Training Manual for
Pro Bono Bankruptcy Training Program

MODULE 4 –
GETTING TO DISCHARGE:
STEPS AFTER THE CASE IS FILED

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MODULE 4 – GETTING TO DISCHARGE: STEPS AFTER THE CASE IS FILED

The focus of this Module is on the essential activities that occur in most cases after the bankruptcy petition is filed. These remaining steps help the debtor achieve the ultimate goal in individual bankruptcy cases, the granting of a discharge. These steps include representation of the debtor at the meeting of creditors, satisfying the document production requirements, dealing with secured debt, and completing the financial education course. This Module also discusses final steps that should be taken before closing the debtor's case to help the debtor get the most from the bankruptcy discharge and the fresh start opportunity. A checklist of the key actions to take after the initial filing is provided at the end of this Module. A timeline showing the important deadlines in a typical chapter 7 case is also provided at the end of this Module.

The emphasis in this Module is on debtor representation in chapter 7 cases. Representation of debtors in chapter 13 cases often involves special concerns beyond the scope of this Module, such as matters related to the confirmation of the debtor's plan, claim objections, and the treatment of debts secured by the debtor's home and other valuable assets.

1. FIRST STEPS AFTER CASE FILED

1.1 File Documents Not Filed with Petition

Soon after the case is filed the attorney should wrap up any loose ends with the necessary papers for the initial filing. Any of the initial required documents that were not filed with the petition must be filed within fourteen days after the petition date. Bankruptcy Rule 1007(c). If additional information is needed from the debtor to complete the schedules and statements, a reminder letter or email should be sent to the debtor, specifically identifying the missing information. If documents will need to be signed by the debtor, an appointment should be scheduled promptly or other arrangements made to ensure that the filing deadline can be met.

If the required documents cannot be completed and filed within fourteen days after the petition date, a motion for extension of time under Bankruptcy Rule 1007(c) should be filed.

Typically the court will provide to the debtor and the debtor's attorney a deficiency notice or order to show cause stating that the case will be dismissed without further notice or hearing if any missing documents are not filed by a specified date. To avoid getting such a notice and having a case dismissed by the court, or "automatically dismissed" within forty-five days after the petition date under section 521(i) as discussed in Module 3, it is good practice for the attorney to use his or her own case file checklist or tickler system to verify that each of the required documents has been filed. A list of the required documents is provided in Module 3. If there are any doubts about whether all documents have been filed, the attorney may wish to compare his or her case file checklist with the docket report in the court's Electronic Case Filing system available through PACER.

1.1.1 Counseling Certification

In the vast majority of cases the certification that the debtor received the prepetition credit counseling from an approved agency will be made on the petition, in Part 5 of Official Form 101. Occasionally there may be some problem in obtaining the certification before the petition is filed even though the debtor completed the briefing prepetition. In that situation the certification should be filed no later than fourteen days after the petition date. If additional time is needed a motion for extension of time under Bankruptcy Rule 1007(c) should be filed before the fourteen-day period expires.

In the rare case in which the debtor has requested that the counseling be deferred based on exigent circumstances (see Module 2), the debtor's attorney should verify whether the court has entered an order granting the request. If the court schedules a hearing on the request, the debtor's attorney will need to prepare the debtor for the hearing. If the request is granted, the debtor must complete the briefing within thirty days after the petition date. The court may, for cause, extend this period by giving the debtor an additional fifteen days. 11 U.S.C. § 109(h)(3)(B). The certification from an approved agency will need to be filed once the briefing has been completed.

1.2 Review Filing Fee Orders with Debtor

If the debtor has filed a motion to waive the filing fee or to pay the fee in installments, the attorney should confirm that the court has acted on the motion. In cases in which a waiver is sought, the attorney may need to provide additional information requested by the court, or appear at a hearing. If the motion to waive the filing fee is denied, the debtor must be advised that the filing fee will need to be paid. In most cases the order denying the waiver motion will set a schedule for the debtor to pay the filing fee in installments. *See* form order within Official Form 103A.

If a motion to pay the filing fee in installments is granted by the court, the order will be sent by the court to the debtor and debtor's counsel. Still, the attorney should send a letter to the debtor providing clear instructions on how and when the installment payments are to be made, and the consequences of noncompliance. You should become familiar with any local court requirements about payments received directly from debtors. Most courts will not take personal checks or credit cards from the debtor - they will accept cash (if provided in person in the exact amount), money order, or a cashier's check.

1.3 File Motion to Extend or Impose Stay

The Bankruptcy Code contains a number of restrictions based on prior bankruptcy filings, which are discussed in Module 1. These provisions must be considered if there has been any prior bankruptcy filings by your client. You will need to determine whether the debtor's bankruptcy filing will invoke the automatic stay and stop a pending foreclosure sale or other creditor action. Particularly in a chapter 13 case that has been filed to cure a mortgage or car loan default, action may need to be taken to extend or invoke the stay to protect the secured property. However, if there is a codebtor on the loan who did not have a prior bankruptcy

dismissal, the codebtor stay under section 1301 may apply depending upon the specific restriction.

One Prior Dismissed Case. If the consumer has had one prior bankruptcy case dismissed within the year before the petition is filed, the automatic stay will terminate thirty days after the case is filed. 11 U.S.C. § 362(c)(3). However, the debtor may file a motion to extend the stay as to some or all creditors. 11 U.S.C. § 362(c)(3)(B). Because the hearing on the motion also must be held within the thirty-day postpetition period, the attorney should file the motion immediately after filing the petition. The debtor must demonstrate that the case has been filed in good faith, often by showing that circumstances have changed and that the proposed plan is feasible (if a chapter 13 case is filed). Because the stay terminates under this provision only "with respect to the debtor," courts have held that the automatic stay continues to apply in the later case as to estate property. These courts may take the view that a motion to extend the stay is therefore unnecessary, so attorneys should become familiar with the local case law and practice on this point.

Two Prior Dismissed Cases. If a debtor has had two or more prior bankruptcy cases dismissed within the year before filing the new petition, the automatic stay does not go into effect upon the filing of the case. 11 U.S.C. § 362(c)(4). On a motion filed by the debtor within thirty days after the filing of the later case, the court may order the stay to take effect as to some or all creditors upon a showing that the case has been filed in good faith. If there is some imminent creditor action, the attorney should review local procedures for having the motion heard on an expedited basis.

1.4 File Amendments to Schedules

Despite using best efforts to obtain complete and accurate information in preparing the schedules, it is not uncommon for errors or omissions to be discovered after the documents are filed, sometimes in response to questions posed to the debtor at the meeting of creditors. If an amendment is needed, Bankruptcy Rule 1009 provides that the debtor may amend the initial papers as a matter of course at any time before the case is closed. The procedure is a simple one involving the filing of an amended document verified by the debtor. The debtor must give notice of the amendment to the trustee and to any entity affected by the amendment. For an amendment to the debtor's exemptions, notice should be sent to all creditors. If the amendment involves the addition of creditors on Schedules D through F, notice should be sent to the creditors added by amendment (and any other creditors that may be affected). The court will send notice of the commencement of the case (Official Form 309) to added creditors.

A filing fee of $32 must be paid (assuming a waiver has not been granted) for any amendments to a debtor's schedules of creditors or mailing list (matrix). No fee is required when the nature of the amendment is simply to change the address of a creditor or an attorney for a creditor listed on the schedules, or to add the name and address of an attorney for a listed creditor. *See* Bankruptcy Court Miscellaneous Fee Schedule, available at: http://www.uscourts.gov/FormsAndFees/Fees/BankruptcyCourtMiscellaneousFeeSchedule.aspx.

1.5 File or Provide Tax Returns

The Bankruptcy Code requires debtors to produce tax returns (or tax transcripts) in certain circumstances. Debtors must provide a copy of the most recent tax return or transcript to the trustee before the meeting of creditors. The other tax return requirements are imposed only if an interested party or the court makes a formal request.

1.5.1 Tax Returns to the Trustee

At least seven days before the first date set for the meeting of creditors, the debtor must provide to the trustee a copy of the federal income tax return or transcript for the most recent tax year ending before the commencement of the case and for which a federal income tax return was filed. 11 U.S.C. § 521(e)(2)(A). Bankruptcy Rule 4002(b)(3) implements this requirement by providing that the debtor shall provide the tax return or transcript for the most recent tax year "ending immediately before the commencement of the case and for which a return was filed." For example, if the debtor files bankruptcy in January 2022 and the debtor has not yet filed a tax return for the 2021 tax year, the trustee will likely request a return or transcript for the 2020 tax year rather than delay the case until the 2021 return is filed. The debtor is given the option of providing a transcript of the return rather than a copy of the actual return, as discussed below. The tax return or transcript is not filed with the court but is provided to the trustee.

Section 521(e)(2)(A) does not require a tax return or transcript to be provided if the debtor was not required under applicable law to file a return for the most recent tax year. This may occur, for example, if the debtor's gross income is below the threshold set by the Internal Revenue Service (IRS) in determining whether a return must be filed. The guidelines for determining whether a federal income tax return needs to be filed are described in the Internal Revenue Service's Form 9452, which is updated every tax year.

If a client has not filed a tax return for some number of years and was not required to do so, it may be more difficult to obtain a transcript for the last year for which such a return was filed. In that case it may be prudent, even though a return is not required, to have the debtor fill out and file a current return stating that no taxes are owed. Alternatively, a statement from the client may be provided to the trustee indicating why the client was not required to file a tax return for the most recent tax year ending before the case was filed. Bankruptcy Rule 4002(b)(3) provides that the debtor may give the trustee, at least seven days before the first date set for the meeting of creditors, a written statement that such tax documentation does not exist.

1.5.2 Tax Returns to Creditors

If a creditor makes a timely request for a tax return or transcript that is to be provided to the trustee, the debtor must give a copy to the creditor at the same time it is provided to the trustee. 11 U.S.C. § 521(e)(2)(A)(ii). Bankruptcy Rule 4002(b)(4) states that the debtor must comply with a creditor's request for a tax return if the request is made at least fourteen days

before the first date set for the meeting of creditors. Such requests generally are not made in routine cases.

1.5.3 Tax Returns Filed with the Court

If a proper request is made, the debtor may also be required to file with the court copies of tax returns (or transcripts) that are filed with the IRS during the bankruptcy case or for tax years ending during the case. 11 U.S.C. § 521(f)(1)-(3). At the request of the court, the United States trustee, or a party in interest, an individual debtor must file with the court a copy of:

- The debtor's federal income tax return (or transcript) for a tax year ending during the time the case is pending, at the same time it is filed with the IRS;

- Any federal tax return (or transcript) that had not been filed with the IRS before the commencement of the case but was subsequently filed for a tax year ending in the three years before the petition, at the same time it is filed with the IRS; and

- Any amendments to such returns.

1.5.4 Obtaining Returns and Transcripts

In complying with these requirements, the debtor is given the option of whether to provide a copy of the return or a transcript of the return. Typically it is quicker and easier to obtain tax transcripts rather than tax returns, and the tax information provided in transcripts will generally cause less invasion of the debtor's privacy because transcripts include less personal identifying information.

There are several different types of tax transcripts. In most cases the preferred transcript for satisfying the bankruptcy production requirements will be the "Tax Account Transcript," formerly known as the MFTRA-X. A "Tax Return Transcript" is also available, but it contains only information from the original return and does not show activity that has occurred after filing or changes made to the original return. In rare cases, technical transcripts, such as the IMF MCC SPECIFIC, or TXMOD, may be required. These technical transcripts do not contain plain English descriptions and must be decoded.

Clients can instantly view, print, and download Tax Account Transcripts from the IRS by registering to use "Get Transcript Online" at its website: www.irs.gov. Alternatively, clients may request transcripts by calling the IRS at (800) 908-9946 or by using "Get Transcript by Mail" on the IRS website. The transcript will arrive by mail in about five to ten calendar days at the client's address found on the return. If the client has moved since filing the return, transcripts can be obtained by using Form 4506-T, which should be mailed or faxed to the appropriate regional IRS office listed on the form. To obtain the "Tax Account Transcript," the debtor should check the box on line 6b. The debtor must also complete line 9 by indicating the tax year(s) requested. There is no charge by the IRS for transcripts.

1.5.5 Privacy Concerns

Compliance with the tax return requirements should be done in a manner that preserves the debtor's privacy. Bankruptcy Rule 4002(b)(5) provides that tax returns or transcripts provided to the trustee, or to creditors who request them, are subject to the procedures promulgated by the Director of the Administrative Office of the U.S. Courts for safeguarding the confidentiality of tax information. The Director's Guidance for Protection of Tax Information requires that tax information provided under section 521 be redacted to show only: (1) the last four digits of Social Security or ITIN numbers, (2) the initials and not the names of minor children, (3) the year of any date of birth, and (4) the last four digits of any financial account number. In addition the procedures do not permit tax returns filed with the court to be accessible to the public. *See* Judicial Conference of the United States Bankruptcy Case Policies, § 830, Guidance for Protection of Tax Information, available at: http://www.uscourts.gov/rules-policies/judiciary-policies/bankruptcy-case-policies.

If a United States trustee, trustee, creditor or other party in interest seeks to obtain tax information filed with the court under section 521(f), the Director's Guidance requires that a motion be filed with the court that includes a statement showing a demonstrated need for the information and the inability to get it in any other manner. The Guidance provides that the order granting a motion for access to tax information should include language advising the movant that the information obtained is confidential, and may state that sanctions may be imposed for the improper use, disclosure, or dissemination of the tax information.

1.5.6 Dismissal for Failure to Provide Tax Returns

If the debtor does not provide a required return or transcript to the trustee or to a creditor who timely requests it, the case may be dismissed, unless the debtor shows that such failure was due to circumstances beyond the debtor's control. 11 U.S.C. § 521(e)(2)(B). Dismissal under section 521(e)(2) is not automatic. An interested party must file a motion seeking dismissal. To avoid the filing of such a motion, debtor's counsel should notify the panel trustee, the United States trustee, and any requesting creditor if the return is not being provided for reasons beyond the debtor's control or of any steps being taken to obtain the return.

1.6 File and Serve Statement of Intention

In chapter 7 cases the debtor is required to prepare and file a statement of intention (Official Form 108) regarding property securing debts and leased personal property. 11 U.S.C. § 521(a)(2). The statement must be filed and served on the trustee and all creditors named in the statement within thirty days after the petition date or on or before the date of the meeting of creditors, whichever is earlier. Bankruptcy Rule 1007(b)(2). The court may extend the deadline for cause. 11 U.S.C. § 521(a)(2)(A). The statement identifies the debtor's intent to either retain or surrender the property that is collateral for secured claims, and if retaining, whether the debtor will reaffirm, redeem, assume the lease, or some other option. These options that may be noted on the statement are discussed in detail in Part 3 below. However, checking a box on the statement of intent does not make it so; the debtor must follow up by performing the intent (for example, by signing a reaffirmation agreement or assuming a lease).

1.7 Determine if Utility Deposit Required

Utility companies may be entitled to collect a security deposit following a bankruptcy, as discussed in Module 2. To ensure that utility service is continued, you should find out whether the debtor will need to pay a deposit within the twenty-day period following the filing of the petition (as provided in 11 U.S.C.§ 366(b)). It is helpful to become familiar with the local practice in your area because some, but not all, utility companies request security deposits (usually equal to approximately twice the average monthly bill).

2. REPRESENTING THE DEBTOR AT THE MEETING OF CREDITORS

All debtors, including both debtors in a joint case, are required to attend the meeting of creditors. The meeting is sometimes referred to as the "section 341 meeting" based on the section of the Code that sets out the requirement. 11 U.S.C. § 341. The meeting provides an opportunity for the trustee and interested parties to examine the debtor under oath and ask questions about the debtor's financial affairs, to ensure that the debtor's bankruptcy schedules are correct and complete. Despite the name, few creditors appear at the meeting of creditors in a consumer bankruptcy.

2.1 Preparing for the Meeting

A notice of the date and location for the meeting of creditors will be sent by court to the debtor and the debtor's attorney soon after the case is filed. (The form notice is Official Form 309A in an individual debtor chapter 7 no-asset case and Official Form 309I in a chapter 13 case). To avoid any confusion by the debtor regarding his or her responsibilities, the debtor should be reminded in a letter of the importance of attending the meeting. The letter should also specify the date and location of the meeting and the documents that should be brought to the meeting. If the debtor has not already been provided with a copy of the bankruptcy petition, schedules, and other filed documents, they should be included with the letter. It is also a good time to ask the debtor to review the documents once again, both to prepare for the meeting of creditors and to ensure that everything is complete and accurate. The debtor should be advised of the need to promptly complete the financial education course and the deadline for filing the course certification.

2.2 Document Requirements

Before the meeting it is important to verify that the debtor has the documents that will need to be brought to the meeting of creditors. Section 521 and Bankruptcy Rule 4002 require that the debtor bring:

- A picture form of identification, such as a driver's license, passport, permanent resident card, or state picture ID;

- Proof of the debtor's Social Security number (or a written statement that the debtor does not have a Social Security number or that no proof is available), such as a Social Security card, pay stub, W-2 form, or IRS Form 1099;

- Unless the trustee or United States trustee instructs otherwise, statements for each of the debtor's depository and investment accounts (such as checking, savings, money market, mutual fund, and brokerage accounts) for the time period that includes the petition date;

- Proof of current income such as most recent pay stub; and

- Documentation of any additional expenses claimed on Official Form 122A-2 under the means test, when required by section 707(b)(2)(A) or (B).

For the last three items listed above (concerning financial information), Bankruptcy Rule 4002(b)(2) provides that if the documentation does not exist or is not in the debtor's possession, the debtor may provide a written statement to that effect. This statement should be prepared before the meeting of creditors and provided to the trustee at the meeting.

The trustee may request other documents in particular cases, such as real property deeds, titles to motor vehicles, proof of insurance on secured collateral, additional tax returns, and pay stubs and bank statements for other time periods. These requests may be made in a notice sent to the debtor or debtor's counsel before the meeting. It is a good idea to become familiar with the local practice on document production and to bring the entire client file to the meeting in case something is needed. If a trustee's request is overly burdensome and unnecessary, disputes over such requests may need to be resolved by the court.

2.3 Attending the Meeting

The debtor (both debtors in a joint case) must attend the meeting of creditors. It may be held at a meeting room at the bankruptcy court or at a separate government or office building. The meeting of creditors is conducted by the panel trustee or the chapter 13 standing trustee. In some cases a representative of the United States trustee's office may appear, especially if there are questions about whether a presumption of abuse exists under the means test.

The meeting is generally informal and consists of a series of routine questions asked by the trustee, lasting from five to ten minutes and rarely longer than half an hour. The debtor's responses, given under oath, are recorded. Despite its name, creditors rarely attend the meeting other than individual (non-corporate) creditors who may have a personal relationship with the debtor or lack information about the bankruptcy process.

The debtor is typically asked to verify that the signature on the petition and schedules is his or her own, and that the information in the schedules and statements is true and accurate. The primary focus of the trustee's questions in a chapter 7 case is to determine whether the debtor

has properly prepared the bankruptcy documents, whether there has been full disclosure of the debtor's income and assets, and whether any non-exempt assets exist that may be liquidated. In a chapter 13 case the questions are more concerned with the feasibility of the debtor's plan. Usually the best thing the debtor and debtor's attorney can do to prepare for the meeting is review the schedules, statements, and other documents that have been filed in the case. The debtor should be advised that the trustee is not there to assist the debtor despite how helpful a trustee appears to be at the 341(a) hearing, and that the Trustee cannot provide the debtor with legal advice about the debtor's case.

In chapter 7 cases, the trustee must orally examine the debtor to ensure that the debtor is aware of certain matters, such as the potential consequences of filing bankruptcy, the ability to file bankruptcy under another chapter, and the effect of receiving a discharge of debts. 11 U.S.C. § 341(d). Trustees typically satisfy this requirement by giving out the information in written form, the "Bankruptcy Information Sheet," and then asking whether the debtor has read it. Versions of this handout are prepared in Spanish and a number of other languages, and are available on the United States Trustee Program's website at: http://www.justice.gov/ust/eo/ust_org/bky-info/. In order to minimize time at the meeting of creditors, counsel should give a copy of the handout to clients before the meeting and review it with them.

For debtors with limited English proficiency, the United States Trustee Program operates a language assistance plan in which free interpreter services are made available at meetings of creditors through the use of telephone-based interpreters participating by speakerphone in the meeting room. These telephone interpreter services are widely available. Counsel should contact either the trustee assigned to their case or the local office of the United States Trustee to confirm that the service is available in their area. Additionally, counsel should contact the assigned trustee in advance of the meeting of creditors so that appropriate preparations can be made.

For debtors who may not be able to attend a meeting of creditors due to illness or hospitalization, for example, counsel may request that the trustee reschedule the meeting or conduct the meeting of creditors telephonically, at a specially set location (e.g., in the hospital), or by written questions. Depending upon local practice, a motion seeking these alternate arrangements may need to be filed with the court.

3. AFTER THE MEETING OF CREDITORS

3.1 Options for Dealing with Secured Debt and Personal Property Leases

After the meeting of creditors the debtor must perform the intention that was stated on the Statement of Intention (Official Form 108) with respect to secured debt and leased personal property. Section 521(a)(2)(B) states that the debtor must perform the intention within thirty days after the first date set for the meeting of creditors. The court may extend this deadline for cause. If the creditor has a purchase money security interest in personal property, section 521(a)(6) suggests that the debtor may have forty-five days after the meeting of creditors to

perform the intention. Failure to perform the debtor's stated intention may result in termination of the automatic stay as to the personal property subject to the statement. 11 U.S.C. §§ 362(h) and 521(a)(6).

For secured debt, the debtor must elect either to retain the collateral securing the debt or surrender it to the secured creditor. Options for retaining the property include reaffirming the secured debt, redeeming the secured property, and exempting and avoiding a lien on the secured property under section 522(f). For home mortgages that are current when the bankruptcy is filed, an option often noted on the Statement under the form's "Other" category is that the debtor will "retain and keep paying." These options are discussed below. Preparation of the Statement of Intention is discussed in Module 3.

With respect to leased personal property, the debtor must state whether she intends to assume the lease. 11 U.S.C. § 365(p)(2). The creditor may condition assumption of the lease on the cure of any outstanding default, as set out in the lease agreement. This option is also discussed below.

3.1.1 Reaffirmation of Secured Debt

If the debtor wishes to retain secured property, one option is to enter into a reaffirmation agreement with the creditor. In entering into such an agreement, the debtor waives the right to discharge the secured debt in the bankruptcy case. Thus, the debtor remains personally obligated to repay the secured debt despite the bankruptcy, including any allowed deficiency if the collateral is later repossessed or foreclosed.

Because the debtor is giving up the right to discharge a debt, which may impede the debtor's fresh start, reaffirmations should always be approached with a great deal of caution. In general it is not advisable for a debtor to reaffirm a secured debt when:

- The amount owed exceeds the value of the collateral and the creditor refuses to reaffirm at a lower amount;
- The creditor cannot provide proof that the debt is secured;
- The debtor has defenses to owing the debt;
- The debt is a high-cost loan or contains unfavorable credit terms and the creditor refuses to negotiate more reasonable terms;
- The debtor has no interest in keeping the collateral or has no ability to maintain the payments;
- The debtor is behind on payments and the creditor refuses to include as part of the reaffirmation an affordable payment plan to cure the default; or

- The debtor is current with payments and the creditor will permit (or court precedent allows) the debtor to keep the property without reaffirmation.

Alternatives to reaffirmation should be explored with the debtor. For example, the debtor may be able to redeem the property with a lump sum payment as discussed below. Another alternative for some debtors may be to surrender the collateral during the case and then purchase a replacement item on more favorable terms.

If such alternatives are not feasible, reaffirmation may be desirable if the debtor can afford the payments. This may be appropriate in some limited situations, such as when:

- The creditor gives something valuable in return, such as agreeing to let the debtor catch up on a default in a manageable way, or agreeing to reduce a secured debt to the value of the property;

- The debtor wants to keep needed collateral, such as a motor vehicle, and the creditor or court will not permit the debtor to keep it without reaffirming.

3.1.2 Retention Without Reaffirmation

Secured debts may in some situations continue to be serviced in the ordinary course of business after bankruptcy even though there has been no reaffirmation. Most commonly this situation occurs when the debtor elects to keep the collateral and pay on the debt without reaffirming, which is sometimes referred to as the "keep and pay" option.

For debts secured by the debtor's principal residence, section 524(j) expressly permits this option by creating a limited exception to the discharge injunction. This provision permits the mortgage creditor to seek and accept payments on the mortgage rather than pursue *in rem* relief to enforce the lien, without violating the discharge injunction.

For other secured debts such as car and appliance loans, creditors may simply decide that it is cost-effective to take no action against the collateral as long as the payments are kept current. In many cases creditors will recover more of the debt by continuing to accept payments than by repossessing and selling the collateral. If the debtor falls behind on the payments post-discharge the creditor is, of course, entitled to enforce a valid lien by pursuing *in rem* relief against the collateral. The creditor in this scenario does give up, however, the right to seek a deficiency judgment or to collect money from the debtor on the debt.

3.1.3 Reaffirming Home Mortgages

For the reasons stated in the previous section and the potential for a huge deficiency liability if the debtor later defaults on a reaffirmed mortgage, there is generally no reason to reaffirm a mortgage debt secured by the debtor's principal residence. However, the debtor should be advised that the mortgage creditor may no longer provide monthly billing statements (though a proposed rule under the federal Truth in Lending Act may change this by requiring that statements

be provided in this situation), and the creditor may stop providing payment information to the credit reporting agencies. The lack of an updated credit report showing the debtor's post-discharge payment history on the mortgage may make it difficult for the debtor to refinance the mortgage with another creditor or obtain other credit. Also, although the formal loan modification programs, such as the Treasury Department's Home Affordable Modification Program (HAMP) and similar programs run by the Federal Housing Administration, Fannie Mae and Freddie Mac, all expressly provide that a borrower who obtained a prior chapter 7 discharge and did not reaffirm the debt is still eligible for a modification, some mortgage creditors continue to deny modifications on this basis.

3.1.4 Reaffirming Credit Card Debt

It is almost never a good idea to reaffirm a credit card debt, even store credit card debts that may be secured. Some creditors offer debtors continuing use of the credit card after bankruptcy, although with a limited credit line, if they reaffirm the debt. Such offers to reaffirm may seem attractive at first. However these offers in most cases are a bad deal because the debtor will often pay more in finance charges to repay the reaffirmed debt than they will get in new credit. Most debtors are able to get a new credit card from another company (or even the same company) fairly soon after bankruptcy, one that will not come with a large unpaid balance.

Some credit cards, especially department and appliance store cards, claim to be secured creditors. It is always advisable to verify whether a creditor really has a valid security interest by requesting documentation of the security and the amount due. A detailed letter of inquiry should be sent to any creditor claiming a security interest. Some creditors are unable to provide documentation of a security interest or what they do provide is insufficient.

Store credit card companies often will not attempt to recover used collateral if a reaffirmation agreement is not signed. The cost of bringing a state court replevin action if the debtor does not turn over the property often far exceeds the liquidation value of the collateral. However, because it is possible, you cannot provide any guarantee to the debtor that such action will not be taken. Still, as you gain experience on your own or learn from other practitioners, you can advise the debtor which creditors are more or less likely to take action. Ultimately the debtor must decide just how important the item is. If the debtor can live without it, or can buy a new one for less than what it will cost to reaffirm the debt, the debtor should not reaffirm.

3.1.5 Reaffirmation Procedures

The reaffirmation agreement must be made and filed with the court before the discharge is entered in the debtor's bankruptcy case. The debtor must receive extensive specific disclosures before or at the time the debtor signs the reaffirmation agreement. 11 U.S.C. § 524(k). Director's Form 240A, issued by the Administrative Office of the United States Courts, is widely used. A longer alternative form reaffirmation agreement, Form 240A/B ALT, may also be used. Any changes to the terms of the original contract must be noted on the reaffirmation agreement.

Practically speaking, the creditor usually generates the Reaffirmation Agreement and mails it to the debtor or debtor's counsel to be signed and returned. If the debtor wishes to reaffirm a debt,

it is important to contact the creditor early (right after the bankruptcy case is filed) to request a reaffirmation agreement. The signed reaffirmation agreement must be filed with a cover sheet (Official Form 427) no later than sixty days after the date first set for the meeting of creditors. Bankruptcy Rule 4008. If this deadline is a problem, debtor's counsel may seek an extension of time to file it.

For reaffirmations negotiated by the debtor's attorney, the attorney must sign a certification on the form agreement stating that the debtor has been fully advised about the consequences of the reaffirmation agreement, and that the agreement is the voluntary act of a fully informed debtor and does not impose an "undue hardship" on the debtor or the debtor's dependents. 11 U.S.C. § 524(c)(3). If the debtor's attorney does not sign the reaffirmation agreement and the debt is not secured by real property, the court must approve the reaffirmation. 11 U.S.C. § 524(c)(6).

As part of the reaffirmation agreement (except when the creditor is a credit union), the debtor must sign a statement, based on the amounts listed for the debtor's income and monthly expenses, that the debtor believes he or she has sufficient income left over after paying expenses to make the payments required under the reaffirmation agreement. If the figures show that the debtor does not have sufficient disposable income to make the reaffirmation payments, it will be presumed that the reaffirmation agreement creates an "undue hardship." The debtor must then explain on the form how he or she will be able to afford the payments and identify any additional sources of income that will be used to make the payments. If the reaffirmation was negotiated by an attorney, the attorney certification also requires the attorney to state that in his or her opinion, despite the presumption, the debtor is able to make the required payment. When the presumption arises, the court is required to review the reaffirmation (except when the creditor is a credit union). 11 U.S.C. § 524(m)(1). If the court finds that the presumption is not rebutted, the court may disapprove the agreement after notice to the debtor and creditor and a hearing concluded before the entry of the discharge. 11 U.S.C. § 524(m)(2).

Debtors should be advised that a reaffirmation agreement may be canceled at any time before the entry of the discharge order, or sixty days after the agreement is filed with the court, whichever occurs later. 11 U.S.C. § 524(c)(4). No reason is required for canceling a reaffirmation agreement, but notice of the cancellation must be given to the creditor.

3.1.6 Redemption

Section 722 provides for a right of redemption in chapter 7 cases. Under this property retention option, a chapter 7 debtor may eliminate a creditor's lien by paying the creditor the value of the collateral securing the lien. For property used for personal, family, or household purposes that are most often redeemed, section 506(a)(2) requires valuation to be based on replacement value given the property's age and condition at the time the value is determined.

As an example, suppose the debtor owes $1,000 on a refrigerator that is now worth just $300. The creditor has a $300 allowed secured claim and a $700 unsecured claim based on the operation of section 506(a). The debtor can wipe out the creditor's lien on the refrigerator under section 722 by paying $300. The debtor's personal obligation for the balance owed will be discharged in the

chapter 7 case. Similarly, if the debtor owes $5,500 on a car now worth $2,500, the debtor can redeem the car by paying its value, $2,500.

There are several limitations on the redemption right. It is available only to individual debtors. It can only be used in cases of dischargeable consumer debts secured by tangible personal property that has either been exempted by the debtor or abandoned by the trustee. It is not available with respect to real estate or intangible liquid assets.

Unless the creditor agrees otherwise, the debtor must redeem through a lump-sum cash payment of the redemption amount. This requirement may present a problem to the debtor who cannot afford to pay the entire redemption amount and is unwilling or unable to negotiate a reaffirmation agreement. One possible solution to this problem is for the debtor to request additional time under section 521(a)(2)(B) to make the redemption payment. This could give the debtors additional time to save the necessary funds. The debtor also may be able to obtain financing of the full redemption amount. Several companies now specialize in bankruptcy redemption financing, though these loans typically come with high interest rates. However, if a vehicle is worth significantly less than the amount owed on an existing car loan, financing the redemption amount may cost the debtor less than the alternatives available to deal with the existing loan, such as reaffirmation.

When the parties agree on value and other terms, redemption may be accomplished by the debtor paying the creditor in exchange for release or satisfaction of the lien. A motion to redeem does not need to be filed and court approval of the redemption agreement is not required. When there is a dispute regarding some issue related to the redemption, most often as to valuation of the collateral, the court's intervention may be necessary. In that case a motion to redeem should be filed within thirty days after the first date set for the meeting of creditors, though the debtor may seek additional time under section 521(a)(2)(B). It should be noted that if the creditor has a purchase money security interest in personal property and the debtor has not redeemed the property within forty-five days after the first meeting of creditors, section 521(a)(6) provides that the automatic stay is terminated as to that property.

3.1.7 Lease Assumption

Section 365(p) provides that a chapter 7 debtor may assume a personal property lease if it is not assumed by the trustee. The most common use of this provision is for automobile leases. The debtor must notify the lessor in writing that the debtor intends to assume the lease, which can be done on the Statement of Intention. Upon being notified by the debtor, the lessor at its option may notify the debtor that it is willing to have the lease assumed and may condition assumption on cure of any outstanding default. If, within thirty days after the first notice, the debtor notifies the lessor in writing that the lease is assumed, the debtor has the right to retain the property if payments are maintained. Court review and approval of the lease assumption are not required.

Section 365(p)(2)(B) provides that upon notification by the debtor of the lease assumption, liability under the lease is assumed by the debtor. However, some courts have held that assumption of a lease under section 365(p) does not constitute a reaffirmation of personal liability unless a formal reaffirmation agreement is executed in compliance with section 524.

If the debtor does not timely assume a personal property lease, section 365(p)(1) provides that the leased property is no longer property of the estate and the automatic stay is terminated as to that property.

3.1.8 Lien Avoidance under Section 522(f)

Section 522(f)(1) permits the debtor to avoid (1) judicial liens on any property claimed as exempt, and (2) nonpossessory, nonpurchase-money security interests in household goods and certain other property claimed as exempt. Such liens may be eliminated to the extent that they impair the debtor's exemption in the property.

Judicial Liens. Section 522(f)(1)(A) gives the debtor the right to avoid judicial liens, except liens securing a domestic support obligation (as defined in section 101(14A)). The term judicial lien is defined broadly, and includes levies, judgment liens, and liens obtained in any legal or equitable proceeding. 11 U.S.C. § 101(36). The right to avoid judicial liens extends to every type of exempt property, without limitation, including property exempted under wild card provisions (such as section 522(d)(5) and state law equivalent provisions). As a result, the debtor may avoid judicial liens on homes, vehicles, household goods, and any other property that may be claimed as exempt. The judicial lien avoidance procedure may be used to recover wages that have been garnished prepetition, if the debtor retains a property interest in the wages under state law and the wages can be claimed as exempt.

Household Goods. Section 522(f)(1)(B) provides for avoidance of nonpossessory, nonpurchase-money security interests in the following items:

- Household furnishings, household goods (as defined in section 522(f)(4)), wearing apparel, jewelry, appliances, books, animals, crops, or musical instruments that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;
- Implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor; and
- Professionally prescribed health aids for the debtor or a dependent of the debtor.

Section 522(f)(2) uses a mathematical formula to determine whether a lien impairs an exemption and thus can result in the total or partial avoidance of a lien:

> A lien shall be considered to impair an exemption to the extent that the sum of--
>
> i. the lien;
> ii. all other liens on the property; and

iii. the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have been in the absence of any liens.

For example, assume a creditor has a judicial lien in the amount of $17,000 on a home valued at $100,000. A pre-existing mortgage on the home has a $75,000 balance owed. The debtor has claimed the state's homestead exemption in the amount of $15,000. The formula is applied as follows:

i. $17,000 - the judicial lien;
ii. $87,000 - all other liens on the property; and
iii. $15,000 - exemption claimed by debtor

The sum of these amounts is $119,000. This sum exceeds the value of the debtor's interest in the property without the liens, which is $100,000, by the amount of $19,000. The creditor's judicial lien ($17,000) is less than $19,000 – thus it impairs the debtor's exemption and is completely void. If in this example the debtor's home is valued at $110,000, the sum exceeds the value of the debtor's interest in the property without the liens by the amount of $9,000. The debtor may partially avoid the judicial lien in the amount of $9,000, and the lien remains valid in the amount of $8,000.

The lien avoidance procedure is generally initiated by the filing of a motion or by including a provision in a chapter 13 plan. Bankruptcy Rule 4003(d). Motions to avoid liens may be brought in both chapter 7 and chapter 13 cases (if a lien is avoided in a chapter 13 case, the claim can be treated as an unsecured claim under the debtor's plan). Such motions are rarely contested, usually only when there is a dispute over the value of the property or the debtor's claim of exemption. The Bankruptcy Rules do not set a time limit for filing lien avoidance actions, but it is best to initiate the proceeding soon after the case is filed. Debtor's counsel should obtain an order from the bankruptcy court declaring the lien or security interest void, which can then be recorded in the appropriate real estate recording offices.

3.2 Dealing with Residential Leases

Several issues may arise if the debtor is a renter rather than a homeowner. Unexpired leases must be listed on Schedule G (see Module 3). A chapter 7 trustee may assume or reject an unexpired lease or any other executory contract within sixty days after the petition is filed. 11 USC § 365(a), (d). However, this is rarely done in a consumer case because the lease does not provide value for the bankruptcy estate. If the lease is not formally assumed within the sixty-day time period, it is deemed "rejected." 11 USC § 365(d). This does not mean that the lease is terminated. The lease reverts back to the debtor upon the closing of the case and the parties to the lease essentially are placed in the same position they were under state law before the bankruptcy was filed, except that the payment of any outstanding prepetition rent is discharged.

If the debtor is current on the rent and wants to stay in the apartment, he or she should be advised to continue paying on time. Section 365(e) protects the debtor by invalidating any bankruptcy or *ipso facto* clause that would terminate the lease based on the debtor's bankruptcy or insolvency.

If the debtor is behind on rent when the case is filed, the missed rent is an unsecured debt that should be listed on Schedule F. If the debtor wishes to stay in the apartment, the debtor may need to pay the past-due rent even though this obligation is discharged in the bankruptcy. Although the landlord cannot attempt to collect the back rent, once the bankruptcy case is closed (or if stay relief is granted) the landlord may pursue an eviction action to recover possession of the apartment based on a lease violation for nonpayment of rent, if permitted by state law. However, section 525 may prohibit a Public Housing Authority or other governmental agency from terminating a lease or Section 8 voucher in this situation. Also, if the landlord does not bring an eviction action and accepts rent postpetition, a new month-to-month tenancy may be created under state law.

If the debtor has a long-term written lease with favorable terms, he or she may want to try to reaffirm the lease, and include in the reaffirmation agreement a payment plan to pay the back rent over time. Another option would be for the debtor to file a chapter 13 case, as the debtor may assume the lease and provide in the plan for the curing of any prepetition default. 11 USC § 1322(b)(3), (b)(7).

3.3 Satisfying the Financial Education Requirement

To receive a discharge the debtor must submit proof of completion of an "instructional course concerning personal financial management." 11 U.S.C. § 727(a)(11) and § 1328(g). To satisfy the requirement, proof of the course's completion must show that the debtor took the course after the petition was filed.

The debtor must take a financial education course that has been approved by the United States Trustee Program for the jurisdiction where the debtor is filing the case (debtors located in North Carolina or Alabama must use counseling agencies approved by the local bankruptcy administrator). Course requirements are set out in 28 C.F.R. part 58. The course should be a minimum of two hours in length and should provide written information and instruction on the following topics: budget development, money management, wise use of credit, consumer information, and coping with unexpected financial crisis. A list of the approved courses and course providers may be found on the website of the United States Trustee Program at www.justice.gov/ust.

A certification of completion of the course must be prepared by the debtor using Official Form 423 and filed with the court. However, the debtor need not file Form 423 if the course provider has notified the court of the course completion, as occurs in many cases. Bankruptcy Rule 1007(b)(7). The provider must notify the court of the course completion or the debtor must file Form 423 within sixty days after the first date set for the section 341 meeting in a chapter 7 case, and no later than the date of the last payment made by the debtor as required by the plan or the date of filing of a motion for hardship discharge in a chapter 13 case.

Chapter 7 debtors should be strongly urged to take the course soon after the petition is filed, preferably before or soon after the meeting of creditors. Bankruptcy Rule 4004(c)(1)(H) provides that the discharge will not be entered if the debtor or course provider has not filed the certification of completion. The advisory committee note to this rule states that the clerk will close the case without entry of a discharge in this situation. Although most courts will liberally grant a motion to reopen a bankruptcy case to enter a discharge if the course is subsequently taken and certification submitted, that involves extra work and costs. The Judicial Conference has taken the position that the debtor must pay a reopening fee ($245 for chapter 7 cases and $235 for chapter 13 cases) if the debtor files a motion to reopen a case that has been "closed without a discharge being entered." *See* Bankruptcy Court Miscellaneous Fee Schedule. Waiver of the filing fee for reopening the case is possible but some courts may be reluctant to do so in this situation.

Even though chapter 13 debtors are given more time to complete the course, they should be encouraged in most cases to take it after the plan is confirmed. The information provided in the course, especially those offered by chapter 13 trustees, should help debtors understand the chapter 13 requirements and prepare budgets that may make it more likely that they will complete their plans.

Most approved providers charge between $20 - $50 for the financial education course. Section 111(d)(1)(E) requires approved providers to provide the course without considering the consumer's ability to pay. If the debtor cannot afford the fee, he or she should request that the agency provide the course free of charge or at a reduced fee. It may be helpful if the agency is informed that the debtor is being represented pro bono or if the court has approved the debtor's filing fee waiver request, as most providers will waive the course fees for such debtors.

Similar to the prepetition credit counseling requirement discussed in Module 2, there are limited exceptions to the debtor education requirement for debtors who are (1) disabled or incapacitated, if that renders them unable to complete the course, (2) on active military duty in a combat zone, or (3) if the courses are not available in the debtor's district. 11 U.S.C. §§ 727(a)(11), 1328(g) (incorporating 11 U.S.C. § 109(h)(4)).

4. OBTAINING AND DEFENDING THE DISCHARGE

4.1 Procedure for Obtaining Discharge

Obtaining the discharge is normally a simple matter once all of the steps discussed above are completed. In a chapter 7 case the discharge order is usually entered soon after the time period for objections to discharge has passed, which is sixty days after the first date set for the meeting of creditors. Bankruptcy Rule 4004. This timetable assumes that the debtor is eligible for a discharge, the debtor has filed the certificate evidencing completion of the required personal financial education course, the trustee has filed a report of no distribution, and there are no pending contested matters such as an objection to discharge or to the claimed

exemptions. The grounds for objecting to the debtor's discharge are listed in section 727(a) and are discussed in Module 1.

In a chapter 13 case the discharge is granted after a debtor who is eligible for a discharge completes payments under a confirmed plan or upon the court granting a motion by the debtor for a hardship discharge. 11 U.S.C. § 1328. If the debtor has claimed a homestead exemption under section 522(b)(3)(A) in excess of the amount set out in section 522(q)(1), the debtor must file a statement as to whether any civil or criminal proceedings described in section 522(q)(1) are pending. Bankruptcy Rule 1007(b)(8). If the debtor is required to pay a domestic support obligation, the debtor must also certify that all amounts that were due before the certification is filed have been paid, including any prepetition arrearages that are provided for by the debtor's plan. 11 U.S.C. § 1328(a).

In both chapters the court may hold a discharge hearing, but most courts choose not to do so. The court is required to hold a discharge hearing only if the debtor reaffirms a debt and the debtor was not represented by an attorney in negotiating the reaffirmation agreement, or if it is presumed that the reaffirmation will impose an undue hardship based on the income and expense figures listed on the agreement. 11 U.S.C. § 524(d), (m)(1). Once the discharge is granted, a copy of the discharge order is sent by the court to the debtor, the debtor's attorney, and all creditors. Shortly thereafter the court ordinarily will close the case.

4.2 Seeking to Discharge Student Loans

In most cases, student loan debts will not be dischargeable. However, some debtors can meet the "undue hardship" standard necessary to discharge them in a bankruptcy case. (Note that student loans may be discharged outside of bankruptcy based on total and permanent disability, school closing, and other grounds; more information is available at www.studentaid.gov/repay-loans/forgiveness-cancellation). Most courts have adopted the three-pronged test for undue hardship developed in *Brunner v. New York State Higher Ed. Servs. Corp.*, 831 F.2d 395 (2d Cir. 1987). This test requires debtors to show:

(1) the student loans prevent the debtor and the debtor's dependents from maintaining a "minimal" standard of living;
(2) additional circumstances exist indicating that the hardship is likely to continue for a "significant portion of the repayment period;" and
(3) the debtor has made a good-faith effort to repay the loans (and to maximize income and limit expenses).

Situations that might give rise to a discharge include a showing that the debtor is permanently disabled or will likely never earn income sufficient to pay off the student loans. There is considerable variation in how courts evaluate undue hardship, so it is a good idea to do a local case law search and consult with an experienced local bankruptcy attorney to find out how the judges in your district apply the undue hardship test. If the debtor may qualify for a discharge of student loans based on undue hardship, it will be necessary to file an adversary proceeding seeking a determination that the student loans are discharged. There is no deadline under the Bankruptcy Rules for seeking a dischargeability determination, so a closed case may be

reopened for that purpose. A more detailed discussion of student loan discharge is provided in Module 5 - Representing Debtors in Student Loan Hardship Discharge Cases.

4.3 Revocation of Discharge

Although rarely invoked, the Code permits an interested party to request a revocation of the debtor's discharge. Generally the requesting party must show that the debtor obtained the discharge by fraud and that this fraud was not known to the party until after the discharge was granted. 11 U.S.C. §§ 727(d), (e), 1328(e). In most cases a complaint seeking revocation of discharge must be filed within one year after the discharge was granted, though additional time may be allowed, depending upon the basis for revocation, if the case is not closed until after the one-year period has passed. 11 U.S.C. §§ 727(e), 1328(e).

4.4 Debtor Audits

In 2006, the United States Trustee Program began conducting audits in certain cases, though the program has been suspended at times due to budgetary constraints. At least one out of every 1,000 individual chapter 7 and chapter 13 cases is randomly selected for audit. There are other targeted audits of cases in which debtors have unusually high income or expenses. These audits attempt to determine the accuracy, veracity, and completeness of debtors' petitions, schedules, and other information required by sections 521 and 1322. *See* Pub. L. No. 109-8, § 603(a), 119 Stat. 23 (2005); 28 U.S.C. § 586(f).

The debtor is notified that his or her case has been selected for audit by a letter sent by the United States Trustee early in the case, usually before the meeting of creditors. The audits are performed by independent firms selected by the United States Trustee Program using auditing standards developed by the Program. (The audit standards are available at www.justice.gov/ust.) The letter typically includes a form for the attorney to indicate whether the audit firm can directly contact a represented debtor about documents and an information sheet about the audit for the debtor. The letter will also identify the firm that will be conducting the audit and the documents that must be produced to the audit firm.

Debtors have twenty-one days to provide the audit firm with the requested documents. A debtor's discharge may be revoked if the debtor does not satisfactorily explain the failure to make available all documents or property requested by the audit firm. Once the audit is complete, the audit firm will issue a report that must specify any material misstatements of income, expenses, or assets that were identified by the audit firm. Before including a material misstatement in an audit report, the audit firm will contact the debtor's counsel, or the *pro se* debtor, in writing, notifying the debtor of the misstatement and offering the debtor an opportunity to provide an immediate written explanation for the item(s) in question.

Audit firms must file the audit report with the court and transmit it to the United States Trustee. The clerk of court must send a notice to creditors in cases in which one or more material misstatements have been identified in an audit report. If material misstatements are not adequately explained by the debtor, the United States Trustee may take appropriate civil action and, when appropriate, make a criminal referral to the United States Attorney.

4.5 Enforcing the Discharge

Before the attorney's client file is closed, it is very important that the debtor be advised about the scope and effect of the discharge. This advice should include a discussion of the protections from discrimination by government agencies, private employers, and student loan providers, as discussed in Module 1. 11 U.S.C. § 525. The debtor should be reminded of the specific debts, if any, that have not been discharged. Most importantly, the debtor should be advised not to ignore attempts to collect discharged debts, and that the debtor should promptly seek legal representation to remedy violations of the discharge injunction. It is helpful to confirm much of this advice in a form letter sent to the debtor.

Violators of the section 524(a) discharge injunction can be held in contempt of court. The remedies for civil contempt can include both actual damages and attorney fees, even if the contempt is not willful. Punitive damages may also be assessed in appropriate cases. Bankruptcy courts have also found remedies for violations of the discharge injunction by invoking the court's authority under section 105. A proceeding seeking contempt remedies may be initiated by the filing of a motion. Bankruptcy Rule 9020. To bring the matter before the court after the case has been closed, the debtor will need to file a motion to reopen the case. 11 U.S.C. § 350(b); Bankruptcy Rule 5010. A reopening fee is not charged by the court when a debtor files a motion to reopen "based upon an alleged violation of the terms of the discharge under 11 U.S.C. § 524." *See* Bankruptcy Court Miscellaneous Fee Schedule, available at http://www.uscourts.gov/services-forms/fees/bankruptcy-court-miscellaneous-fee-schedule.

4.6 Credit Reports

Credit reports should be checked sixty to ninety days after discharge to verify whether creditors are properly reporting information about discharged debts as required by the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 *et seq*. All debts discharged in the bankruptcy case should show a zero balance and be noted as having been included in the bankruptcy.

Clients can get a free credit report once every twelve months from each of the three major consumer reporting agencies. To order:

- Go to www.annualcreditreport.com;
- Call (877) 322-8228; or
- Complete the annual credit report request form (available at www.annualcreditreport.com) and mail it to:

  Annual Credit Report Request Service
  P.O. Box 105281
  Atlanta, GA 30348-5281.

Clients should be warned NOT to contact the three consumer reporting agencies individually to obtain their free annual reports under this program. The consumer reporting agencies provide

free annual credit reports only through the centralized sources listed above. Using one of these centralized sources, the consumer may order free annual reports from all three consumer reporting agencies at the same time, or they can order from only one agency, saving their right to a free report from the other two until later in the year.

If the client's credit reports still show balances owed on discharged debts, the client should be advised to send letters demanding correction of the reports to both the creditor furnishers of information and the credit reporting agencies. If the report is not corrected it may be necessary to initiate litigation to enforce the debtor's rights under the FCRA and the bankruptcy discharge. The consumer reporting agency must first be notified that the information is disputed before an action may be brought under the FCRA against the creditor furnisher.

Appendix A

Checklist of Key Actions After Case Filed

The debtor should be advised to:

- ☐ Complete counseling briefing from an approved agency within thirty days after petition filed (or seek extension of additional fifteen days), if debtor requested and court granted a deferral of credit counseling requirement based on exigent circumstances.

- ☐ Pay all filing fee installments when due if debtor filed and court granted motion to pay filing fee in installments.

- ☐ Provide to attorney any information and documents needed to complete schedules and filing requirements.

- ☐ Attend meeting of creditors and bring required documents.

- ☐ Perform intention listed on statement of intention within thirty days after first date set for the meeting of creditors unless the court, for cause, extends the deadline under section 521(a)(2)(B).

- ☐ Attend hearings scheduled by court concerning reaffirmation agreements, redemptions, or other matters.

- ☐ Inform attorney of any attempts by creditors to collect prepetition debts or seize property.

- ☐ Complete financial education course, preferably before or soon after meeting of creditors.

Additionally in chapter 13 cases the debtor should be advised to:

- ☐ Make first plan payment to trustee within thirty days of the petition date, and timely make all subsequent payments. If the plan provides that ongoing mortgage and other payments on long-term debt are to be paid directly by the debtor rather than the trustee, also begin making those payments within thirty days of the petition date.

- ☐ Attend confirmation hearing if required by court.

- ☐ Contact attorney immediately if any job loss, significant change in income, or financial problems occur. Contact attorney immediately if any plan payments are not made, including any ongoing mortgage or secured debt payments made directly by the debtor.

- [ ] Keep attorney informed of any change in contact information, including address and telephone number. The trustee should also be made aware of any address change.

- [ ] Keep attorney informed of any change in any insurance on home, car, or other collateral for secured debts.

- [ ] Keep attorney informed of postpetition acquisition of any substantial assets.

- [ ] Keep trustee and attorney informed of any notices from creditors on long-term loan agreements concerning changes in payment amounts, escrows, or other contract terms, or the assessment of fees. For home mortgages, contact attorney if any notice of a change in required payment or notice of fees is inaccurate or invalid.

- [ ] Begin making payments at the new payment amount if a mortgage payment change notice is received and the plan provides that ongoing mortgage and other payments are to be paid directly by the debtor rather than the trustee, and there is no dispute as to the payment change.

- [ ] Contact attorney about whether court approval is required before buying, refinancing, or selling any real property or before entering into any long-term loan agreements.

The attorney should:

- [ ] Send reminder letter to debtor concerning any missing information and documents needed to complete schedules and filing requirements.

- [ ] Prepare and file within fourteen days of petition date all required documents that were not filed with the petition, or seek extension of time under Bankruptcy Rule 1007(c).

- [ ] Send reminder letter to debtor explaining how, when, and where to make filing fee installment payments, if debtor filed and court granted motion to pay filing fee in installments.

- [ ] Send reminder letter to debtor concerning date and location of meeting of creditors, documents that should be brought to meeting, and need to promptly complete financial education course.

- [ ] Prepare and file statement of intention (Official Form 108) regarding property securing debts and leased personal property within thirty days after the petition date, or on or before the date of the section 341 meeting of creditors, whichever is earlier, unless the court, for cause, extends the deadline for filing under section 521(a)(2)(A), and serve the statement on any affected creditors.

- [ ] Provide debtor's prior year's federal tax return or transcript to trustee at least seven days before first date set for meeting of creditors.

- [ ] Provide debtor's prior year's federal tax return or transcript to any creditors who have made requests at least fourteen days before first date set for meeting of creditors, at same time provided to trustee.

- [ ] Contact utility companies that provide service to the debtor to determine whether debtor will need to pay a deposit within the twenty-day period following the filing of the petition.

- [ ] Appear at meeting of creditors with debtor and verify that debtor has brought required documents, or prepare statement for debtor explaining that documentation does not exist or is not in debtor's possession.

- [ ] Prepare and file amended schedules, statements, and other documents if any corrections or additions are needed.

- [ ] Prepare and file motion to redeem if debtor intends to redeem personal property and no agreement can be reached with creditor as to terms of redemption.

- [ ] Review proposed reaffirmation agreements with debtor and advise about consequences of signing. If reaffirmation signed by debtor, return reaffirmation to creditor (for eventual filing with court) or file with court. Determine whether to negotiate terms of reaffirmation and sign attorney certification.

- [ ] Verify that financial education course provider used by debtor has submitted to the court certification that the debtor has completed the course, or prepare and file Official Form 423, within sixty days after first date set for the meeting of creditors (in a chapter 7 case).

- [ ] Review checklist of required documents within forty-five days after the petition date to verify that all information required by section 521(a)(1) has been filed with court, so as to avoid automatic dismissal under section 521(i). If necessary, seek extension of time, for cause, under section 521(i)(3).

- [ ] Prepare and file motions to avoid any judicial liens and nonpossessory, nonpurchase-money security interests that impair exemptions pursuant to section 522(f), and ensure that orders voiding liens are recorded.

- [ ] Advise debtor about obtaining and correcting credit reports, and about the proper reporting of discharged debt.

- [ ] Send closing letter to debtor after discharge is entered and case closed.

Additionally in chapter 13 cases the attorney should:

- [ ] Send a reminder letter to debtor explaining how, when, and where to make chapter 13 plan payments to the trustee and to any creditors that will be paid directly by the debtor.

- [ ] Respond to objections to plan confirmation and, when appropriate, prepare and file amended plan.

- [ ] Appear at any scheduled confirmation hearing.

- [ ] File motion to impose or extend automatic stay if repeat filing or other stay limitations apply, when appropriate.

- [ ] Represent the debtor in proceedings on motions for relief from automatic stay.

- [ ] Provide proof of insurance within sixty days after filing petition to lessor or creditor on personal property subject to lease or purchase money secured claim, as required by section 1326(a)(4).

- [ ] Object to improper or invalid claims, when appropriate.

- [ ] Review postpetition, mortgage-related notices for accuracy, including notices of payment changes, notices of the assessment of fees, expenses, or charges, and notices of final cure payment. If necessary, seek timely court determination of the proper amounts owed.

- [ ] Prepare and file motions to value secured property and motions to avoid judicial liens, if not done as a plan provision.

- [ ] Prepare and file, when necessary and appropriate, motions to buy, sell, or refinance property or to incur debt.

- [ ] Review and comply with any local rules, standing orders, or confirmation orders that require disclosure of debtor's postpetition acquisition of assets or receipt of tax refunds.

- [ ] Prepare and file, when necessary and appropriate, motions to modify the plan or request suspension of plan payments.

- [ ] Advise client of options if client is unable to complete plan payments, such as converting case to Chapter 7 or seeking a hardship discharge.

- [ ] Review creditor response to Notice of Final Cure under Rule 3002.1(g). If appropriate, seek timely court determination of whether amounts are owed, and seek order that debtor had fully cured all defaults, paid all postpetition amounts, and that loan is current.

- [ ] Prepare and file motion under Rule 5009(d) seeking an order declaring that a secured claim has been satisfied and the lien released under the confirmed plan, if the plan provided for the strip-off or modification of the secured claim.

- [ ] Send request for information under RESPA to mortgage servicer after case is closed, if debtor's plan provided for cure of mortgage default, to verify that mortgage servicer is treating default as fully cured and that no outstanding fees and charges remain unpaid.

Appendix B

CHAPTER 7 BANKRUPTCY TIMELINE
("ROUTINE" CONSUMER CASE)

DATE	ACTION
Within 180 days before petition filing date	Debtor receives credit counseling briefing from approved agency—§ 109(h)
Petition filing date	Case initiated by filing petition, mailing matrix; Filing fee paid or waiver/installment application filed; Order for relief entered; Panel trustee appointed; Section 341 meeting date set
14 days after petition filed	Balance of schedules, counseling certificate, current monthly income and means test statement, payment advices (received within 60 days prepetition) due if not filed with petition—Rule 1007(c)
At least 7 days before first date set for § 341 meeting	Tax return or transcript to be provided to trustee for most recent tax year ending immediately before petition date for which a return was filed— Rule 4002(b) *Note*: copy of return or transcript also to be provided to creditor if request made at least 14 days before first date set for § 341 meeting
30 days (approximately) after petition date	Section 341 meeting held; Debtor to bring recent bank statement, picture ID, proof of current income, and proof of Social Security number—Rule 4002(b)
45 days after petition date	Deadline for filing all documents required by § 521(a)(1), or motion for extension of time (up to 45 days), to avoid automatic case dismissal
Within 30 days after first date set for § 341 meeting (45 days if purchase money security interest on personal property involved)	Debtor must perform intention as provided on Statement of Intention—§ 521(a)(2), (6)
30 days after conclusion of § 341 meeting	Deadline for objections to claim of exemptions— Rule 4003(b)
60 days after first date set for § 341 meeting	Deadline for filing certification of financial education course completion—Rule 1007(c); Deadline for objection to debtor's discharge—Rule 4004(a); Deadline for objections to dischargeability of a particular debt—Rule 4007(c); Deadline for filing reaffirmation agreement and cover sheet (Official Form 427)—Rule 4008(a)
3–4 months (approximately) after petition filed	Report of no distribution filed by trustee; Discharge entered; Case closed