code's credit counseling or briefing requirement, that you are otherwise eligible to file petition, *and* that filing a petition is the best thing for you to do:

DO NOT file if you have not obtained credit counseling within 180 days before you file your bankruptcy case (unless you qualify for one of the rarely applicable exceptions to that requirement). You need to make sure that you receive credit counseling, as required by section 109(h) of the Bankruptcy Code (11 U.S.C. § 109(h)), before you file. (A copy of the Bankruptcy Code is available at the Clerk's Office and also online at <http://uscode.house.gov/search/criteria.shtml>). If you do not get the credit counseling before you file, your case may be dismissed. (See, *Notice to All Debtors Before Filing a Case*, above).

You need to determine whether, under the law of your state, your income is above or below the amount subject to garnishment or is immune from garnishment, and whether your other assets can or cannot be seized by creditors. For example, if your employer is located in Tennessee, the amount of wages that can be seized is governed by Tennessee Code Annotated section 26-2-106 which may be accessed at <http://www.michie.com/tennessee>. Other states' statutes can be found on <http://www.law.cornell.edu/states/listing.html>

If you are considering bankruptcy because you face a foreclosure on real property, there may be ways of avoiding foreclosure short of filing a bankruptcy case. See the discussion of foreclosure on these U.S. Government websites:

FDIC Foreclosure Prevention website pages.

<http://www.fdic.gov/consumers/loans/prevention/consumer.html>

Home Ownership Resources page of MyMoney.gov, the U.S. Financial Literacy and Education Commission's website designed to teach the basics of financial education.

<http://www.mymoney.gov/>

U.S. Courts website. <http://www.uscourts.gov/bankruptcycourts/prose.html>.



**If you have filed a bankruptcy case before and that case was dismissed:**

Determine whether the order that dismissed your last case barred you from filing a new case for some period of time (for example, by dismissing the case “with prejudice for 180 days”). If so, you cannot file your new case until that time has passed (usually measured from the date the clerk entered the order of dismissal which may be later than the date the Judge signed the order).

Determine whether a motion for relief from the automatic stay was pending in your earlier case when you decided to dismiss your case voluntarily. If so, your new case may be dismissed if filed within 180 days after entry by the clerk on the docket of the order that dismissed the earlier case. See section 109(g)(2) of the Bankruptcy Code (11 U.S.C. § 109(g)(2)).

Your right to have the automatic stay in place throughout your case will be affected if a prior case or cases were pending during the year before you file your new case. You are urged to seek the advice of an attorney about this. See sections 362(c)(1) and 362(c)(2) of the Bankruptcy Code (11 U.S.C. §§ 362(c)(1) and 362(c)(2)).

**If you filed a bankruptcy case before and received a discharge:**

Determine if that discharge makes you ineligible to receive a discharge in the new case. See the *Table Regarding Availability of Discharge if Debtor Got a Discharge in an Earlier Case*, at the end of this discussion.

**You may be denied a discharge in a chapter 7 case if you engaged in certain conduct preceding the bankruptcy case such as:**

in some instances, having made a transfer of property in order to hinder, delay, or defraud a creditor (see 11 U.S.C. § 727(a)(2)), or

in some instances, having failed to keep adequate records (see 11 U.S.C. § 727(a)(3)),

or if you will not be able in the case to explain satisfactorily any loss of assets or deficiency of assets to meet your liabilities (see 11 U.S.C. § 727(a)(5)).

You should be aware that sometimes not all of a debtor's liabilities are discharged in a bankruptcy case even if the debtor receives a discharge. See 11 U.S.C. §§ 523(a) and (c), and 1328(a). The provisions regarding which debts are dischargeable are complicated, and the advice of counsel is *strongly* recommended in your evaluating them.

**Before you file a bankruptcy petition, you ought to determine whether you are eligible to file a bankruptcy case:**

Be aware of the consequences, discussed above, of having filed a bankruptcy case before;

Make sure that your case will not be dismissed based on the statutory requirement regarding pre-petition credit counseling discussed above under *Notice to All Debtors Before Filing a Case*;

If you wish to file a case under chapter 13 of the Bankruptcy Code, make sure you meet the regular income and debt eligibility requirements for such a case (see 11 U.S.C. § 109(e)); and

If you wish to file a case under chapter 7 of the Bankruptcy Code, be aware of the means test under 11 U.S.C. § 707(b)(2). See also Official Form B22A (information you must file addressing the means test). (A copy of the Official Forms is available at the court's website at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>). If a presumption of abuse arises under the means test, then under 11 U.S.C. § 707(b)(1) your case might be dismissed as an abuse of the provisions of chapter 7 unless you convert the case to another chapter.

You will also need to be aware of all of the requirements that will be imposed upon you, once the case is filed, in order for you to prevent dismissal of the case and to prevent denial of a discharge. See *Warning to Debtors Who Are Pro Se (Without an Attorney) Regarding the Difficulties They May Encounter Once They File a Bankruptcy Case* topic set forth below. Beyond that, you need to also read the *General Warning to Parties Proceeding Without an Attorney (Proceeding Pro Se)*, above.

**Table Regarding Availability of Discharge if Debtor Got a Discharge in an Earlier Case**

**Chapter 7.** An individual debtor is not entitled to get a discharge in a new Chapter 7 case if:

- the debtor was granted a discharge in a case under Chapter 7 or 11 of the Bankruptcy Code in a case commenced within 8 years before the date of the filing of the petition in the new case; or
- the debtor was granted a discharge in a case under chapter 12 or 13 of the Bankruptcy Code in a case commenced within 6 years before the date of the filing of the petition in the new case, unless

payments under the plan in such prior case totaled at least:

100 percent of the allowed unsecured claims in such prior case; or

70 percent of such claims, and the plan was proposed by the debtor in good faith, and was the debtor's best effort.

See 11 U.S.C. § 727(a), paragraphs (8) and (9).

**Chapter 11.** An individual debtor is not entitled to get a discharge in a new chapter 11 case in certain circumstances if the debtor would not be entitled to get a discharge in a chapter 7 case. See 11 U.S.C. § 1141(d)(3).

**Chapter 13.** A debtor is not entitled to get a discharge in a new chapter 13 case if the debtor got a discharge:

- in a case filed under chapter 7, 11, or 12 during the 4-year period preceding the filing of the debtor's petition in the new case; or
- in a case filed under chapter 13 during the 2-year period preceding the filing of the debtor's petition in the new case.

See 11 U.S.C. § 1328(f).

**§ 4. Warning to Debtors Who Are *Pro Se* (Without an Attorney)  
Regarding the Difficulties  
They May Encounter Once They File a Bankruptcy Case**

In addition to reading this topic, an individual debtor thinking of filing a bankruptcy petition should read the information found in these sections:

- **Notice to All Debtors Before Filing a Case**
- **General Warning to Parties Proceeding Without Counsel (Proceeding *Pro Se*)**
- **Special Warning to a Debtor Thinking of Filing a Bankruptcy Petition**

Particularly for a debtor, it is extremely difficult to successfully navigate a bankruptcy case given the complexity of the bankruptcy laws. The rules are very technical, and a misstep may affect a *pro se* debtor's rights. **Bankruptcy for a debtor has long-term financial and legal consequences. The court strongly encourages debtors to attempt to obtain the assistance of an attorney** (see *Find an Attorney, Sometimes Available for Free*).

In addition to the general requirement regarding obtaining credit counseling before you file your petition (discussed in detail under *Notice to All Debtors Before Filing a Case* ) you need to be aware of the requirements that you must meet in order to avoid dismissal of the case and to prevent denial of a discharge. There are materials addressing in more detail the requirements that will be imposed on you and how to comply with them under *Informational Materials*. Those requirements, detailed therein, include the following.

**Filing Petition and other Documents on the Required Correct Official Form**

The Petition is the document you file to commence your bankruptcy case. (Official Form 1). It must be accompanied by the filing fee, an application to pay the filing fee in installments or, in a chapter 7 case, an application for waiver of the filing fee.

It ***must*** be filed using the most recent version of the Official Form for a petition. Similarly, other documents required to be filed on an Official Form ***must*** use the most recent version of the Official Forms. Official Forms are available at the Court's website, <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>.

## **Requirements of Filing With the Petition a List of Creditors, a Mailing Matrix, and a Statement of Social Security Number**

Under Federal Rule Bankruptcy Procedure 1007(a)(1), you are required to file **with the petition** a list of creditors, other parties to any executory contract or unexpired lease, and any co-debtor (such as a guarantor or co-signer). You must file that list (commonly referred to as the **List of Creditors**), using the caption of the case (see Official Form B16B) and signing the list under penalty of perjury (or under oath) (see Fed. R. Bankr. P. 1008 and 28 U.S.C. § 1746)) as being an accurate list in compliance with Rule 1007(a)(1). But this List of Creditors, as discussed below, can be combined with the Mailing Matrix.

In addition, you must submit that list as a **Mailing Matrix** for the case in accordance with Local Bankruptcy Rule 1007(a)-1 and the Clerk's Office's Mailing Matrix Guidelines.

You must also file **with the petition** a Statement of Social Security Number on Official Form B21.

**Caution!** Failure to file the List of Creditors, the Mailing Matrix, or the Statement of Social Security Number with the petition may result in the court dismissing the case within a few days after it started.

## **Required Filings Within 15 Days of Commencement of Case of Certain Documents on Official Forms, Payment Advices, and Record of Certain Educational IRAs**

You are required to file within 15 days after you file your bankruptcy petition certain additional papers, some of them on Official Forms. See 11 U.S.C. § 521(a)(1)(B) and (c) and Bankruptcy Rule 1007(b) and (c). See also the checklists (one for each chapter of the Bankruptcy Code under which a case may be filed) entitled Required Lists, Schedules, Statements, and Fees (Director's Procedural Form B200, available at <http://www.tnwb.uscourts.gov/TNW/BKInfo.aspx> under **Filing Requirements**).

You must fill out the required Official Forms fully and truthfully, and sign them under penalty of perjury. You must use the most recent version of the Official Forms. We emphasize that one of these Official Forms, known as the Means Test, is especially complicated.

If you file under chapter 7 of the Bankruptcy Code, you will have to file a complicated Statement of Current Monthly Income and Means Test Calculation (Chapter 7) (Form B22A) addressing the means test under 11 U.S.C. § 707(b)(2). If a presumption of abuse arises under the means test, then under 11 U.S.C. § 707(b)(1) your case might be dismissed as an abuse of the provisions of chapter 7 (unless you were to convert the case to another chapter).

If you file under chapter 13 of the Bankruptcy Code, you will have to file a similarly complicated Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income (Chapter 13) (Form B22C).

In addition to the papers you must submit on Official Forms, you are required to file the record of certain educational IRAs and be prepared to submit copies of certain payment advices to the trustee at the first meeting of creditors. See 11 U.S.C. § 521(a)(1)(B)(iv) and (c).

In a chapter 13 case, you must also file a plan. The plan form may be found at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx> (Form LF002F). Also, in a chapter 13 case, you must begin making plan payments to the chapter 13 trustee 30 days after filing your petition or risk dismissal of your case. See 11 U.S.C. § 1326(a).

**Warning!** Failure to timely file these required papers or, in the case of payment advices, to furnish the payment advices to the trustee may result in dismissal of the case:

There are limits on the court's granting an extension of the 15-day period. See 11 U.S.C. § 521(a) and (c); Bankruptcy Rule 1007(b) and (c).

11 U.S.C. § 521(i)(1) generally requires that if certain of these required documents are not filed "within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition."

## **Tax Returns and (in Chapter 13) Periodic Statements of Income and Expenses**

The Bankruptcy Code imposes various requirements on you regarding tax returns, and if you fail to comply with those requirements, your case may be dismissed:

Not later than 7 days before the date first set for the meeting of creditors you must give the trustee a copy of the Federal income tax return that was required under the tax laws for the most recent tax year ending immediately before the commencement of the case and for which you filed a return. See 11 U.S.C. § 521(e)(2)(A); Bankruptcy Rule 4002(b)(3) and (4). In lieu of a copy of the tax return, you may furnish a transcript of the return.

You are required timely to file with the tax authorities tax returns coming due after the commencement of the case. See 11 U.S.C. § 521(j).

At the request of any party in interest in a chapter 7, 11, or 13 case, you are required to file with the court, at the same time you file it with the IRS:

a copy of each Federal income tax return (or a transcript of such return) for each tax year ending while the case is pending (see 11 U.S.C. § 521(f)(1));

a copy of each Federal income tax return (or a transcript of such return) for each tax year ending in the 3-year period ending on the date you file your bankruptcy petition for which a return had not been filed with the IRS as of the date you filed your bankruptcy petition and for which you subsequently filed a return (see 11 U.S.C. § 521(f)(2));

a copy of each amendment to any of the foregoing Federal income tax returns (see 11 U.S.C. § 521(f)(3)).

In a chapter 13 case, you must, prior to the first date set for the meeting of creditors, file with the appropriate tax authorities all tax returns required to be filed under non-bankruptcy law for all taxable periods ending during the 4-year period ending on the date of the filing of your petition. See 11 U.S.C. § 1308. Also, in a chapter 13 case, at the request of any party in interest, you must periodically file an annual statement of income and expenditures. See 11 U.S.C. § 521(f)(4) and (g)(1).

## **Statement of Intention in Chapter 7 Case**

In a chapter 7 case you must file by the earlier of 30 days after you file your petition or the date of the meeting of creditors a statement of intention regarding any debts you have that are secured by property of your bankruptcy estate. See 11 U.S.C. § 521(a)(2). If you fail to comply with that requirement, the automatic stay may be terminated with respect to any personal property, for example, an automobile, securing such debt. See 11 U.S.C. § 362(h).

## **Meeting of Creditors**

You are required to attend a meeting of creditors and to be examined and testify truthfully under oath at that meeting in response to questions posed by the trustee (and by any creditors in attendance). See 11 U.S.C. §§ 341 and 343; Fed. R. Bankr. P. 2003(b)(1).

The meeting of creditors' date, time, and location will be set by the clerk shortly after you file your petition for a date 20 to 40 days after you file your petition commencing your case. See Fed. R. Bankr. P. 2003(a). Within 15 days after you file your petition, you should receive a notice regarding the commencement of the case that sets forth the date, time, and location of the meeting. If you do not receive that notice by then, you should promptly contact the Clerk's Office to learn when and where the meeting will be held.

### **At the meeting of creditors:**

Under Bankruptcy Rule 4002(b)(1), you must bring:

- (1) a driver's license (or other picture identification issued by a governmental unit) or other personal identifying information that establishes your identity; and
- (2) evidence of your Social Security Number(s), or a written statement that such documentation does not exist.

Under Bankruptcy Rule 4002(b)(2), you must bring and make available to the trustee:

- (1) evidence of current income such as your most recent payment advice;
- (2) unless the trustee or U.S. Trustee instructs otherwise, statements for each of your depository and investment accounts (including checking, savings, and money market accounts, mutual funds and brokerage accounts) for the time period that includes the date of the filing of the petition; and



(3) documentation of the monthly expenses claimed by you on the version of Official Form B22 applicable to the chapter in which you filed your case (Form B22A, B22B, or B22C)).

(4) In a case other than one under chapter 7, the trustee (or the United States Trustee) may require you to provide documentation at the meeting of creditors regarding your being current on any domestic support obligation coming due post-petition, as required, for example, in a chapter 13 case, by 11 U.S.C. § 1325(a)(8), to obtain confirmation of a plan.

## **Reaffirmation Agreements**

(Information adapted from “Reaffirmation Agreement Information Packet” published by the Debtor Assistance Project, Los Angeles, CA and available at <http://www.publiccounsel.org/publications?id=0098>

If you file a chapter 7, you may have the option of entering into a reaffirmation agreement with one or more secured creditors.

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

A reaffirmation agreement is where you agree to pay a debt even though you could have discharged the debt in your bankruptcy case. In return, the creditor promises not to repossess the property securing the debt as long as you pay the debt.

When you reaffirm a debt, you continue to be legally responsible for paying it back. This gives the creditor some legal rights. For example, if you have a car loan and miss a payment in the future, the creditor can do any of the following things:

- (1) Repossess the car;
- (2) Sell the car to someone else; and
- (3) Sue you for the money you owe (deficiency balance).

When you reaffirm a debt, it’s like you never filed for bankruptcy. This can have serious financial consequences on your future. Therefore, it is wise to consider all of your options before entering into a reaffirmation agreement.

### **2. When is a reaffirmation agreement required?**

If you filed your bankruptcy case on or after October 17, 2005, a reaffirmation agreement may be mandatory. For example, if you own secured property, such as a car, you must tell the court what you intend to do with it. You have three options:

- (1) Keep the car and continue making payments until it's paid off;
- (2) Keep the car by paying it off in a lump-sum payment (this could be less than you owe); or
- (3) Return the car to the creditor and owe nothing more.

If you can afford to keep the secured property and continue making payments, you are required to sign a reaffirmation agreement. **See Reaffirmation Agreement Director's Procedural Form B 240 A** available at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>. If you decide that you cannot afford to keep the property, you must return it to the creditor. If you decide to return it, the unsecured deficiency debt ordinarily will clear later with your discharge.

After you file for bankruptcy, you will receive an appointment to see the bankruptcy trustee. This is called the 341(a) hearing or "meeting of the creditors." **After the meeting of creditors, you have 45 days to sign a reaffirmation agreement or return the secured property to the creditor.** If you fail to do either of these things, you may lose important legal rights **and** the property.

### 3. Reaffirmation Hearing

If you do not have an attorney, the bankruptcy judge must approve your reaffirmation agreement. You will receive a hearing date to see a judge and explain why you want to reaffirm the debt. You must also explain how you can afford to make payments in the future. The judge will decide whether or not to approve your reaffirmation agreement.

### 4. Making Payments

While your bankruptcy case is pending, you must continue making payments to avoid losing your secured property. Your creditor may have stopped sending you the monthly bill after you filed for bankruptcy. If so, contact the creditor immediately to get the correct payment information, including the address and payment date. If you do not hear back from the creditor, it is still your responsibility to send payments on time.

### **Restrictions on Your Obtaining a Discharge:**

You can be denied a discharge (or the case may be dismissed, thereby precluding you from obtaining a discharge) if you refuse to comply with an order of the court, or knowingly and fraudulently make a false statement under oath in the case or fail to

disclose all of your assets and debts or have otherwise engaged in certain dishonest conduct with respect to the bankruptcy case. See 11 U.S.C. §§ 727(a)(4), 727(a)(6), 1307(c).

You may even be denied a discharge in a chapter 7 case if you engaged in certain conduct preceding the bankruptcy case (such as failing to keep adequate records or having engaged in certain transfers of property in order to hinder, delay, or defraud a creditor). See 11 U.S.C. §§ 727(a)(2), (3) and (5).

In order to receive a discharge in a chapter 7 or chapter 13 case, you are required to take a financial management course *after* filing the petition and file a **Debtor's Certification of Completion of Instructional Course Concerning Financial Management . ( Local Form 023F available at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>).**

#### **Fees You Must Pay:**

You are required to pay with the petition a filing fee in the case unless (1) you apply for and are granted a waiver in a chapter 7 case (see Application for Waiver, **Form AOB3B2** at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>) or (2) you apply for and are granted permission to pay the fee in installments (see Debtor's Application to Pay Filing Fee in Installments, **Local Form LF001F** available at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx> ). If you fail to obtain a waiver or fail to timely pay the filing fee, the court will dismiss your case. See Fed. R. Bankr. P. 1006 (b) and (c).

The cumulative filing fee for a Chapter 7 case is \$299 and for a Chapter 13 case is \$274.

If you amend your schedules (or your list of creditors and mailing matrix) to add or change the name of a creditor, you must pay a \$26 fee.

**§ 5. Creditors (and Other Non-Debtor Parties)  
Proceeding *Pro Se* (Without an Attorney).**

Creditors (and other non-debtor parties), should be aware of the following points regarding proceeding *pro se* (that is, without an attorney).

**Filing of Papers by Corporations and Partnerships.**

Corporations and partnerships generally may not file papers in a bankruptcy case *pro se*, and, with certain exceptions listed below, will need to obtain representation by an attorney to file any papers. See *Find an Attorney (Sometimes Available for Free)*. But any creditor (including a corporation or a partnership through a non-attorney representative such as a member, officer, or employee) may file *pro se* any documents that would not constitute the practice of law, including the following documents or an amended version of such documents:

Request to Receive All Notices under Fed. R. Bankr. P. 2002(i),

Proof of Claim, including an amended Proof of Claim. See, Proof of Claim Instructions, Form AOB10 LINFO; Proof of Claim Forms: Chapters 7, 11, and 12-FORM AOB10L; Chapter 13 -Memphis-FORM MISC 015F and Chapter 13 -Jackson-FORM MISC 014F at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>.<sup>1</sup>

Withdrawal of a proof of claim,

Notice of Transfer of Claim Other Than for Security (Director's Procedural Forms B210A and B210B),

Application for Search of Bankruptcy Records (Director's Procedural Form B132),

Request to Recover Unclaimed Funds,

Reaffirmation Agreement and proposed Order regarding that Agreement  
(see Reaffirmation Agreement, Form AO B240A available at  
<http://www.tnwb.uscourts.gov/TNW/Forms.aspx>).

Even though they generally may not appear *pro se*, corporations and partnerships may find that the above *Informational Materials* section has informative topics, including Bankruptcy Basics.

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Note that the Proof of Claim forms as posted on this website, <http://www.tnwb.uscourts.gov/TNW/Forms.aspx> can be filled in using your computer. In a chapter 7 case, a creditor ought not file a proof of claim until the clerk gives notice of a deadline to file a proof of claim. Often a chapter 7 case is a so-called "no asset case" in which there is nothing for a trustee to distribute to creditors and hence no proofs of claim are filed.

## **Participation by Corporations and Partnerships at the Meeting of Creditors**

**The meeting of creditors is a meeting at which the debtor must appear and, under oath, submit to an examination by the case trustee, U. S. Trustee, and creditors. See 11 U.S.C. §§ 341 and 343.**

Under 11 U.S.C. § 341(c), and notwithstanding any other statute, rule, or state constitution provision to the contrary, a creditor (including a corporation or partnership) holding a claim arising from a consumer debt (including a non-attorney representative of such creditor such as an employee) must be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13 of the Bankruptcy Code.

## **Right of Creditor Who is an Individual to Appear, File Papers, and Participate in Case**

A creditor who is an individual may pursue any matter *pro se*. Even though an individual may appear *pro se*, that individual should consider whether to engage an attorney. See *Find an Attorney (Sometimes Available for Free)*. If you decide to proceed *pro se*, you may find Bankruptcy Basics in the *Informational Materials* section of particular assistance. You should also be aware that there are restrictions on any assistance from court personnel as discussed in the *General Warning to All Parties Proceeding Without An Attorney* section.

## **Reaffirmation Agreement**

A chapter 7 debtor may be interesting in reaffirming certain debts by entering into a reaffirmation agreement with the creditor. Under a reaffirmation agreement, the debtor agrees to pay a debt even though he could have eliminated the debt in the bankruptcy case. When the debtor reaffirms a debt, he continues to be legally responsible for paying it back. This gives the creditor some legal rights. For example, if you have claim secured by a car and the debtor misses a payment in the future, the creditor can do any of the following things:

- (1) Repossess the car;
- (2) Sell the car to someone else; and
- (3) Sue the debtor you for the additional amount owed (deficiency balance).

If a debtor does not have an attorney, the bankruptcy judge must approve the reaffirmation agreement at a hearing. See 11 U.S.C. § 524(c) and Reaffirmation

Agreement Director's Procedural Form B240A available at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>.

### **Child Support Creditors.**

Child support creditors or their authorized representatives are permitted to appear and intervene in the case in order to protect their child support claim without charge or meeting any rule regarding attorney appearances if the creditor or representative completes and files the appropriate **Appearance of a Child Support Creditor Form, MISC027F** available at <http://www.tnwb.uscourts.gov/TNW/Forms.aspx>.

Again, although many creditors are able successfully to proceed *pro se* with respect to some of the more routine aspects of a bankruptcy case (such as filing a proof of claim), you may wish to consult with competent legal counsel before doing so (see *Find an Attorney, (Sometimes Available for Free)*) in order to make sure you are proceeding correctly (for example, that you have correctly completed any required form, particularly if you do not understand the form).

### **Corporations' and Partnerships' Inability to File Papers and Appear *Pro Se* in a Proceeding Brought By or Against It.**

In a proceeding pursued by you or against you (such as a motion for relief from the automatic stay or an objection to your proof of claim), only individuals may appear *pro se*. A corporation or partnership may not appear *pro se* in a proceeding commenced by it in a case. For example, a corporation may not file a motion for relief from the automatic stay *pro se*.

Nor may a corporation or partnership appear *pro se* to defend against a proceeding brought against it in a case, and this includes both filing papers in the proceeding without an attorney and representing itself without an attorney at any hearing. For example, it may not appear *pro se* to defend against an objection to its proof of claim (but it could file an amended proof of claim *pro se* to cure a defect that was the subject of the objection to the proof of claim, as such a filing is not considered a prohibited *pro se* appearance).

Although a corporation or partnership may not file papers *pro se* in a proceeding brought against it or appear *pro se* at hearings, it may, without an attorney, contact the opposing party's attorney to discuss a settlement of the matter. But the court encourages corporations and partnerships to consult with competent legal counsel if in need of legal advice. See *Find an Attorney (Sometimes Available for Free)*.

## § 6. Find an Attorney (Sometimes Available for Free)

*Only* an attorney is qualified to give you legal advice. So called “petition preparers” or “document preparers” are not authorized to give debtors or other parties legal advice. Their role is strictly that of a typing service transcribing for a minimal fee the information a client provides, but they are not qualified to give advice regarding what papers are legally appropriate or what information legally is appropriate to include on the papers. The following are suggestions regarding finding an attorney.

(1) **The court and the clerk’s office personnel** cannot advise you regarding who would be a good attorney for you to employ. But you can come to the clerk’s office and review court files to see how well an attorney has handled matters in other cases, and to see the fees a debtor’s attorney has charged in other cases. You may also attend any hearings the court conducts to see how attorneys handle cases at those hearings. Information regarding when hearings are scheduled is available at the clerk’s office and on the court’s website, [www.tnwb.uscourts.gov](http://www.tnwb.uscourts.gov), under Court Calendars.

(2) **The Memphis Bar Association** has a webpage regarding How to Find and Work With an Attorney:

<http://www.memphisbar.org>

(3) **The Memphis Bar Association and Memphis Area Legal Services** offer free Advice and Referral Clinics (Saturday Clinics) on certain Saturdays, at which you can obtain free advice regarding many legal problems including debt collection problems, landlord-tenant problems, and bankruptcy:

<http://www.memphisbar.org>

<http://www.malsi.org>

At such a clinic, an individual may ask an attorney about bankruptcy (including asking the attorney for advice concerning completing papers the individual might file regarding a bankruptcy case). In addition, certain indigent debtors in need of the protections of the bankruptcy laws may be referred to an attorney who will file a case under chapter 7 of the Bankruptcy Code for free. Although such a debtor is responsible for filing fees, the debtor may be eligible for a waiver of such fees from the court.

(4) **The American Bar Association’s website,**

<http://apps.americanbar.org/legalservices/findlegalhelp/home.cfm>

is another possible starting point for finding an attorney, and it offers information regarding dealing with an attorney. It lists links for finding an attorney for each state.

**§ 7. Informational Materials Regarding Bankruptcy**  
**(Guides to Basics of Bankruptcy, Statutes, Forms, Rules, Checklists, Filing Fees)**

Individuals unfamiliar with the bankruptcy process may find the following materials useful:

Bankruptcy Basics Video at <http://www.tnwb.uscourts.gov/TNW/BKBasics.aspx>

*In Debt*, the Federal Trade Commission's web page for individuals having debt problems.  
<http://www.ftc.gov/bcp/menus/consumer/credit/debt.shtm>

• **Guidance regarding filing bankruptcy:**

*Filing for Bankruptcy Without an Attorney* discussion above.

Bankruptcy Basics:  
available at <http://www.tnwb.uscourts.gov/TNW/BKBasics.aspx> which discusses:

The Bankruptcy Discharge

Descriptions of the Different Chapters Under Which a Debtor May File:

Chapter 7  
Chapter 11  
Chapter 12  
Chapter 13

Bankruptcy Glossary

Director's Form B200 (checklists of filing requirements for different chapters) available at  
<http://www.tnwb.uscourts.gov/TNW/BKInfo.aspx> under Filing Requirements.

Filing Fees (see Filing Fee link at [www.tnwb.uscourts.gov](http://www.tnwb.uscourts.gov))

• **Accessing Case Information and Obtaining Copies of Documents**

**In person** at the Clerk's Office Intake Counter, 200 Jefferson Avenue, 4th Floor, Memphis, Tennessee between the hours of 8:30 a.m. and 4:00 p.m.

**By Phone:** Bankruptcy Court Clerk's Office: (901) 328-3500 Memphis; (731) 421-9300 (Jackson).

Voice Case Information System (VCIS) 901-328-3509 or 1-888-361-4961. PACER (901) 328-3617 or 1-800-406-0190.

• **Statutes, rules, forms, and free legal research:**

Accessing Legal Research for Free: <http://www.law.cornell.edu> (Cornell University's Legal Information Institute)



Shelby County Law Library, 140 Adams Avenue, Room 334, Memphis, TN 38103, 901-527-7041, open 8:00 a.m.– 4:00 p.m., Monday through Friday,  
[www.shelbycountylawlibrary.com](http://www.shelbycountylawlibrary.com).

**Federal Statutes including the Bankruptcy Code (Title 11, U.S. Code)** may be accessed:

<http://uscode.house.gov/search/criteria.shtml>

**Federal Rules of Bankruptcy Procedure** may be accessed:

<http://www.uscourts.gov/FederalCourts/Bankruptcy.aspx>

**Official Bankruptcy Forms** may be accessed:

<http://www.uscourts.gov/FormsAndFees/Forms/BankruptcyForms.aspx>

**Local Rules of Bankruptcy Procedure** may be accessed:

<http://www.tnwb.uscourts.gov/TNW/LBKRules.aspx>

**Local Bankruptcy Forms** may be accessed:

<http://www.tnwb.uscourts.gov/TNW/Forms.aspx>

**Federal Rules of Evidence** (governing what evidence the court can receive in a trial) may be accessed:

<http://www.law.cornell.edu/rules/fre>

**State Constitutions and Statutes.** State laws often play a role in determining rights in a bankruptcy case:

State law often defines property rights (for example, what property the debtor owns that may become property of the bankruptcy estate), and much of that law is statutory. The statutes governing property rights, when Tennessee law applies, are found in the Tennessee Code Annotated at <http://www.michie.com/tennessee>. Other states' statutes may be found at <http://www.law.cornell.edu/states/listing.html> (But property rights may also be based on decisional law. Some of the decisions of the Tennessee Courts of Appeal and Supreme Court are available online at <http://www.law.cornell.edu/states/tennessee.html> Other courts may also have issued decisions on Tennessee property law questions.)

State law plays a role in the exemptions a debtor claims. Tennessee has opted out of the Federal Bankruptcy Exemption Statute (11 U.S.C. § 522). Thus, a debtor domiciled in Tennessee may only claim the exemptions available under

the Tennessee Code and federal non-bankruptcy exemptions including social security benefits and veterans' benefits. See 38 U.S.C.A. § 5301(a).

The statutes governing Tennessee exemptions may be accessed at <http://www.michie.com/tennessee>. See Tenn. Code Ann. § 26-2-101, et seq.

### **§ 8. Resources Available at the Clerk's Office**

The Clerk's Office personnel are prohibited from giving legal advice. As mentioned elsewhere on this website, the Clerk's Office personnel and the Judges' staff members are prohibited from giving legal advice. For example, they cannot:

Explain the meaning of a particular statutory provision or rule.

Give an interpretation of case law.

Explain the result of taking or not taking action in a case.

Help you complete forms, or advise you regarding what is legally required when a form asks for information from you.

Tell you whether jurisdiction is proper in a case.

Tell you whether a complaint properly presents a claim.

Provide advice on the best procedure to accomplish a particular goal.

Apply a rule or statute.

Explain who should receive proper notice or service.

The Judge in a case cannot give you legal advice or assist you in the case. The Judge's job is to supervise and administer the entire case and to resolve disputes between the parties. Thus, the Judge must remain impartial (not lean in favor of one side). You cannot engage in so-called *ex parte* communications with the Judge (meaning only you communicating with the Judge). You cannot contact the Judge to have a conversation about the case. When you file a paper requesting some form of relief from a Judge, you must serve any person who might be adversely affected were the relief granted or who might otherwise be interested in the matter with a copy of the request.

At the Clerk's Office, you may examine copies of the following materials:

the Bankruptcy Code (Title 11, U.S. Code);

Federal Rules of Bankruptcy Procedure;

Official Bankruptcy Forms;

Official Forms;

Local Bankruptcy Rules and Local Forms.

You may also access all of the above described information for free at the websites identified in the discussion under *Informational Materials*.

For information regarding the Clerk's Office's hours operation, telephone numbers, etc., go to [www.tnwb.uscourts.gov](http://www.tnwb.uscourts.gov).