



**The Nuts and Bolts of Consumer Bankruptcy and How They Fit  
into Your Practice Area Toolkit**

**November 12, 2019  
6:00 p.m. – 8:00 p.m.**

**CT Bar Association  
New Britain, CT**

**CT Bar Institute, Inc.**

CT: 2.0 CLE Credits (General)  
NY: 2.0 CLE Credits (AOP)

## Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

*--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994*

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**The Nuts and Bolts of Consumer Bankruptcy and How They Fit into Your Practice Area  
Toolkit (EYL191112)**

**NOVEMBER 12, 2019**

**AGENDA**

6:00 p.m. (10 mins) – Introductions

6:10 p.m. (60 mins) – Part I: Basics of Chapter 7 and Chapter 13  
(Roberta Napolitano & George Roumeliotis)

- The differences between the two Chapters, including but not limited to timelines, duties of the Trustees, and the Meeting of Creditors
- How clients qualify for each Chapter
- What is property of a bankruptcy estate, including an overview of state and federal exemptions
- How the automatic stay impacts collection efforts, including but not limited to lawsuits and wage garnishments
- About discharge and dischargeability

7:10 p.m. (10 mins) – Questions and Answers on Part I

7:20 p.m. (30 mins) – Part II: Intersectionality  
(Michael Culkin)

- Common intake questions for the prudent practitioner, such as homeownership, beneficiary status, business interests, marital and custody status, and repayments to family members and friends
- Practice points for how bankruptcy interacts with other areas of the law, such as criminal, family and divorce, tax, real estate, estate planning, retirement plans and ERISA qualifications, and worker's compensation, personal, injury, and other claims a client may have against a third party

7:50 p.m. (10 mins) – Questions and Answers on Part II

# Faculty Biographies

## [Michael J. Culkin, The Culkin Law Office LLC, Waterbury](#)

Attorney **Michael J. Culkin** received his law degree as well as his MBA from the University of Connecticut School of Law in 2001 (he did so while working full-time as a manager in Aetna's Law & Regulatory Affairs Division). Attorney Culkin began his legal career as a State and Local Tax Attorney working for PricewaterhouseCoopers LLP out of its New York Metro office. In 2005, Attorney Culkin opened The Culkin Law Office LLC and presently works as a solo-practitioner in downtown Waterbury. Attorney Culkin practices primarily in the areas of family, child protection/welfare and bankruptcy law. Since opening the Culkin Law Office LLC, Attorney Culkin has successfully assisted hundreds of clients obtain their personal discharges under Chapter 7. Michael is a permanent resident of Woodbury, Connecticut where he resides with his beautiful wife Kimberly of eighteen years and their twin fifteen-year olds Anna & Christopher.

## [Roberta Napolitano, Chapter 13 Trustee, Office of the US Trustee, Hartford](#)

**Roberta Napolitano** was a member of the panel of Chapter 7 Trustees for the District of Connecticut from May 1997 through September 1, 2017, when she became the Chapter 13 Standing Trustee for the District of Connecticut. She was a partner and associate at Ignal, Napolitano and Shapiro from October 1983 to September 1, 2018. Roberta is Vice President of the Commercial Section of the Connecticut Bar Association, and Treasurer of the Connecticut Chapter of the International Women's Insolvency and Reorganization Confederation. She received her J.D. from the University of Connecticut School of Law in 1982, and her A.B. in 1979 from Bryn Mawr College. Her reported cases are *Fichera v. Mine Hill Corporation*, 207 Conn. 204 (1988); *In re McNamara*, 310 B.R. 664, 666 (Bankr. D. Conn. 2004); and *In re Kujan*, 286 B.R. 216, 217 (Bankr. D. Conn. 2002).

## [George I. Roumeliotis, Chapter 7 Trustee, Roumeliotis Law Group PC, Hartford](#)

**George I. Roumeliotis** is the managing shareholder of Roumeliotis Law Group, P.C., with offices in Chicopee, Massachusetts, and New Haven, Connecticut. Previously, he was a shareholder with the Springfield firm of Hendel & Collins, P.C. He is an honors graduate of McGill University and Western New England College School of Law. Mr. Roumeliotis's practice is concentrated in the areas of insolvency, bankruptcy, cross-border, and commercial law, and he has been recognized in *The Best Lawyers in America* (published by Woodward White) in the area of bankruptcy law. He also serves as a panel Chapter 7 Trustee for the District of Connecticut. He has participated in numerous education programs for the Massachusetts Bar Association, Connecticut Bar Association, and others, including the Commercial Law League of America, the American Bankruptcy Institute, MCLE, Massachusetts Bankers Association, and the Hampden County Bar Association. Mr. Roumeliotis is admitted to practice before the state and federal courts in Massachusetts and Connecticut.

**Introduction to Chapter 7 Bankruptcy Cases, Section 341 Meeting,**  
**Exemptions,**  
**Duty to Cooperate with Chapter 7 Trustee**

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**A. Jurisdiction and Venue**

**Jurisdiction:** The Bankruptcy Code is contained in Title 11 of the United States Code. The bankruptcy court initially does not have jurisdiction to hear bankruptcy cases. Surprisingly, 28 U.S.C. §1334 actually confers subject matter jurisdiction on the federal district court in all cases filed under Title 11. The district court also has original, but not exclusive jurisdiction in all proceedings arising in, under, or related to a case filed under Title 11.

Sections 1334(c) and (d) provide that a district court has the discretion to abstain from considering a civil proceeding which involves state law for reasons of comity (or out of respect for state law), but must abstain from any civil proceeding pending at the date of the filing of the bankruptcy case which involves state law and could be adjudicated without delay.

How we get a bankruptcy case to be heard by the bankruptcy court is under 28 U.S.C. §157(a), through which the district courts refer bankruptcy matters to the bankruptcy courts. Further, under 28 U.S.C. §157(b)(1), bankruptcy courts can hear and

determine “core” proceedings that satisfy the jurisdictional prerequisites of §1334. 28 U.S.C. §157(b)(2) provides a non-exclusive list of “core” proceedings:

- (A) matters concerning the administration of the estate;
- (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
- (C) counterclaims by the estate against persons filing claims against the estate;
- (D) orders in respect to obtaining credit;
- (E) orders to turn over property of the estate;
- (F) proceedings to determine, avoid, or recover preferences;
- (G) motions to terminate, annul, or modify the automatic stay;
- (H) proceedings to determine, avoid, or recover fraudulent conveyances;
- (I) determinations as to the dischargeability of particular debts;
- (J) objections to discharges;
- (K) determinations of the validity, extent, or priority of liens;
- (L) confirmations of plans;
- (M) orders approving the use or lease of property, including the use of cash collateral;
- (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;
- (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
- (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

Specifically excluded from the jurisdiction of the bankruptcy court are personal injury and wrongful death claims. 28 U.S.C. §157(b)(5). Further, under Section 157(c)(1), a bankruptcy judge may hear (but may not render a binding decision) on a “noncore” proceeding related to a bankruptcy case. The judge submits proposed findings of fact and conclusions of law for the district court to consider, through a *de novo* review. However, practitioners should review three relatively recent decisions by the United States Supreme Court, which have added some complexity to the extent of a bankruptcy court’s jurisdiction. A summary of these cases follows.

In *Stern v. Marshall*, 131 S. Ct. 2594 (2011), the court ruled that Congress did not have the authority under the Constitution to give bankruptcy judges the authority to decide cases based entirely on state law grounds because bankruptcy judges do not enjoy the protections, such as lifetime tenure, enjoyed by Article III judges. In *Stern*, the debtor asserted that his counterclaim was a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(C). The court found that even though the bankruptcy court had the statutory authority to decide the counterclaim, it lacked the constitutional authority to do so. The type of claim that was at dispute in this case has become known as a “Stern claim”.

Then, in *Executive Benefits Ins. Agency v. Arkison*, 134 S. Ct. 2165 (2014), the court held that bankruptcy courts may issue proposed findings of fact and conclusions of law for *de novo* review and entry of a judgment by the district court when presented with a Stern claim.

The third of these cases was *Wellness Int’l Network, Ltd. v. Sharif*, 135 S. Ct. 1932 (2015), in which the court held that a bankruptcy court may decide a Stern claim so long as the parties consent. Consent only needs to be knowing and voluntary, and not express. The court remanded the case to the Seventh Circuit to determine whether the debtor’s actions evidenced knowing and voluntary consent. The district court can withdraw the reference of a case and/or proceeding referred to a bankruptcy court. 28 U.S.C. § 157(d).



**Venue:** 28 U.S.C. §1408 governs the venue of bankruptcy case—in which bankruptcy court do you file. It is fairly straightforward and brief. In its entirety, it states:

Except as provided in section 1410 of this title, a case under title 11 may be commenced in the district court for the district—

(1) in which the domicile, residence, principal place of business in the United States, or principal assets in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and-eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; or

(2) in which there is pending a case under title 11 concerning such person's affiliate, general partner, or partnership.

**Which Division?** In Connecticut, the Court operates 3 different divisions: Hartford, New Haven and Bridgeport. The debtor's place of residence or where it has its principal place of business governs which division a case is filed in. Local Bankruptcy Rule 1073-1 provides the details, and states as follows:

(a) All cases shall be assigned by the Clerk to a Bankruptcy Judge as follows:

(1) those cases in which the Debtor resides or has its principal place of business in Fairfield or Litchfield Counties shall be assigned to the Bridgeport Division;

(2) those cases in which the Debtor resides or has its principal place of business in Middlesex or New Haven Counties shall be assigned to the New Haven Division; and

(3) those cases in which the Debtor resides or has its principal place of business in Hartford, New London, Tolland or Windham Counties shall be assigned to the Hartford Division.

(b) Upon motion to the judge to whom the case has been assigned, and after notice and an opportunity for a hearing, the Clerk shall reassign the case to another

Division as ordered by that judge upon the findings that such reassignment would be in the best interests of the estate and parties in interest.

Section 1410 of title 28 deals with venue in of cases ancillary to foreign proceedings under Chapter 15 of the bankruptcy code, which is outside the scope of these materials.

## **B. Typical Types of Bankruptcy Cases for Consumers**

### **Chapter 7:**

This is by far the most common type of bankruptcy case and are sometimes called liquidation cases. An individual debtor commences a case by filing a petition and supporting documents (schedules, statement of financial affairs and other ancillary documents). Two spouses can file a joint petition as well. Upon the filing of the case, a trustee from a panel of trustees maintained by the Office of the U.S. Trustee is randomly assigned to administer the case. The chapter 7 trustee is a disinterested person (typically an attorney) with the duty to liquidate assets of the estate (turn them into cash) and then to distribute the money to creditors in accordance with the priority scheme of the bankruptcy code. The trustee reviews the schedules and examines the debtor at the meeting of creditors that takes place about one to two months after the filing. Subject to the debtor's rights to exempt certain assets after electing to take the bankruptcy or non-bankruptcy exemptions and rights of secured creditors in their collateral, the trustee collects and liquidates assets of the estate with non-exempt equity and then distributes the funds remaining after the payment of administrative expenses pursuant to the priorities set forth in the Bankruptcy Code.

Well over 90 percent of Chapter 7 cases are "no asset" cases, given that name because all of the assets of the estate are or can be exempted by the debtor or because they have little or no equity beyond amounts owed to secured creditors. Then, assuming that there are no reasons for a party in interest (which could be the panel trustee, the Office of the U.S. Trustee or a creditor) to contest the debtor's general discharge or the dischargeability of a particular debt, the debtor receives a discharge of the debt about 70

days after the first meeting of creditors (the deadline for a party in interest to file a complaint contesting the discharge or the dischargeability of a particular debt is 60 days after the first date set for the meeting of creditors).

### **Chapter 11:**

Chapter 11 of the Bankruptcy Code is designed to provide a framework for an individual or a business debtor to reorganize their financial affairs. As in Chapter 7, the debtor files a petition accompanying schedules and statements to commence a case. Instead of a panel Chapter 7 trustee, the debtor is examined under oath at the meeting of creditors by a representative of the Office of the U.S. Trustee (“UST”). The UST also monitors the progress of the case. Unless the case is converted or a trustee is appointed, the debtor remains in control of its assets and is known as a debtor-in-possession. The debtor has a 120 day exclusivity period to propose a Plan of Reorganization which is subject to creditor and court approval. After that 120 day period (or longer of the Debtor obtains an extension of that period), other parties can file a Plan. The process is very complex and costly, and should not be attempted by an inexperienced attorney. Therefore, it is outside the scope of these materials.

### **Chapter 13:**

These are reorganization cases filed by individuals (or spouses) with regular income. In addition to the petition and schedules required by Chapter 7, a debtor files a Chapter 13 plan which proposes the restructuring of the individual’s debts. As long as the plan meets the requirements of Chapter 13 of the Code, the Court will approve it and does not require the affirmative vote of creditors.

A Chapter 13 trustee is appointed (there is only one Chapter 13 trustee for the entire state of Connecticut—Roberta Napolitano). The Chapter 13 trustee reviews the plan for feasibility and that the proposed terms of the plan are consistent with the debtor’s financial information. The plan typically provides for regular monthly payments over a

period of 36 to 60 months, which need to commence within 30 days after the filing of the petition. The debtor does not get a discharge of debt until the plan is completed.

### **Chapters 9, 12, and 15:**

These are the other types of bankruptcy that are available under the Code, and are far less common than 7, 11 and 13. Chapter 9 is dedicated to municipal reorganizations, Chapter 12 is for family farmers and fishermen, and Chapter 15 is how a debtor in a foreign bankruptcy case can get recognition of that case and get creditor protection and other relief in the United States.

### **C. The Other Chapters of the Bankruptcy Code**

The Bankruptcy Code has other chapters as well, which apply generally in all cases. By the way, the chapter numbers are all odd numbers from 1 to 15, other than Chapter 12 (the provisions for farmers and fishermen).

Chapter 1 contains definitions, rules of construction, eligibility requirements, sovereign immunity provisions, among other things of general applicability.

Chapter 3 provides for many administrative and procedural matters, including, but not limited to, how to commence a case, documents to be filed, case administration, officers of the bankruptcy estate, professionals, the automatic stay, dismissal, conversion, and the treatment of executory contracts and unexpired leases.

Finally, Chapter 5 of the Code addresses creditors' rights, the Debtor's exemptions, the filing and allowance of claims, determination of secured status, the priority scheme for claims, the subordination of certain creditor claims, avoiding powers (preferences, fraudulent transfers and the like), property of the estate, setoff, discharge issues, administrative expenses and tax liability of the estate. The sections of Chapter 5 starting

with Section 555 focus on specialized types of debtors such as stockbrokers, securities and grain dealers.

#### **D. Federal Rules of Bankruptcy Procedure**

The Federal Rules of Bankruptcy Procedure are promulgated by the Supreme Court and are revised from time to time, usually in November of each year. They deal with the procedures associated with a bankruptcy case. The Rules cannot “abridge, enlarge or modify any substantive right.” 28 U.S.C. § 2075. The Rules must be read along with the relevant Code provisions. Most of the Bankruptcy Code books available for sale refer to the various rules that are related to the Code sections. Finally, the Bankruptcy Court for the District of Connecticut has local rules, recently reorganized to follow the numbering system of the Federal Rules of Bankruptcy Procedure. Practitioners should familiarize themselves with the local rules, and should not assume that the Code and the Federal Rules are all they need to consult on a particular issue.

The local rules, as well as standing orders and forms, are available at the Court’s website, [www.ctb.uscourts.gov](http://www.ctb.uscourts.gov).

#### **E. The Chapter 7 Means Test**

The Bankruptcy Code was substantially amended in 2005 and among the biggest changes was the introduction into Chapter 7 of the concept of the means test. The concept is simple: if you have the means to pay back some of your debt, you should not qualify for a Chapter 7. The initial inquiry revolves around income and household size. If a debtor’s family income, as calculated by Official Form 122A-1, is above the median income in the state for a family of the same size, the debtor would need to fill out Official Form 122A-2 to see if the debtor qualifies for Chapter 7. A table of the median incomes applicable for cases filed on or after November 1, 2019, and these official forms, are attached as Exhibit “A”. Form 122A-2 is fairly complex and refers to official IRS

standard and local figures available at the UST's website, [justice.gov/ust/means-testing](https://justice.gov/ust/means-testing).

#### **F. Prefiling Credit Counseling and Debtor Financial Education Courses**

Also introduced in the 2005 amendments to the Bankruptcy Code is the requirement to do a pre-filing credit counseling course before filing the case. After filing the case, but before being eligible for a discharge, a debtor must do a debtor financial education course. Information about these courses is also available at the UST's website at [justice.gov/ust/credit-counseling-debtor-education-information](https://justice.gov/ust/credit-counseling-debtor-education-information).

#### **G. The Section 341 Meeting, Dealing with the Trustee, Property of the Estate**

**Section 341 Meeting:** As noted above, when a Chapter 7 case is filed, a Chapter 7 Trustee is assigned, and a meeting of creditors is scheduled. That meeting is mandated pursuant to Section 341 of the Code, and is therefore frequently called the “Section 341 meeting”. Currently, Chapter 7 cases filed in Hartford will have their meetings conducted at the Federal Building in Hartford, whereas Chapter 7 cases filed in New Haven or in Bridgeport will have their meetings conducted at the Federal Building in New Haven. The meetings are generally scheduled from about 4 weeks to 8 weeks after the initial filing date. If a debtor or a debtor's attorney has a valid scheduling conflict, the Chapter 7 trustee should be contacted to arrange to have the meeting rescheduled. Further, the Debtor's appearance is required at the Section 341 meeting—it is not optional. For appropriate cause, if a Debtor cannot physically appear at the designated meeting room, arrangements can be made through the UST in New Haven to have the Debtor appear telephonically.

**Duty to Provide Documents and Proper Identification:** Under Section 521(e)(2) of the Code, no later than 7 days prior to the scheduled meeting, a Debtor must provide the Trustee with the Debtor's last filed federal tax return as well as paystubs the

debtor received in the 60 day period prior to the filing of the case. Under Local Bankr. R. 4002-1, a Debtor has a duty to provide additional information that is needed for the Trustee's administration of the case. That additional information is found in Appendix I to the Local Rules which is attached as Exhibit "B" to these materials.

Providing these materials to the Trustee in a timely manner will increase the chances that the Trustee will be able to complete the review of the case in a timely manner. If certain documents are not provided, it is common for the Chapter 7 Trustee to continue the Section 341 meeting to a later date so that the documents or other information can be provided.

At the Section 341 meeting, the Trustee will need to examine the Debtor's government issued photo ID as well as proof of social security number. Regarding the social security number, please understand that it has to be a document that a third party created. Ideally, that will be the Debtor's actual social security card, but it could be an employer issued W-2 form or a 1099 form that the Debtor received. The Debtor's own tax return will not suffice because the Debtor (or an agent of the Debtor) prepared it. The Trustee has a duty to confirm the identity of the Debtor through these pieces of identification. The Trustee will also place the Debtor under oath. Further, if English is not the Debtor's first language, the Trustee has the ability to call a government approved/funded translation service at the meeting room to help conduct the meeting. A Debtor's family member or friend cannot act as a translator for the Section 341 meeting.

**No Asset Cases:** As noted above, most Chapter 7 cases have no non-exempt assets. Therefore, once the Trustee has examined the Debtor at the Section 341 meeting and has reviewed the required information and confirms that it is a "no asset" case, the Trustee will file a "Report of No Distribution" with the Court. If, however, a Debtor has a non-exempt asset that has value and can be liquidated for the benefit of creditors, the Trustee will take steps to do that. Under Section 521 of the Code, the Debtor has a continuing obligation to cooperate with the Trustee in those efforts.

**Property of the Estate:** The assets that the Trustee looks at are everything that the Debtor has the right to as of the filing of the case, and also includes reviewing certain transactions that the Debtor participated in that might give the Trustee rights against third parties—for example, fraudulent transfers (Sections 544 and 548 of the Bankruptcy Code) and preferential transfers (Section 547 of the Code). All of these things, rights and claims are referred to as property of the bankruptcy estate under Section 541 of the Code. Most of these rights and claims are fixed as of the filing date. However, there is an exception to this with regard to a Debtor’s rights to an inheritance or a life insurance payment as a result of someone passing away within 180 days after the filing of the case. Under Section 541(a)(5), those rights are also property of the bankruptcy estate. If the Debtor learns that they will be receiving such an asset or payment, the Debtor has a continuing duty to inform the Trustee, even if the Trustee has already filed a Report of No Distribution. The failure to do this could lead to the revocation of the Debtor’s discharge and possible criminal implications.

**Exemptions:** Even if something is property of the bankruptcy estate, it does not mean it will automatically be administered for creditors. A Debtor is entitled to certain statutorily described exemptions in assets so that those properly exempted assets are kept from the reach of creditors. In Connecticut, a Debtor can choose from the list of exemptions found in Section 522(d) of the Code (commonly referred to as the Bankruptcy Code exemptions) or from non-bankruptcy law exemptions (commonly referred to as State exemptions). A Debtor cannot mix and match between the two lists, and in a joint case, both Debtors must choose from the same list. A summary of the exemptions available to a Connecticut debtor is provided below.



## **Bankruptcy Code Exemptions (Section 522(d)):**

What follows are a summary of the common categories of exemptions available under Section 522(d), with dollar limits, if applicable, to cases filed on or after April 1, 2019. The amounts are adjusted for inflation every 3 years:

### Homestead:

Section 522(d)(1), (5) - Real property, including mobile homes and co-ops, or burial plots up to \$25,150. The unused portion of the homestead exemption up to \$12,575 can be used for other property.

### Personal Property:

522(d)(2) - Motor vehicle up to \$4,000.

522(d)(3) - Animals, crops, clothing, appliances and furnishings, books, household goods, and musical instruments up to \$625 per item, and up to \$13,400 total.

522(d)(4) - Jewelry up to \$1,700.

522(d)(9) - Health aids.

522(d)(11)(B) - Wrongful death recovery for a person you depended upon.

522(d)(11)(D) - Personal injury recovery up to \$25,150 except for pain and suffering or for pecuniary loss.

522(d)(11)(E) - Lost earnings payments.

### Pensions:

522(b)(3)(C) - Tax exempt retirement accounts (including those administered under the Internal Revenue Code Sections 401(k) and 403(b), profit-sharing and money purchase plans, SEP and SIMPLE IRAs, and defined benefit plans).

522(b)(3)(C)(n) - IRAs and Roth IRAs up to \$1,362,800.

Public Benefits:

522(d)(10)(A) - Public assistance, Social Security, Veteran's benefits, Unemployment Compensation.

522(d)(11)(A) - Crime victim's compensation.

Tools of Trade:

522(d)(6) - Implements, books, and tools of the trade, up to \$2,525.

Alimony and Child Support:

522(d)(10)(D) - Alimony and child support needed for support.

Insurance:

522(d)(7) - Unmatured life insurance policy except for credit insurance.

522(d)(8) - Life insurance policy with loan value up to \$13,400.

522(d)(10)(C) - Disability, unemployment or illness benefits.

522(d)(11)(C) - Life insurance payments for a person you depended on, which you need for support.

Wildcard:

522(d)(5) - \$1,325 of any property, and the unused portion of homestead exemption up to \$12,575.

**Connecticut State Exemptions:**

<b><u>Asset</u></b>	<b><u>Extent to which Exempt</u></b>	<b><u>CGS</u></b>
Homestead	Real property, including mobile or manufactured home to \$75,000	52-352b(t)
Insurance	Disability benefits paid by association for its members	52-352b(p)
	Fraternal benefit society benefits	38a-637
	Health or disability benefits	52-352b(e)
	Life insurance proceeds if clause prohibits proceeds from being used to pay beneficiary's creditors	38a-454
	Life insurance proceeds	38a-453
	Unmatured life insurance policy loan value to \$4,000	52-352b(s)
Alimony & Child Support	Alimony, to extent wages exempt	52-352b(n)
	Child support	52-352b(h)
Pensions	ERISA-qualified benefits, to extent wages exempt (only payments being received)	52-352b(m)
	Municipal employees	7-446
	Probate judges and employees	45-29o

	State employees	5-171, 5-192w
	Teachers	10-183q
Personal Property	Appliances, food, clothing, furniture and bedding needed	52-352b(a)
	Burial plot	52-352b(c)
	Health aids needed	52-352b(f)
	Motor vehicle to \$3,500	52-352b(j)
	Proceeds for damaged exempt property	52-352b(q)
	Residential utility and security deposits for 1 residence	52-352b(l)
	Wedding and engagement rings	52-352b(k)
Public Benefits	Aid to blind, aged, disabled, AFDC	52-352b(d)
	Crime victims' compensation	52-352b(o), 54-213
	Social security	52-352b(g)
	Unemployment compensation	31-272(c), 52-352b(g)
	Veterans' benefits	52-352b(g)
	Vietnam veterans' death benefits	27-140I
	Wages from earnings incentive program	52-352b(d)

	Workers' compensation	52-352b(g)
Tools of Trade	Arms, military equipment, uniforms, musical instruments of military personnel	52-352b(I)
	Tools, books, instruments and farm animals needed (unlimited)	52-352b(b)
Wages	Minimum 75% of earned but unpaid wages	52-361a(f)
Wild Card	\$1,000 of any property not otherwise exempted	52-352b(r)

**Asset Cases:** If it turns out that a case has non-exempt equity in property, or the Trustee has rights against third parties, then the Trustee will request the Bankruptcy Court clerk's office to set a deadline for creditors to file claims and will administer the asset or pursue the claim for the benefit of those creditors.

## Census Bureau Median Family Income By Family Size

**(Cases Filed On or After November 1, 2019)**

The following table provides median family income data reproduced in a format designed for ease of use in completing Bankruptcy Forms 122A-1 and 122C-1.

STATE	1 EARNER	FAMILY SIZE		
		2 PEOPLE	3 PEOPLE	4 PEOPLE *
ALABAMA	\$47,680	\$55,905	\$67,334	\$81,514
ALASKA	\$62,858	\$76,208	\$100,494	\$101,221
ARIZONA	\$51,388	\$64,543	\$70,428	\$85,403
ARKANSAS	\$42,461	\$52,986	\$57,221	\$72,767
CALIFORNIA	\$59,286	\$77,860	\$86,665	\$99,512
COLORADO	\$60,819	\$79,711	\$92,517	\$105,947
CONNECTICUT	\$65,502	\$87,017	\$99,857	\$123,477
DELAWARE	\$54,589	\$71,351	\$83,079	\$100,799
DISTRICT OF COLUMBIA	\$62,285	\$113,034	\$127,467	\$138,112
FLORIDA	\$50,641	\$61,619	\$67,717	\$81,091
GEORGIA	\$49,236	\$63,850	\$72,426	\$85,763
HAWAII	\$64,803	\$76,240	\$98,829	\$112,345
IDAHO	\$51,189	\$60,814	\$66,222	\$76,536
ILLINOIS	\$53,900	\$71,301	\$82,268	\$101,240
INDIANA	\$47,965	\$61,811	\$72,228	\$86,076
IOWA	\$50,661	\$67,897	\$77,525	\$93,880
KANSAS	\$50,944	\$66,025	\$75,629	\$87,119
KENTUCKY	\$43,800	\$55,256	\$65,544	\$78,689
LOUISIANA	\$44,822	\$54,424	\$61,917	\$80,818
MAINE	\$50,537	\$63,734	\$76,984	\$93,912
MARYLAND	\$69,529	\$88,815	\$104,390	\$125,989
MASSACHUSETTS	\$65,924	\$82,628	\$106,206	\$132,026
MICHIGAN	\$52,168	\$63,281	\$76,825	\$91,986
MINNESOTA	\$57,017	\$76,319	\$95,919	\$112,291
MISSISSIPPI	\$41,659	\$50,980	\$57,431	\$68,491
MISSOURI	\$48,212	\$60,424	\$72,543	\$90,489
MONTANA	\$50,165	\$63,278	\$73,586	\$85,739
NEBRASKA	\$48,796	\$68,061	\$77,274	\$93,746
NEVADA	\$51,516	\$64,586	\$73,524	\$80,077
NEW HAMPSHIRE	\$65,400	\$78,998	\$100,278	\$120,342
NEW JERSEY	\$68,464	\$82,249	\$104,752	\$128,994
NEW MEXICO	\$44,833	\$55,325	\$59,538	\$66,358
NEW YORK	\$56,120	\$71,349	\$86,670	\$105,636
NORTH CAROLINA	\$47,904	\$60,946	\$67,931	\$85,948
NORTH DAKOTA	\$52,357	\$79,459	\$86,261	\$97,559
OHIO	\$50,384	\$63,514	\$76,260	\$91,580
OKLAHOMA	\$48,322	\$58,436	\$65,400	\$75,326
OREGON	\$55,943	\$70,559	\$79,262	\$97,311
PENNSYLVANIA	\$53,633	\$66,338	\$82,375	\$101,477
RHODE ISLAND	\$60,608	\$74,508	\$83,585	\$102,967
SOUTH CAROLINA	\$46,642	\$60,434	\$65,410	\$79,780
SOUTH DAKOTA	\$47,053	\$67,817	\$69,074	\$82,331
TENNESSEE	\$47,361	\$59,829	\$68,493	\$78,283

TEXAS	\$49,996	\$65,708	\$72,632	\$84,724
UTAH	\$63,653	\$67,778	\$81,167	\$91,810
VERMONT	\$56,829	\$74,256	\$80,232	\$101,783
VIRGINIA	\$60,925	\$77,999	\$90,358	\$110,000
WASHINGTON	\$66,309	\$78,823	\$90,921	\$105,568
WEST VIRGINIA	\$48,183	\$51,102	\$63,137	\$74,916
WISCONSIN	\$51,792	\$67,146	\$82,119	\$98,317
WYOMING	\$60,985	\$72,964	\$76,916	\$96,120

\* Add \$9,000 for each individual in excess of 4.

COMMONWEALTH OR U.S. TERRITORY	1 EARNER	FAMILY SIZE		
		2 PEOPLE	3 PEOPLE	4 PEOPLE *
GUAM	\$42,009	\$50,229	\$57,238	\$69,265
NORTHERN MARIANA ISLANDS	\$28,211	\$28,211	\$32,821	\$48,273
PUERTO RICO	\$24,261	\$24,261	\$25,560	\$33,501
VIRGIN ISLANDS	\$33,331	\$40,059	\$42,712	\$46,794

\* Add \$9,000 for each individual in excess of 4.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
 First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_

Case number \_\_\_\_\_  
 (if known)

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

- 1. There is no presumption of abuse.
- 2. The calculation to determine if a presumption of abuse applies will be made under *Chapter 7 Means Test Calculation* (Official Form 122A-2).
- 3. The Means Test does not apply now because of qualified military service but it could apply later.

Check if this is an amended filing

**Official Form 122A-1**

**Chapter 7 Statement of Your Current Monthly Income**

10/19

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

**Part 1: Calculate Your Current Monthly Income**

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

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

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

	Column A Debtor 1	Column B Debtor 2 or non-filing spouse
2. <b>Your gross wages, salary, tips, bonuses, overtime, and commissions</b> (before all payroll deductions).	\$ _____	\$ _____
3. <b>Alimony and maintenance payments.</b> Do not include payments from a spouse if Column B is filled in.	\$ _____	\$ _____
4. <b>All amounts from any source which are regularly paid for household expenses of you or your dependents, including child support.</b> Include regular contributions from an unmarried partner, members of your household, your dependents, parents, and roommates. Include regular contributions from a spouse only if Column B is not filled in. Do not include payments you listed on line 3.	\$ _____	\$ _____
5. <b>Net income from operating a business, profession, or farm</b>	<b>Debtor 1</b>	<b>Debtor 2</b>
Gross receipts (before all deductions)	\$ _____	\$ _____
Ordinary and necessary operating expenses	– \$ _____	– \$ _____
Net monthly income from a business, profession, or farm	\$ _____	\$ _____
		Copy here →
6. <b>Net income from rental and other real property</b>	<b>Debtor 1</b>	<b>Debtor 2</b>
Gross receipts (before all deductions)	\$ _____	\$ _____
Ordinary and necessary operating expenses	– \$ _____	– \$ _____
Net monthly income from rental or other real property	\$ _____	\$ _____
		Copy here →
7. <b>Interest, dividends, and royalties</b>	\$ _____	\$ _____



Column A Debtor 1	Column B Debtor 2 or non-filing spouse
----------------------	--

8. Unemployment compensation

Do not enter the amount if you contend that the amount received was a benefit under the Social Security Act. Instead, list it here: ↓

For you \$
For your spouse \$

\$ \$

9. Pension or retirement income. Do not include any amount received that was a benefit under the Social Security Act. Also, except as stated in the next sentence, do not include any compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services.

\$ \$

10. Income from all other sources not listed above. Specify the source and amount. Do not include any benefits received under the Social Security Act; payments received as a victim of a war crime, a crime against humanity, or international or domestic terrorism; or compensation, pension, pay, annuity, or allowance paid by the United States Government in connection with a disability, combat-related injury or disability, or death of a member of the uniformed services.

\_\_\_\_\_
\_\_\_\_\_

\$ \$
\$ \$
+ \$ + \$

Total amounts from separate pages, if any.

11. Calculate your total current monthly income. Add lines 2 through 10 for each column. Then add the total for Column A to the total for Column B.

\$ + \$ = \$
Total current monthly income

Part 2: Determine Whether the Means Test Applies to You

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

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

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

Fill in the state in which you live.
Fill in the number of people in your household.
Fill in the median family income for your state and size of household. 13. \$
To find a list of applicable median income amounts, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

14. How do the lines compare?

14a. Line 12b is less than or equal to line 13. On the top of page 1, check box 1, There is no presumption of abuse. Go to Part 3.
14b. Line 12b is more than line 13. On the top of page 1, check box 2, The presumption of abuse is determined by Form 122A-2. Go to Part 3 and fill out Form 122A-2.

Debtor 1

\_\_\_\_\_  
First Name Middle Name Last Name

Case number (if known) \_\_\_\_\_

**Part 3:** Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

**x** \_\_\_\_\_  
Signature of Debtor 1

**x** \_\_\_\_\_  
Signature of Debtor 2

Date \_\_\_\_\_  
MM / DD / YYYY

Date \_\_\_\_\_  
MM / DD / YYYY

If you checked line 14a, do NOT fill out or file Form 122A-2.

If you checked line 14b, fill out Form 122A-2 and file it with this form.

**Fill in this information to identify your case:**

Debtor 1 \_\_\_\_\_  
First Name Middle Name Last Name

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

United States Bankruptcy Court for the: \_\_\_\_\_ District of \_\_\_\_\_

Case number \_\_\_\_\_  
 (If known)

Check the appropriate box as directed in lines 40 or 42:

According to the calculations required by this Statement:

- 1. There is no presumption of abuse.
- 2. There is a presumption of abuse.
- Check if this is an amended filing

# Official Form 122A-2

## Chapter 7 Means Test Calculation

04/19

To fill out this form, you will need your completed copy of *Chapter 7 Statement of Your Current Monthly Income* (Official Form 122A-1).

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for being accurate. If more space is needed, attach a separate sheet to this form. Include the line number to which the additional information applies. On the top of any additional pages, write your name and case number (if known).

**Part 1:** Determine Your Adjusted Income

1. **Copy your total current monthly income.** ..... Copy line 11 from Official Form 122A-1 here → ..... \$ \_\_\_\_\_

2. **Did you fill out Column B in Part 1 of Form 122A-1?**

- No. Fill in \$0 for the total on line 3.
- Yes. Is your spouse filing with you?
  - No. Go to line 3.
  - Yes. Fill in \$0 for the total on line 3.

3. **Adjust your current monthly income by subtracting any part of your spouse's income not used to pay for the household expenses of you or your dependents.** Follow these steps:

On line 11, Column B of Form 122A-1, was any amount of the income you reported for your spouse NOT regularly used for the household expenses of you or your dependents?

- No. Fill in 0 for the total on line 3.
- Yes. Fill in the information below:

State each purpose for which the income was used <small>For example, the income is used to pay your spouse's tax debt or to support people other than you or your dependents</small>	Fill in the amount you are subtracting from your spouse's income
_____	\$ _____
_____	\$ _____
_____	+ \$ _____
<b>Total</b> .....	\$ _____

Copy total here ..... → - \$ \_\_\_\_\_

4. **Adjust your current monthly income.** Subtract the total on line 3 from line 1.

\$ \_\_\_\_\_

Part 2: Calculate Your Deductions from Your Income

The Internal Revenue Service (IRS) issues National and Local Standards for certain expense amounts. Use these amounts to answer the questions in lines 6-15. To find the IRS standards, go online using the link specified in the separate instructions for this form. This information may also be available at the bankruptcy clerk's office.

Deduct the expense amounts set out in lines 6-15 regardless of your actual expense. In later parts of the form, you will use some of your actual expenses if they are higher than the standards. Do not deduct any amounts that you subtracted from your spouse's income in line 3 and do not deduct any operating expenses that you subtracted from income in lines 5 and 6 of Form 122A-1.

If your expenses differ from month to month, enter the average expense.

Whenever this part of the form refers to you, it means both you and your spouse if Column B of Form 122A-1 is filled in.

5. The number of people used in determining your deductions from income

Fill in the number of people who could be claimed as exemptions on your federal income tax return, plus the number of any additional dependents whom you support. This number may be different from the number of people in your household.

Empty rectangular box for entering the number of people.

National Standards You must use the IRS National Standards to answer the questions in lines 6-7.

6. Food, clothing, and other items: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for food, clothing, and other items. \$

7. Out-of-pocket health care allowance: Using the number of people you entered in line 5 and the IRS National Standards, fill in the dollar amount for out-of-pocket health care. The number of people is split into two categories—people who are under 65 and people who are 65 or older—because older people have a higher IRS allowance for health care costs. If your actual expenses are higher than this IRS amount, you may deduct the additional amount on line 22.

People who are under 65 years of age

7a. Out-of-pocket health care allowance per person \$

7b. Number of people who are under 65 X

7c. Subtotal. Multiply line 7a by line 7b. \$ Copy here -> \$

People who are 65 years of age or older

7d. Out-of-pocket health care allowance per person \$

7e. Number of people who are 65 or older X

7f. Subtotal. Multiply line 7d by line 7e. \$ Copy here -> + \$

7g. Total. Add lines 7c and 7f. \$ Copy total here -> \$

**Local Standards** You must use the IRS Local Standards to answer the questions in lines 8-15.

Based on information from the IRS, the U.S. Trustee Program has divided the IRS Local Standard for housing for bankruptcy purposes into two parts:

- Housing and utilities – Insurance and operating expenses
- Housing and utilities – Mortgage or rent expenses

To answer the questions in lines 8-9, use the U.S. Trustee Program chart.

To find the chart, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office.

8. **Housing and utilities – Insurance and operating expenses:** Using the number of people you entered in line 5, fill in the dollar amount listed for your county for insurance and operating expenses. \$ \_\_\_\_\_

9. **Housing and utilities – Mortgage or rent expenses:**

9a. Using the number of people you entered in line 5, fill in the dollar amount listed for your county for mortgage or rent expenses. \$ \_\_\_\_\_

9b. Total average monthly payment for all mortgages and other debts secured by your home.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Name of the creditor	Average monthly payment
_____	\$ _____
_____	\$ _____
_____	+ \$ _____
Total average monthly payment	\$ _____

Copy here → - \$ \_\_\_\_\_ Repeat this amount on line 33a.

9c. Net mortgage or rent expense. Subtract line 9b (total average monthly payment) from line 9a (mortgage or rent expense). If this amount is less than \$0, enter \$0. \$ \_\_\_\_\_ Copy here → \$ \_\_\_\_\_

10. If you claim that the U.S. Trustee Program's division of the IRS Local Standard for housing is incorrect and affects the calculation of your monthly expenses, fill in any additional amount you claim. \$ \_\_\_\_\_

Explain why: \_\_\_\_\_

11. **Local transportation expenses:** Check the number of vehicles for which you claim an ownership or operating expense.

- 0. Go to line 14.
- 1. Go to line 12.
- 2 or more. Go to line 12.

12. **Vehicle operation expense:** Using the IRS Local Standards and the number of vehicles for which you claim the operating expenses, fill in the Operating Costs that apply for your Census region or metropolitan statistical area. \$ \_\_\_\_\_

13. Vehicle ownership or lease expense: Using the IRS Local Standards, calculate the net ownership or lease expense for each vehicle below. You may not claim the expense if you do not make any loan or lease payments on the vehicle. In addition, you may not claim the expense for more than two vehicles.

Vehicle 1 Describe Vehicle 1:

13a. Ownership or leasing costs using IRS Local Standard. \$

13b. Average monthly payment for all debts secured by Vehicle 1. Do not include costs for leased vehicles.

To calculate the average monthly payment here and on line 13e, add all amounts that are contractually due to each secured creditor in the 60 months after you filed for bankruptcy. Then divide by 60.

Table with 2 columns: Name of each creditor for Vehicle 1, Average monthly payment. Includes lines for creditor names and payments.

Total average monthly payment \$ Copy here - \$ Repeat this amount on line 33b.

13c. Net Vehicle 1 ownership or lease expense Subtract line 13b from line 13a. If this amount is less than \$0, enter \$0. Copy net Vehicle 1 expense here

Vehicle 2 Describe Vehicle 2:

13d. Ownership or leasing costs using IRS Local Standard. \$

13e. Average monthly payment for all debts secured by Vehicle 2. Do not include costs for leased vehicles.

Table with 2 columns: Name of each creditor for Vehicle 2, Average monthly payment. Includes lines for creditor names and payments.

Total average monthly payment \$ Copy here - \$ Repeat this amount on line 33c.

13f. Net Vehicle 2 ownership or lease expense Subtract line 13e from 13d. If this amount is less than \$0, enter \$0. Copy net Vehicle 2 expense here

14. Public transportation expense: If you claimed 0 vehicles in line 11, using the IRS Local Standards, fill in the Public Transportation expense allowance regardless of whether you use public transportation.

15. Additional public transportation expense: If you claimed 1 or more vehicles in line 11 and if you claim that you may also deduct a public transportation expense, you may fill in what you believe is the appropriate expense, but you may not claim more than the IRS Local Standard for Public Transportation.

**Other Necessary Expenses** In addition to the expense deductions listed above, you are allowed your monthly expenses for the following IRS categories.

16. **Taxes:** The total monthly amount that you will actually owe for federal, state and local taxes, such as income taxes, self-employment taxes, Social Security taxes, and Medicare taxes. You may include the monthly amount withheld from your pay for these taxes. However, if you expect to receive a tax refund, you must divide the expected refund by 12 and subtract that number from the total monthly amount that is withheld to pay for taxes. \$ \_\_\_\_\_

Do not include real estate, sales, or use taxes.

17. **Involuntary deductions:** The total monthly payroll deductions that your job requires, such as retirement contributions, union dues, and uniform costs. \$ \_\_\_\_\_

Do not include amounts that are not required by your job, such as voluntary 401(k) contributions or payroll savings.

18. **Life insurance:** The total monthly premiums that you pay for your own term life insurance. If two married people are filing together, include payments that you make for your spouse's term life insurance. Do not include premiums for life insurance on your dependents, for a non-filing spouse's life insurance, or for any form of life insurance other than term. \$ \_\_\_\_\_

19. **Court-ordered payments:** The total monthly amount that you pay as required by the order of a court or administrative agency, such as spousal or child support payments. \$ \_\_\_\_\_

Do not include payments on past due obligations for spousal or child support. You will list these obligations in line 35.

20. **Education:** The total monthly amount that you pay for education that is either required:  
 as a condition for your job, or  
 for your physically or mentally challenged dependent child if no public education is available for similar services. \$ \_\_\_\_\_

21. **Childcare:** The total monthly amount that you pay for childcare, such as babysitting, daycare, nursery, and preschool. Do not include payments for any elementary or secondary school education. \$ \_\_\_\_\_

22. **Additional health care expenses, excluding insurance costs:** The monthly amount that you pay for health care that is required for the health and welfare of you or your dependents and that is not reimbursed by insurance or paid by a health savings account. Include only the amount that is more than the total entered in line 7. Payments for health insurance or health savings accounts should be listed only in line 25. \$ \_\_\_\_\_

23. **Optional telephones and telephone services:** The total monthly amount that you pay for telecommunication services for you and your dependents, such as pagers, call waiting, caller identification, special long distance, or business cell phone service, to the extent necessary for your health and welfare or that of your dependents or for the production of income, if it is not reimbursed by your employer. + \$ \_\_\_\_\_

Do not include payments for basic home telephone, internet and cell phone service. Do not include self-employment expenses, such as those reported on line 5 of Official Form 122A-1, or any amount you previously deducted.

24. **Add all of the expenses allowed under the IRS expense allowances.** \$ \_\_\_\_\_  
Add lines 6 through 23.

**Additional Expense Deductions**

These are additional deductions allowed by the Means Test.  
Note: Do not include any expense allowances listed in lines 6-24.

25. **Health insurance, disability insurance, and health savings account expenses.** The monthly expenses for health insurance, disability insurance, and health savings accounts that are reasonably necessary for yourself, your spouse, or your dependents.

Health insurance	\$ _____
Disability insurance	\$ _____
Health savings account	+ \$ _____
Total	\$ _____

Copy total here → ..... \$ \_\_\_\_\_

Do you actually spend this total amount?

No. How much do you actually spend? \$ \_\_\_\_\_

Yes

26. **Continuing contributions to the care of household or family members.** The actual monthly expenses that you will continue to pay for the reasonable and necessary care and support of an elderly, chronically ill, or disabled member of your household or member of your immediate family who is unable to pay for such expenses. These expenses may include contributions to an account of a qualified ABLÉ program. 26 U.S.C. § 529A(b).

\$ \_\_\_\_\_

27. **Protection against family violence.** The reasonably necessary monthly expenses that you incur to maintain the safety of you and your family under the Family Violence Prevention and Services Act or other federal laws that apply. By law, the court must keep the nature of these expenses confidential.

\$ \_\_\_\_\_

28. **Additional home energy costs.** Your home energy costs are included in your insurance and operating expenses on line 8. If you believe that you have home energy costs that are more than the home energy costs included in expenses on line 8, then fill in the excess amount of home energy costs. You must give your case trustee documentation of your actual expenses, and you must show that the additional amount claimed is reasonable and necessary.

\$ \_\_\_\_\_

29. **Education expenses for dependent children who are younger than 18.** The monthly expenses (not more than \$170.83\* per child) that you pay for your dependent children who are younger than 18 years old to attend a private or public elementary or secondary school. You must give your case trustee documentation of your actual expenses, and you must explain why the amount claimed is reasonable and necessary and not already accounted for in lines 6-23.

\$ \_\_\_\_\_

\* Subject to adjustment on 4/01/22, and every 3 years after that for cases begun on or after the date of adjustment.

30. **Additional food and clothing expense.** The monthly amount by which your actual food and clothing expenses are higher than the combined food and clothing allowances in the IRS National Standards. That amount cannot be more than 5% of the food and clothing allowances in the IRS National Standards. To find a chart showing the maximum additional allowance, go online using the link specified in the separate instructions for this form. This chart may also be available at the bankruptcy clerk's office. You must show that the additional amount claimed is reasonable and necessary.

\$ \_\_\_\_\_

31. **Continuing charitable contributions.** The amount that you will continue to contribute in the form of cash or financial instruments to a religious or charitable organization. 26 U.S.C. § 170(c)(1)-(2).

+ \$ \_\_\_\_\_

32. **Add all of the additional expense deductions.**  
Add lines 25 through 31.

\$ \_\_\_\_\_



**Deductions for Debt Payment**

33. For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.

To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

**Mortgages on your home:**

33a. Copy line 9b here ..... → **Average monthly payment**  
\$ \_\_\_\_\_

**Loans on your first two vehicles:**

33b. Copy line 13b here. .... → \$ \_\_\_\_\_

33c. Copy line 13e here. .... → \$ \_\_\_\_\_

33d. List other secured debts:

Name of each creditor for other secured debt	Identify property that secures the debt	Does payment include taxes or insurance?	
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	\$ _____
_____	_____	<input type="checkbox"/> No <input type="checkbox"/> Yes	+ \$ _____

33e. Total average monthly payment. Add lines 33a through 33d. .... **\$ \_\_\_\_\_** Copy total here → \$ \_\_\_\_\_

34. Are any debts that you listed in line 33 secured by your primary residence, a vehicle, or other property necessary for your support or the support of your dependents?

- No. Go to line 35.
- Yes. State any amount that you must pay to a creditor, in addition to the payments listed in line 33, to keep possession of your property (called the *cure amount*). Next, divide by 60 and fill in the information below.

Name of the creditor	Identify property that secures the debt	Total cure amount		Monthly cure amount
_____	_____	\$ _____	÷ 60 =	\$ _____
_____	_____	\$ _____	÷ 60 =	\$ _____
_____	_____	\$ _____	÷ 60 =	+ \$ _____
			Total	<b>\$ _____</b> Copy total here → \$ _____

35. Do you owe any priority claims such as a priority tax, child support, or alimony — that are past due as of the filing date of your bankruptcy case? 11 U.S.C. § 507.

- No. Go to line 36.
- Yes. Fill in the total amount of all of these priority claims. Do not include current or ongoing priority claims, such as those you listed in line 19.

Total amount of all past-due priority claims ..... \$ \_\_\_\_\_ ÷ 60 = \$ \_\_\_\_\_

36. Are you eligible to file a case under Chapter 13? 11 U.S.C. § 109(e). For more information, go online using the link for Bankruptcy Basics specified in the separate instructions for this form. Bankruptcy Basics may also be available at the bankruptcy clerk's office.

- No. Go to line 37.
Yes. Fill in the following information.

Projected monthly plan payment if you were filing under Chapter 13 \$

Current multiplier for your district as stated on the list issued by the Administrative Office of the United States Courts (for districts in Alabama and North Carolina) or by the Executive Office for United States Trustees (for all other districts).

X

To find a list of district multipliers that includes your district, go online using the link specified in the separate instructions for this form. This list may also be available at the bankruptcy clerk's office.

Average monthly administrative expense if you were filing under Chapter 13

\$ Copy total here \$

37. Add all of the deductions for debt payment.

Add lines 33e through 36.

\$

Total Deductions from Income

38. Add all of the allowed deductions.

Copy line 24, All of the expenses allowed under IRS expense allowances \$

Copy line 32, All of the additional expense deductions \$

Copy line 37, All of the deductions for debt payment + \$

Total deductions \$ Copy total here \$

Part 3: Determine Whether There Is a Presumption of Abuse

39. Calculate monthly disposable income for 60 months

39a. Copy line 4, adjusted current monthly income \$

39b. Copy line 38, Total deductions - \$

39c. Monthly disposable income. 11 U.S.C. § 707(b)(2). Subtract line 39b from line 39a. \$ Copy here \$

For the next 60 months (5 years) x 60

39d. Total. Multiply line 39c by 60. \$ Copy here \$

40. Find out whether there is a presumption of abuse. Check the box that applies:

- The line 39d is less than \$8,175\*. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.
The line 39d is more than \$13,650\*. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.
The line 39d is at least \$8,175\*, but not more than \$13,650\*. Go to line 41.

\* Subject to adjustment on 4/01/22, and every 3 years after that for cases filed on or after the date of adjustment.

41. 41a. Fill in the amount of your total nonpriority unsecured debt. If you filled out A Summary of Your Assets and Liabilities and Certain Statistical Information Schedules (Official Form 106Sum), you may refer to line 3b on that form.....

\$ \_\_\_\_\_

X .25

41b. 25% of your total nonpriority unsecured debt. 11 U.S.C. § 707(b)(2)(A)(i)(I). Multiply line 41a by 0.25. ....

\$ \_\_\_\_\_

Copy here →

\$ \_\_\_\_\_

42. Determine whether the income you have left over after subtracting all allowed deductions is enough to pay 25% of your unsecured, nonpriority debt.

Check the box that applies:

[ ] Line 39d is less than line 41b. On the top of page 1 of this form, check box 1, There is no presumption of abuse. Go to Part 5.

[ ] Line 39d is equal to or more than line 41b. On the top of page 1 of this form, check box 2, There is a presumption of abuse. You may fill out Part 4 if you claim special circumstances. Then go to Part 5.

Part 4: Give Details About Special Circumstances

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

[ ] No. Go to Part 5.

[ ] Yes. Fill in the following information. All figures should reflect your average monthly expense or income adjustment for each item. You may include expenses you listed in line 25.

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

Table with 2 columns: Give a detailed explanation of the special circumstances, Average monthly expense or income adjustment. Includes four rows of input fields.

Part 5: Sign Below

By signing here, I declare under penalty of perjury that the information on this statement and in any attachments is true and correct.

X Signature of Debtor 1

X Signature of Debtor 2

Date MM / DD / YYYY

Date MM / DD / YYYY

APPENDIX I

DOCUMENTS TO BE PRODUCED TO TRUSTEE IN CHAPTER 7 CASES PRIOR TO SECTION 341 CREDITORS MEETING

**The following must be brought by the Debtor to the Section 341 Creditor's Meeting in order to have the meeting concluded:**

1. Valid government-issued photo identification;
2. Proof of the Debtor's social security number by any document issued by a third party (a tax return is not acceptable proof but a W-2 issued by the Debtor's employer is acceptable proof).

**The following documents must be received by the Trustee at least seven (7) days prior to the meeting of creditors:**

1. Photocopies of pay stubs and any/all income received by the Debtor and spouse, if any, (whether or not a joint petition has been filed) during the 60-day period prior to the filing of the Bankruptcy Petition.
2. A complete copy of the Debtor's last two (2) years of filed Federal and State Tax Returns with all schedules, W-2 and/or 1099 forms or Tax Transcript redacted for all Social Security Numbers and the names of any dependents.
3. A copy of the statement for any bank account, brokerage account or other account in which the Debtor had money on deposit on the date of the filing of the petition. This includes any such accounts which are in the Debtor's name for convenience or anticipated probate reasons.
4. If the Debtor or non-filing spouse, if any, have any income from self-employment: a sworn Profit and Loss statement indicating the income and/or loss for the sixty (60) days prior to filing of the Bankruptcy Petition dated and signed by the Debtor or non-filing spouse, if any, under penalty of perjury.
5. If the Debtor owns real estate or a mobile home:
  - a. An appraisal or comparative market analysis with at least 3 comparable sales listed that is no more than one (1) year old and that is dated and signed by the person providing the value. A tax assessment, Zestimate or similar valuation is not acceptable;
  - b. A title search or copy of all mortgages recorded on the land records which include the volume and pages of recordation;
  - c. A copy of the recorded deed with property description or a title search;
  - d. A payoff statement or monthly statement from each mortgage holder showing the balance due on the mortgage(s);
  - e. Circle or highlight the value of the property and the balance due on the mortgage(s).
6. If the Debtor has purchased, sold, obtained an equity line or mortgage, transferred or refinanced any real property in the four (4) years before the filing of the Bankruptcy Petition:
  - a. A copy of the Closing Disclosure and the Loan Estimate;
  - b. An accounting of how the Debtor used the money the net proceeds received from the sale, equity line, mortgage or refinancing.

7. If the Debtor has creditors with a lien on a motor vehicle, boat or any other type of property: proof of the amount owed to the creditor as of the filing of the Bankruptcy Petition and proof of the value of the property.
8. If the Debtor has filed or plan to file any lawsuit against anyone for any reason:
  - a. A letter from the attorney representing the Debtor regarding the status of the lawsuit and its value;
  - b. The attached form completed in full and including the name and address of the Debtor's attorney in the lawsuit.
9. If the Debtor owns an interest in a business, including but not limited to limited liability company, corporation, partnership, joint venture of personal business.
  - a. Documents stating the value of the Debtor's interest in the business;
  - b. If not previously filed as part of Schedule J, a statement of the monthly expenses of the business;
  - c. A balance sheet disclosing assets and liabilities as of the filing of the BankruptcyPetition.
10. If the Debtor owns any shares or stocks: documents regarding the number of stocks owned in each company and the value of the stock as of the filing of the Bankruptcy Petition.
11. If the Debtor owns any jewelry valued at more than \$5,000.00 (other than a wedding or engagement ring): evidence of the value of the jewelry.
12. If the Debtor has a retirement plan such as an IRA, 401 (K), KEOGH or SEP: documents which state the type of plan and its current value.
13. If the Debtor has any annuity contracts: documents which state the type of annuity and its current value.
14. If the Debtor owns a motor vehicle, boat, or trailer: a valuation of the property provided by an independent and recognized source that is dated within six (6) months of the filing of the Bankruptcy Petition.
15. If the Debtor has been divorced: a copy of the final divorce agreement or order and the judgment.
16. If the Debtor has been divorced in the two (2) years prior to the filing of the Bankruptcy Petition: a copy of any and all financial affidavits that filed with the Court in the divorce case.
17. If the Debtor is obligated to pay alimony and/or support pursuant to a Court order: a completed Domestic Support Obligation Disclosure Form.

**DOMESTIC SUPPORT OBLIGATION DISCLOSURE FORM  
PERSONAL INJURY INFORMATION**

Debtor Name:

Case Number:

Date of Accident:

Type of claim (check one)

Car Accident       Medical Malpractice       Slip and fall

Who was injured:

Husband    Wife    Both

Nature of injury?

Were you admitted to the hospital as a result of injuries received in this accident?       Yes    No

Have you had any additional hospitalizations or operations as a result of this accident?    Yes    No

Have you lost work as a result of your injuries?       Yes    No

Have you returned to work?       Yes    No

Name, address, phone number & email address of attorney representing you:

Name:

Email:

Phone:

I certify that the foregoing statements made by me are true to the best of my knowledge, information and belief. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Signature Debtor \_\_\_\_\_

Signature Co-Debtor \_\_\_\_\_

## Intersectionality CLE

November 12, 2019

Roberta Napolitano, Chapter 13 Standing Trustee

### General

- I. Typical Types of Bankruptcy Cases: Chapters 7, 11 and 13
  - a. Chapter 7 – Liquidation
    - i. Chapter 7 is the liquidation or selling off of non-exempt property for payment to creditors from the proceeds.
    - ii. The Debtor (or Debtors in the case of a joint petition by spouses) files a petition and schedules, an order for relief enters and an interim trustee from a panel of trustees is assigned to administer the case.
    - iii. The Chapter 7 trustee is a disinterested attorney on a rotation panel of trustees whose primary duty is to locate and liquidate assets of the estate into cash and then to distribute the money to creditors in accordance with the priority scheme of the Bankruptcy Code.
    - iv. The trustee reviews the schedules and examines the Debtor at the meeting of the creditors (341 meeting).
    - v. Subject to the Debtor's rights to exempt certain assets after electing to take the bankruptcy or non-bankruptcy exemptions and rights of secured creditors in their collateral, the trustee collects and liquidates assets of the estate with equity and then distributes net cash according to priority scheme of the Bankruptcy Code.
    - vi. In a no asset case (e.g. all assets of the estate are exempt or abandoned because of little or no equity), a discharge will enter within 60-90 days after the first meeting of creditors.
    - vii. Where there are assets with equity that have not been exempted or when exemption is questioned, the first meeting of creditors is often continued by the trustee and the clerk's office of the bankruptcy court will not issue a discharge until creditors and/or the trustee may file objections to the discharge or to the dischargeability of their debt, or request extensions of time in which to do so.
    - viii. Note, an involuntary bankruptcy case may also be commenced.
  - b. Chapter 11 – “Reorganization”
    - i. Chapter 11 provides the opportunity to reorganize or readjust debts through a plan or contract with creditors. Creditors are allowed to vote on the plan and the plan must be approved by the Court. Individuals and most businesses can file a petition under Chapter 11.
    - ii. Debtor files a petition and schedules and an order for relief enters.
    - iii. The Debtor is examined under oath at the meeting of creditors by the U.S. Trustee's office every several months to monitor the status of the case.
    - iv. Unless the case is converted or a trustee is appointed, the Debtor remains in control of the estate and is known as the debtor-in-possession,

managing its operations and ultimately files a Disclosure Statement and Plan of Reorganization subject to court approval and confirmation.

- v. There is a four-month exclusivity period to file a plan.
  - vi. Confirmation of the plan discharges a Debtor.
  - vii. Lengthy delays, inability to provide adequate protection to secured creditors or to have a plan confirmed, gross mismanagement and other problems during the pendency of the case can result in a trustee or examiner being appointed or the conversion or dismissal of the case.
- c. Chapter 13 – Reorganization of Individual with Regular Income
- i. Chapter 13 provides the opportunity to restructure debts through a payment plan which lasts between 3-5 years.
  - ii. Debtor files a petition and schedules and an order for relief enters.
  - iii. The Chapter 13 Trustee monitors, supervises and performs other administrative tasks. She ensures the plan is feasible and supported by Debtor's financial information and that the case is properly prosecuted.
  - iv. The Debtor remains in control and files a plan for confirmation.
  - v. A plan must be filed with the petition or within 14 days, or the Court will dismiss the case.
  - vi. Payments under a Chapter 13 plan starts the earlier of thirty days after the case is filed or a plan is filed. Section 1326(a)(1).
  - vii. Consummation of the plan discharges the Debtor.
  - viii. Like a Chapter 11 case, delays and other problems can lead to a conversion of the case to one under Chapter 7 or dismissal of the case.

## II. Bankruptcy Code and Bankruptcy Rules

### a. The Bankruptcy Code

- i. 11 U.S.C. §§ 101 et seq. The Code consists of nine chapters.
  - 1. Chapter 1: contains provisions dealing generally with definitions, rules of construction and eligibility requirements for relief under the Code.
  - 2. Chapter 3: contains provisions dealing with the commencement of the case, filing fees, schedules, lists, statements to be filed, case administration, the bankruptcy estate and its officers, professionals, automatic stay, abstention, dismissal, conversion, adequate protection, assumption/rejection of executory contracts and unexpired leases, and certain administrative powers.
    - a. 11 U.S.C. § 362 – automatic stay
    - b. 11 U.S.C. § 348 – conversion
  - 3. Chapter 5: deals with creditor's rights, including the filing and allowance of claims, determination of secured status, claims to priority in payment, and the subordination of creditors. It also addresses avoiding powers, property of the estate, setoff, discharge, administrative expenses and tax liability. (Note: Except as provided in 11 U.S.C. § 103, Chapters 1, 3 and 5 apply to all other chapters of Title 11).
  - 4. Chapter 7: Liquidation.
  - 5. Chapter 11: Reorganization.



6. Chapter 13: Reorganization of Individual.

b. The Bankruptcy Rules

- i. The Federal Rules of Bankruptcy Procedure (“FRBP”) set forth various types of procedures in a bankruptcy case necessary to obtain an order from a bankruptcy judge, or to obtain a result or conclusion within a case.
- ii. The Supreme Court revises the rules from time to time.
- iii. The rules cannot “abridge, enlarge or modify any substantive right.” 28 U.S.C. § 2075.
- iv. The rules must be read along with the relevant Bankruptcy Code provisions.
  1. (1001-1021) – commencement of the case, proceedings relating to the petition and order for relief.
  2. (2001-2020) – notice, meetings, examination, elections, attorneys and accountants.
  3. (3001-3022) – claims and distribution to creditors and equity interest holders, plans.
  4. (4001-4008) – Debtor’s duties and benefits.
  5. (5001-5012) – courts and clerks.
  6. (6001-6011) – collection and liquidation of the estate.
  7. (7001-7087) – proceedings in adversary proceedings – many rules incorporate similar rules in the Federal Rules of Civil Procedure.
  8. (8001-8028) – appellate procedure.
  9. (9001-9037) – general provisions, including those dealing with extensions of time, sanctions similar to Fed. R. Civ. P. 11, contempt, motions, contested matters and noncore procedure, transmittal of pleadings.
- v. In addition to the FRBP, there are Local Rules of Bankruptcy Procedure established by the bankruptcy judges in Connecticut.

III. Schedules, Means Testing and Credit Counseling

- a. Obtain client information (in writing) including:
  - i. Valuation of real property, lien balances, recorded liens, bank account balance, balance sheet for any business, recent tax returns, credit counseling certificate, paystubs, signed representation agreement.
- b. Inquire about certain matters:
  - i. Tax issues, past bankruptcies, tax refunds, claims against third parties (pending and/or that could be asserted), assets, trusts, interests in businesses, alimony or support arrearages, possible inheritances, transfers to third parties, repayments of loans to family members and friends, antiques/collections, cosigners, exemption issues and planning, timing issues.
- c. Discuss alternatives to bankruptcy:
  - i. Wait to see if problem is temporary, assess existing assets to help situation, evaluate settlement opportunities (settle with aggressive creditors), evaluate whether debtor is judgment proof, borrow money, debt

repayment plans, Fair Debt Collection Practices Act issues, return collateral/short sale.

- d. Credit Counseling:
  - i. Law requires that before an individual file a bankruptcy case, the individual must:
    - 1. Receive a credit counseling briefing during the 180 days before filing the case, and
    - 2. File a credit counseling certificate from the agency with the petition.
  - ii. Only applies to individual debtors, applies to any Chapter, pre-bankruptcy filing requirement, certificate is good for 180 days, each Debtor must take course, usually takes 90 minutes or less, credit counseling agency must be approved by U.S. Trustee and can be obtained from their website.
  - iii. There is also a post-bankruptcy Debtor education financial management course requirement.
    - 1. Discharge will not enter without it.
    - 2. Requirements similar to credit counseling course.
    - 3. Agency providing Debtor education financial course must be approved by U.S. Trustee.

#### IV. About Bankruptcy Schedules

- a. Extensive compilation of detailed financial affairs, both past and present, of a Debtor.
- b. Must be prepared and reviewed carefully by Debtor – signed under penalty of perjury.
- c. Attorney should review carefully. Review assets, exemptions, responses, income and expenses for issues.
  - i. An attorney is considered “debt relief agency.” See 11 U.S.C. § 101(12A) and § 707(b)(3) for the definition and some of the added responsibilities which require “reasonable investigation into the circumstances that give rise to the petition, pleading or written motion.”
    - 1. Certain disclosures and notices required by the Debtors counsel. See 11 U.S.C. §§ 527-528.
    - 2. Some straightforward requirements:
      - a. Disclose assets, liabilities, income and expenses.
      - b. There could be an audit.
      - c. Different chapters.
    - 3. Some not to straightforward requirements:
      - a. Within 5 business days after bankruptcy assistance is provided a written retainer contract is to be executed.

- b. Disclose conspicuously in advertising that you are a debt relief agency and help people file for bankruptcy relief under the Bankruptcy Code.
- d. Look for:
  - i. Real property
    - 1. Who owns real property – debtor or entity debtor controls?
      - a. 11 U.S.C. § 522 (b)(1) – “an *individual* debtor may exempt . . . “
      - b. Exemptions available only to natural persons “Under Connecticut law, exemptions-including the homestead exemption—‘afforded by General Statutes § 52–352a, apply only to ‘property of any natural person’.’ *Shawmut Bank, N.A. v. Valley Farms, et al.*, 222 Conn. 361, 366 (1992). The *Valley Farms* court stated that ‘[a]lthough the term ‘natural person’ is not defined ..., it clearly means a human being, *as opposed to an artificial or juristic entity.*” *Id.* In re Kochman, No. 11-50111, 2011 WL 5325792, at \*2 (Bankr. D. Conn. Nov. 3, 2011).
    - 2. Debtor need not inhabit entire property –
 

“Connecticut’s homestead exemption statute does not require that a homestead be used exclusively as the debtor’s residence, nor does it pro-rate the exemption if some portion of the property claimed as a homestead is utilized for other purposes.” In re Majewski, 362 B.R. 67, 70 (Bankr. D. Conn. 2007).
    - 3. Check for address on petition – PO Box? Check for mail, utility bills, voter registration, address on license, address on tax return.
  - ii. Check state court website for personal injury claims.
  - iii. Check Zillow for values.
  - iv. Check tax returns for interest, dividends, income not traceable to scheduled assets.
  - v. Check Schedule F for types of claims listed – if commercial, may lead to business.
  - vi. Means Test Form –I can provide an Excel spreadsheet for detailed analysis, but the most fruitful inquiry is whether tax returns or other independent documents support household size.
    - 1. Only applies to individuals with primarily consumer debts.
    - 2. Set forth in 11 U.S.C. § 707(b)(2) for Chapter 7.
    - 3. Can be convoluted and complex different test for each Chapter.
    - 4. Complicated mathematical formula.

5. Average of last 6 months of current monthly income less certain expenses (some capped, some unlimited, some not allowed) to determine if presumption of bankruptcy abuse arises.
6. Uses household income.
7. If household income is above the median for household of that size in your area, then more extensive questions must be answered on means test.
8. Can rebut presumption, but sometimes difficult to show special circumstances.
9. Can deduct, for example:
  - a. IRS standards for housing, transportation, food and clothing;
  - b. Reasonably necessary insurance;
  - c. Reasonably necessary housing and utility expenses that exceed national standards but proof required to determine that they are reasonably necessary;
  - d. Charitable contributions of up to 10% of gross income;
  - e. Actual secured debt;
  - f. Payments of priority debt (e.g. taxes); and
  - g. Actual education expenses up to \$1,500 per year per child.
- vii. Asset transfer – grounds for denial of discharge and counseling same is an ethical violation in Connecticut.

## The Automatic Stay, 11 U.S.C. § 362

- V. About the automatic stay
  - a. 11 U.S.C. § 362(a) of the Bankruptcy Code:
    - i. (a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—
      1. the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;
      2. the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;
      3. any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;
      4. any act to create, perfect, or enforce any lien against property of the estate;
      5. any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;
      6. any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;
      7. the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and
      8. the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the Bankruptcy Court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.
  - b. Termination of the Automatic Stay – 11 U.S.C. § 362(c)
    - i. The various circumstances under which the automatic stay terminates, without need for a specific court order granting stay relief, are set forth in 11 U.S.C. § 362(c):
      1. With respect to actions against property of the estate (as opposed to actions against the Debtor (i.e. in rem actions)) stayed under 362(a), when the property is no longer property of the estate (11 U.S.C. § 362(c)(1)).

2. With respect to actions against the Debtor (as opposed to actions against property), the stay continues until the earlier of:
    - a. the time the bankruptcy case is closed or dismissed (11 U.S.C. § 362(c)(2)(A) and (c)(2)(B)); or
    - b. the time discharge is granted (in all cases except non-individual Chapter 7 cases) (11 U.S.C. § 362(c)(2)(C)).
  3. Secured creditors seeking to continue an action to recover against their collateral after discharge but before the bankruptcy case is closed or terminated need to determine whether the collateral remains an asset of the estate. Creditors should determine whether the Trustee has abandoned the asset (in accordance with 11 U.S.C. § 554) before proceeding against the collateral in reliance on 11 U.S.C. § 362(c)(1).
- ii. The Bankruptcy Code provides other circumstances under which the stay can be terminated or modified by order of the Bankruptcy Court. 11 U.S.C. § 362(d).
    1. Motions for relief from stay are commonplace where Debtor has no equity in property subject to a security interest and (in the case of Chapter 7 or 13), the property is not necessary for an effective reorganization.
    2. In cases where the stay terminates on account of entry of the discharge, creditors must understand that the stay is subsumed by the Discharge Injunction, which enters automatically (by operation of 11 U.S.C. § 524(a)).
  - c. Serial filers and the Automatic Stay
    - i. 11 U.S.C. § 362(c)(3) – stay is in effect against property of the **DEBTOR** until case is closed, dismissed, or discharge is granted or denied but the stay is effective against property of the **ESTATE** until the property is no longer property of the estate 11 U.S.C. § 362(c)(1). Property is property of the estate until case is closed or dismissed. 11 U.S.C. §550 (c); 11 U.S.C. § 349(b)(3). However -
    - ii. 11 U.S.C. § 362(c)(3) of the Bankruptcy Code –
      1. (A) the stay expires “with respect to the debtor” 30 days after filing as to secured creditors if the Debtor re-files a case within a year of filing a prior Chapter 7, 11 or 13 and that case was dismissed. Court may re-impose stay but order must enter within 30 days of filing.
      2. (C) the stay expires with respect to all creditors if more than one case were pending within year preceding filing AND there has not been a substantial change in circumstances OR if the case was dismissed and a Motion for Relief was pending.
    - iii. “Finding the majority interpretation persuasive, I hold that section 362(c)(3) merely provides for a partial termination of the automatic stay. After thirty days, the stay terminates only with respect to the debtor and

- the debtor's property; the stay remains operative, however, with respect to estate property even after the thirty-day period expires.” In re Weil, No. 3:12CV462 SRU, 2013 WL 1798898, at \*4 (D. Conn. Apr. 29, 2013).
- iv. However – Stay expires as to property of ESTATE and “In sum, after following the guideposts the Supreme Court has planted, and reexamining this question with the benefit of over a decade of experience, scholarly study, and case law, this Court is persuaded the Minority Approach to interpreting the Controlling Statute is the most truly aligned with the congressional goal of deterring successive bankruptcy filings by an individual debtor and should be applied in this district. The Minority Approach meaningfully implements a deterrent to repeat filings by terminating the stay as to all creditors.” In re Goodrich, 587 B.R. 829, 847 (Bankr. D. Vt. 2018).
  - v. 11 U.S.C. §362(h) – automatic expiration of stay against personal property in individual cases expires 45 days after case is filed if not extended.
  - vi. 11 U.S.C. 109(g) – no refiling if Debtor voluntarily dismissed and motion for relief was filed.
  - vii. 11 U.S.C. § 362(c)(4)(A) if– two or more pending cases – a party in interest can request entry of an order confirming no stay is in effect AND (D) – presumption of bad faith filing.
- d. Other serial filer issues
    - i. 11 U.S.C. § 109(g) of the Bankruptcy Code bars a Debtor from refiling within 180 days if the Debtor voluntarily dismisses after a motion for relief is filed.
    - ii. 11 U.S.C. §§ 105(a) and 349(a) of the Bankruptcy Code permit a Bankruptcy Court, in an appropriate case, to prohibit a serial filer from filing petitions for periods of time exceeding 180 days. In re Casse, 198 F.3d 327, 339 (2d Cir. 1999).
    - iii. A Debtor shows bad faith if the “sole and transparent purpose” of a bankruptcy is to “frustrate” foreclosure proceedings. In re Casse, 198 F.3d 327, 329 (2d Cir. 1999).
  - e. Lien stripping
    - i. 11 U.S.C. § 522(f) – available in Chapters 7, 11, 13 and only as to judicial liens.
    - ii. 11 U.S.C. § 506(a) – only Chapters 11 and 13 and in Chapter 13, can’t alter terms of claim secured by Debtor’s residence.
    - iii. A Debtor can’t cram down a car if it were purchased within 910 days of filing– 11 U.S.C. § 1325(a)(9).
    - iv. Defenses generally involve valuation but look at the exemptions, too

- v. Remember you have only 30 days from termination of meeting of creditors to object to exemption under FRBP Rule 4003(b), so make sure you've examined exemptions as soon as you can.
- f. Debtor and small businesses
  - i. Debtor must file MORs (monthly operating reports).
  - ii. Liquidation and valuation of small businesses
    - 1. Check operating agreements – most agreements provide for dissociation, not dissolution.
    - 2. Chapter 7 Trustee owns all stock, interest in wholly owned business and, if majority interest, can control business.
    - 3. If minority interest, Trustee will market and will likely find buyer whose specialty is purchasing interests and negotiating with co-owners.
    - 4. Dissociation in Connecticut if in a member-managed limited liability company, the person: (A) Becomes a Debtor in bankruptcy; Conn. Gen. Stat. Ann. § 34-263a.
    - 5. “ If a person is dissociated as a member: (1) The person's right to participate as a member in the management and conduct of the company's activities and affairs terminates; (2) if the company is member-managed, the person's duties and obligations under section 34-255h as a member end with regard to matters arising and events occurring after the person's dissociation; and (3) subject to section 34-259c and sections 34-279 to 34-279g, inclusive, or the Connecticut Entity Transactions Act, any transferable interest owned by the person in the person's capacity as a member immediately before dissociation as a member is owned by the person solely as a transferee.” Conn. Gen. Stat. Ann. § 34-263b(a).
- g. Property of the estate
  - i. Inquiry must focus on relationship between asset and pre-petition past.
    - 1. Examples – commissions due real estate brokers, insurance agents, contingency fees due personal injury attorneys.
  - ii. Exemption of most property removes its value, not the property itself, from the estate. “As noted above, §§ 522(d)(5) and (6) define the ‘property claimed as exempt’ as an ‘interest’ in Reilly's business equipment, *not* as the equipment *per se*.” Schwab v. Reilly, 560 U.S. 770, 783, 130 S. Ct. 2652, 2662, 177 L. Ed. 2d 234 (2010).



## The Bankruptcy Discharge and Dischargeability Issues

- VI. Exceptions to Discharge, Denial or Revocation of Discharge
- a. Discharge Exceptions - 11 U.S.C. § 523 (Specific Debts Not Discharged)
- i. Some types of debt are not subject to discharge in bankruptcy, even when the Debtor receives a general discharge. 11 U.S.C. § 523 sets forth 19 categories of debts that are not discharge in bankruptcy. Among the categories of non-dischargeable debts are:
1. Tax obligations (subject to certain limitations) (11 U.S.C. § 523(a)(1), (a)(14) and (a)(14a));
  2. Debts that are unlisted/unscheduled in Debtor's schedules (11 U.S.C. § 523(a)(3));
  3. Alimony and child support (11 U.S.C. § 523(a)(5));
  4. Government fines and penalties (as distinguished from compensation for pecuniary loss), subject to certain limitations in the statute (11 U.S.C. § 523(a)(7));
  5. Liability for death or personal injury caused by Debtor's operation of automobile or vessel while intoxicated (11 U.S.C. § 523(a)(9));
  6. Loan from retirement fund (11 U.S.C. § 523(a)(18)); and
  7. Violation of Securities Laws (11 U.S.C. § 523(a)(19)).
- ii. Litigation under 11 U.S.C. § 523(a)(2), (4) and (6)
1. These exceptions are the most common statutory basis for debt discharge litigation brought by unhappy creditors:
    - a. 11 U.S.C. § 523(a)(2): Debts for money, property or services provided to Debtor, to the extent obtained by fraud or false pretenses or by use of a false written statement of Debtors financial condition.
      - i. Certain consumer debts for purchase of luxury goods, and cash advances, presumed non-dischargeable (See 11 U.S.C. § 523(a)(2)(C)).
      - ii. If Creditor brings 523(a)(2) non-discharge proceeding for a consumer debt and loses the action, the creditor may be held liable for the Debtor's attorney's fees if the Court finds such award warranted. See 11 U.S.C. § 523(d).
      - iii. Burden of proof is on the creditor. However, even if creditor is alleging fraud (11 U.S.C. § 523(a)(2)), applicable standard is not clear and convincing, as would be the case in a civil action outside the bankruptcy context, but preponderance of the Evidence, which is the applicable standard for all bankruptcy matters. Grogen v. Garner, 498 U.S. 279 (1991).
    - b. 11 U.S.C. § 523(a)(4): Debts for Debtor's fraud or defalcation while acting in a fiduciary capacity, and for embezzlement or larceny.

- c. 11 U.S.C. § 523(a)(6): Debts for a willful or malicious injury by the Debtor. Debtor fired five shots at victim – two in the air, one in the ground and two that hit victim in the arm. Debtor claimed his conduct was neither reckless nor malicious. In re Arguello, No. 17-80324, 2018 WL 6720772, at \*1 (Bankr. S.D. Tex. Dec. 20, 2018).
- iii. Who has standing to bring litigation under 11 U.S.C. § 523?
  - 1. The Debtor or any creditor (Rule 4004(a)).
- iv. How litigated
  - 1. When non-discharge is based on 11 U.S.C. § 523(a)(2), (a)(4) or (a)(6), discharge of such debt will be denied only upon the Court’s determination that such debt is non-dischargeable (11 U.S.C. § 523(c)(1)). Such a proceeding requires the initiation of an adversary proceeding (Rule 7001(6)). With limited exception, non-discharge of the other types of debts listed in 11 U.S.C. § 523(a) requires no court determination and is essentially automatic.
- v. When A 11 U.S.C. § 523(c) Action Must Be Commenced
  - 1. Not later than 60 days after the First date set for the 11 U.S.C. § 341(a) Creditors Meeting. Rule 4007(c).
  - 2. Creditors are entitled to at least 30 days’ notice of the deadline. On motion of a party in interest, the 60 day deadline may be extended.
- vi. Government Guaranteed/Funded Student Loan Debt
  - 1. These types of student loans are automatically excepted from discharge (11 U.S.C. § 523(a)(8)). However, guaranteed student loan debt can be discharged if the Debtor demonstrates that non-discharge of the debt results in “undue hardship” on Debtor and his or her dependents (11 U.S.C. § 523(a)(8)). A Debtor must initiate an adversary proceeding against the entity holding the student loan in order to obtain a hardship discharge (Rule 7001(6)).
- vii. In Chapter 13
  - 1. In Chapter 13 cases, the 11 U.S.C. § 523(a) exceptions apply when a Chapter 13 Debtor receives a discharge despite having failed to complete payments under the confirmed Chapter 13 plan as permitted under 1328(b). However, when a Chapter 13 Debtor completes payments under the Chapter 13 plan, the scope of exceptions to discharge is more limited:
    - a. Certain tax obligations (of the kind specified in 11 U.S.C. § 507(a)(8)(C), and 523(a)(1)(B) and (a)(1)(C).
    - b. Unscheduled and unlisted debts.
    - c. Debts incurred by fraud or breach of fiduciary duty (of the kind specified in 11 U.S.C. § 523(a)(2) and (a)(4).
    - d. Alimony and child support – property division claims are dischargeable.
    - e. Guaranteed Student Loans (subject to undue hardship exception).

- f. Liability for death or personal injury caused by Debtor's operation of automobile or vessel while intoxicated.
    - g. Post-petition consumer debts not approved by the trustee before being incurred.
- b. Denial of Bankruptcy Discharge Generally
  - i. In certain circumstances, a Debtor can be denied a bankruptcy discharge altogether - in which case no prepetition debts are discharged.
  - ii. In Chapter 7 Cases
    - 1. 11 U.S.C. § 727(a) sets forth 12 separate circumstances where a Chapter 7 Debtor may be denied a discharge. Among the 12 reasons:
      - a. Debtor has transferred or concealed assets within 1 year preceding bankruptcy, with intent to hinder, delay or defraud creditors (11 U.S.C. § 727(a)(2));
      - b. Debtor's spoliation of relevant evidence related to Debtor's financial condition or business affairs (11 U.S.C. § 727(a)(3));
      - c. Debtor has provided false information in connection with the bankruptcy case or has withheld necessary information from the trustee (such as books and records) (11 U.S.C. § 727(a)(4));
      - d. Debtor's refusal to obey court orders or to provide testamentary evidence (11 U.S.C. § 727(a)(6));
      - e. Debtor previously granted a bankruptcy discharge in a Chapter 7 or Chapter 11 case filed within 8 years of the filing of the instant bankruptcy case (11 U.S.C. § 727(a)(8)); and
      - f. Debtor previously granted a bankruptcy discharge in a Chapter 13 case filed within 6 years of the filing of the instant bankruptcy case (11 U.S.C. § 727(a)(9)) unless Debtor paid 100%/70% of general unsecured claims.
    - 2. How 11 U.S.C. § 727(a) Discharge Exceptions Determined:
      - a. Proceedings to object to discharge or revoke discharge under 11 U.S.C. § 727(a) are brought by adversary proceeding, except for discharge based on Debtor's prior discharge (11 U.S.C. § 727(a)(8) and 9)), which may be brought by motion objecting to discharge (Rule 7001(4)).
    - 3. Who can seek denial of the discharge under 11 U.S.C. § 727(a)?
      - a. The Chapter 7 Trustee, The United States Trustee, or a Creditor may seek denial of discharge (11 U.S.C. § 727(c)).
    - 4. When must a 11 U.S.C. § 727(a) proceeding be brought?
      - a. 60 days after the FIRST date set for the 11 U.S.C. § 341 creditors meeting (Rule 4004(a); 4007(c)).
      - b. This date may be extended for cause - Debtor will often stipulate to the extension (Rule 4004(b)).

**Avoidance Litigation**

- VII. Avoidance Litigation in Bankruptcy
- a. Bankruptcy Code Chapter 5 Avoidance Tools
    - i. Preferential Transfers
    - ii. Fraudulent Conveyances
    - iii. Trustee’s “Strong-Arm” Avoidance Powers
    - iv. Unauthorized Post-Petition Transfers
  - b. General
    - i. Who can bring avoidance action?
      1. The Trustee (in a Chapter 11 case that would be the Debtor unless a Chapter 11 trustee has been appointed) (11 U.S.C. § 550(a)). In Chapter 11 cases, we have seen the authority delegated to Official Committee of Unsecured Creditors - requires a court order. It might also be the Debtor in a Chapter 13 case. “Inasmuch as Olick's activities before the district court did not involve any attempt to assert the trustee's avoiding powers, *see* 11 U.S.C. §§ 544–53, we need not consider, and deliberately express no opinion regarding, whether a Chapter 13 Debtor would be able to invoke those powers in an action to augment the bankruptcy estate.” Olick v. Parker & Parsley Petroleum Co., 145 F.3d 513, 516 (2d Cir. 1998).
    - ii. How are Chapter 5 Avoidance Actions Determined?
      1. As proceedings to recover money or property, avoidance litigation requires commencement of an adversary proceeding (Bankruptcy Rule 7001(1)). A defendant that has not otherwise subjected itself to the jurisdiction of the Bankruptcy Court may have the right to trial by jury, though jury trials in Chapter 5 litigation is extremely rare.
    - iii. Who is liable for avoidable transfers?
      1. The initial transferee. 11 U.S.C. § 550(a);
      2. The immediate or mediate transferee of the initial transferee unless such immediate or mediate transferee takes for value provided, in good faith, and without knowledge of the voidability of the transfer (11 U.S.C. § 550(a)).
    - iv. What is the Statute of Limitations to bring an Avoidance Action?
      1. Statute of limitations is 11 U.S.C. § 546(a). These actions must be brought by the later of:
        - a. 2 years entry of the order for relief (i.e. the bankruptcy petition date); or
        - b. 1 year after the appointment of a bankruptcy trustee.
  - c. Avoidance of Preferential Payments – 11 U.S.C. § 547
    - i. Trustee can bring action to avoid “preferential” payments made by Debtor prior to the Petition Date. 11 U.S.C. § 547(b). The Look back periods for avoidable preferences are:

1. For payments to non-insider creditors, 90 days prior to the Petition Date.
  2. For payments to insider creditors, 1 year prior to the Petition Date.
- ii. Elements of Avoidable Preference Cause of Action
1. The payment was made to or for the benefit of a creditor;
  2. The payment was on account of an antecedent debt (i.e., the debt was owed before the payment was made);
  3. The payment was made while the Debtor was insolvent; and
  4. The payment enabled the creditor to receive more than it would receive if the case were Chapter 7 and the payment had not been made.
- iii. Defenses
1. 11 U.S.C. § 547 provides a number of affirmative defenses to an otherwise avoidable preference. Of those defenses, those most often litigated are:
    - a. The payment was, and was intended to be, a contemporaneous exchange for new value. 11 U.S.C. § 547(c)(1).
    - b. The payment was made in the ordinary course of business between the Debtor and the creditor, or made in accordance with ordinary business terms (industry standard). 11 U.S.C. § 547(c)(2).
  2. The creditor provided new value to Debtor after the payment. 11 U.S.C. § 547(c)(4).
- iv. Payments to Secured Creditors
1. Payments made to a creditor that has a valid, perfected security interest in Debtor's assets are typically safe (at least to the extent the creditor is not undersecured) from avoidance because the payment, being secured, did not enable the creditor to receive "more" than it would have received in a Chapter 7 liquidation and the payment had not been made.
- d. Fraudulent Conveyance Actions – 11 U.S.C. § 548
- i. Trustee can bring action to avoid transfers of the interest of Debtor in property within 2 years of the petition date where:
    1. The payment was made with actual intent to hinder or delay or defraud a creditor (11 U.S.C. § 548(a)(1)(A));
    2. The Debtor received less than reasonably equivalent value in exchange for such transfer (11 U.S.C. § 548(a)(1)(B). Certain other conditions that must be satisfied to avoid a transfer under 11 U.S.C. § 548(a)(1)(B);
    3. Debtor was insolvent when the transfer in issue was made, or became insolvent because of such payment;
    4. Debtor was under capitalized for the business it was transacting; or
    5. Debtor intended to incur debts beyond its ability to pay such debts as they matured; or

6. Debtor made the transfer to the benefit of an insider under an employment contract and outside the ordinary course.
- e. Trustee's Strong-Arm Avoidance Power – 11 U.S.C. § 544
  - i. Pursuant to 11 U.S.C. § 544, the Trustee has the avoidance powers of a hypothetical lien creditor as of the Petition Date as provided under applicable non-bankruptcy law. This essentially means that state laws granting creditors the power to avoid transfers of a Debtor's interests in property are available to a bankruptcy trustee. Such actions are not limited to the look back period of 11 U.S.C. § 548 – the look back period of the applicable non-bankruptcy law applies.
  - ii. In Connecticut, a Trustee may have standing under 11 U.S.C. § 544 to invoke the Connecticut Uniform Fraudulent Transfer Act., C.G.S. § 52-552 to avoid fraudulent transfers. The look-back period under the Connecticut act is four years for some types of transfers. However, under the Connecticut law, a UFTA plaintiff must be an actual creditor before the transfer to be avoided was made. Thus, to have standing under Section 544 to invoke UFTA, a Trustee must that there was at least one creditor whose claim existed before the Debtor made the transfer in question. The statute might be 10 years if the IRS is a creditor. "In sum, this Court agrees with *Kaiser* and the majority of decisions that the language in § 544(b) is clear and allows the Trustee in this case to step into the shoes of the IRS to take advantage of the ten-year collection period in 26 U.S.C. § 6502." *In re Kipnis*, 555 B.R. 877, 883 (Bankr. S.D. Fla. 2016).
  - iii. In New York, Trustees frequently invoke New York Debtor and Creditor Law 270-281.
- f. Unauthorized Post-Petition Transfers

## VIII. Disparate Treatment of Student Loans in Chapter 13

### A. Overview:

- a. Between 2001 and 2016, the real amount of student loan debt owed by American households more than tripled. [www.federalreserve.gov/econres/notesfesd-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm](http://www.federalreserve.gov/econres/notesfesd-notes/student-loan-debt-and-aggregate-consumption-growth-20180221.htm). In June 2018, approximately \$1.41 trillion in student loan debt was outstanding. Of that amount, approximately 10.9% was more than ninety days past due, and even that figure may be understated because so many loans are in deferment. The actual figure may be twice as high. See [www.newyorkfed.org/media/library/interactives/household-credit/data/pdf/HHDC\\_2018Q2.pdf](http://www.newyorkfed.org/media/library/interactives/household-credit/data/pdf/HHDC_2018Q2.pdf).
- b. According to the website [studentloans.gov](http://studentloans.gov) there are four types of federal student loans – Direct Subsidized Loans, Direct Unsubsidized Loans, Direct PLUS Loans, and Direct Consolidation Loans. <https://studentloans.gov/myDirectLoan/entrance-counseling.action?execution+e1s1>. Also according to the website, the federal government pays interest on most direct subsidized loans while they are in deferment (when the student is in school, for six months afterwards, and for



certain other periods - the site is silent regarding the bankruptcy deferment referenced in ECF 44.) It also appears from the website that interest on all direct subsidized loans on all other loans, regardless of deferment, is capitalized, or added to the principal, during all periods of nonpayment or deferral.

#### B. Student Loans in Chapter 13 Bankruptcy Proceedings

- a. Non Dischargeable Debts not afforded Priority: The Bankruptcy Code does not afford a debt priority simply because it is non-dischargeable. *In re Bentley*, 266 B.R. 229, 241 (B.A.P. 1st Cir. 2001). It is interesting that one of the most frequently cited cases on the student loan issue is *In re Leser*, 939 F.2d 669 (8th Cir. 1991), which allowed favorable treatment of a child support obligation, on which Congress later conferred super-priority under BAPCPA.
- b. Student Loan Debt only desirable behavior excepted from discharge. Section 523(a)(8) of the Bankruptcy Code excepts from discharge an educational benefit loan made, insured, guaranteed or funded by a governmental unit or nonprofit institution, or an obligation to repay funds received as an educational benefit, scholarship or stipend. Some courts argue that incurring a student loan is the only socially positive behavior denied a discharge under Section 523. The rationale for including every other nondischargeable debt in Section 523 is to punish undesirable conduct or curtail rewards for “socially undesirable behaviors.” Student loan debt is the only non-dischargeable debt incurred for a “socially beneficial purpose.” *In re Engen*, 561 B.R. 523, 540-541 (Bankr. D. Kan. 2016).
- c. Budget balancing purposes of making student loan debt non-dischargeable. Student loan debt has so permeated the American economy that while its original inclusion in Section 523 arose from attempt in 1978 to “curb the abuses” of the educational loan system,” the expansion of non-dischargeable debt occurred in a budget balancing act. *In re McFadyen*, 192 B.R. 328, 331 (Bankr. N.D.N.Y. 1995), citing *In re Pilcher*, 149 B.R. 595, 598 (9th Cir. BAP 1993), citing 124 Cong.Reg.1791–94 (1978); *see also In re Pelkowski*, 990 F.2d 737, 742–43 (3d Cir.1993); *Engen* at 544.
- d. Disparate Treatment in Plan: Debtors in Chapter 13 have attempted to ease the burden of repaying student loans by placing them in a separate class from other unsecured debt, and paying them in lieu of, or at more favorable proportions, than other non-priority unsecured debt. Few courts have confirmed plans with disparate treatment, and the bar for that approval is high.
- e. What Constitutes Unfair Discrimination under Chapter 13 of the Bankruptcy Code: Section 1322(b)(1) allows a Debtor in Chapter 13 to designate a class or classes of unsecured claims, but prohibits “unfair” discrimination against any class so designated. There is no definition of unfair discrimination in this circuit, and we are not alone. “Discriminate” in this context has no pejorative connotation, but means treating “two things differently on account of a distinction between them.” *Bentley* at 237. The meaning of “unfair discrimination” has presented much more difficulty. “One early court, after observing that decisions on the issue of what constituted ‘unfair’ discrimination ran the ‘gamut from everything goes to nothing is allowed,’

was led to conclude that “somewhere between total whim and an Act of God lies the answer to what justification is needed to hew out a particular class of unsecured creditors and distinguish it from other unsecured creditors.’ *In re Hill*, 4 B.R. 694, 697–698 (Bankr.D.Kan.1980).” *In re Orawsky*, 387 B.R. 128, 141 (Bankr. E.D. Pa. 2008).

- f. Failure to allocate pro rata need not be unfair: An allocation among claims in the same class need not be “*pro rata*” to be fair. Mandating *pro rata* distribution in every situation is contrary to Section 1322(b)(1)’s express authorization for **separate** classification. *Orawsky* at 146. Relying on the public interest in promoting the solvency of educational loan programs, the *Orawsky* Court confirmed a plan which provided for payments of \$100.00 a month to the trustee for the benefit of non-student loan unsecured creditors and payments of \$217.00 a month by the debtor for student loan debt. Because the debtor was below median, the Court characterized her payments as “voluntary.” *Orawsky* at 148.
- g. *Baseline or Bentley Test*: The Court in *Bentley* found the examination of fairness involves three parties – the debtor, the preferred class, and the class discriminated against. *Bentley* at 239. *Pro rata* treatment of the General Unsecured Class would provide a substantial dividend. Whether the treatment was unfair involved the following considerations:
  - i. Equality of distribution – unless the Code confers priority, unsecured creditors should share equally in any dividend. The burden of justification is on those who propose plans to the contrary. *Bentley* at 240.
  - ii. Non-priority of student loans- a debt doesn’t acquire priority just because it can’t be discharged, and nothing in the Code suggests student loans should be treated more favorably *Bentley* at 241.
  - iii. Contributions- mandatory v. voluntary. The above median debtors in *Bentley* proposed to pay only the sum required by their Means Test, and that sum only to their student loan creditors. The Court found this unfairly enhanced the position of the student loan creditors, who are in a better position than that of general unsecured creditors because they are assured of payments after the plan is consummated because of the nondischargeability of their debts. *Bentley* at 242-3.
  - iv. A fresh start doesn’t mean a debtor will emerge completely free of student loan obligations. *Bentley* at 242.
- h. *Engen*: The Bankruptcy Court for the District of Kansas loosely applied the *Bentley* Baseline Test. It referred to the prevalence of “first day” orders which disturb the priority of the Code in Chapter 11. *Engen* at 535. It found the Congressional intent in making student loans nondischargeable was the preservation of the government’s fiscal health as guarantor or lender of these loans; therefore, it would further a legitimate public policy to favor them. The amendment making loans nondischargeable came as part of a federal budget balancing package which suggests its purpose was to serve a societal interest in maximizing payments. *Engen* at 541-7. The Court allowed discrimination in *Engen*, but relied on two factors absent here. The debtors, petition,



participated in a Debt Management Plan (“DMP”) and paid down approximately 83% of their general unsecured debt. Participation in the DMP caused the debtors to default on their mortgages, and incur priority tax debt of about \$25,000.00. The debtor was a co-borrower for her son on one treated loan. *Engen* at 526.

- i. *Mason Test*: The Court in *In re Mason*, 300 B.R. 379 (Bankr. D. Kan. 2003), applied a hybrid of *Leser, Bentley*, and the test in *In re Colfer*, 159 B.R. 602 (Bankr. D. Me. 1993). It found the debtors benefited only “marginally” from a reduction from 93 percent of student loan debt remaining unpaid with discrimination, compared to 83 percent remaining with discrimination. In another *Mason* case, the Court stated it might allow discrimination had the debtor articulated a reason for the discrimination. *In re Mason*, 456 B.R. 245, 252 (Bankr. N.D.W. Va. 2011). “For example, if the 72% distribution will prevent the unwarranted accrual of interest and/or penalties during the term of the Chapter 13 plan, the court is likely to find the discrimination acceptable. *Mason (WV)* at 253, ft. 8. The damage to unsecured creditors in this case offsets the minimal accrual of interest.
- j. *The Second Circuit on “unfair” discrimination*: Two cases in the Second Circuit considered what might make discrimination “unfair.” The Court in *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233 (Bankr. S.D.N.Y. 2014), a case under Chapter 11, found the plan proponent must show 1) there is a reasonable basis for discriminating, 2) the debtor cannot consummate the plan without the discrimination, 3) the discrimination is proposed in good faith, and 4) the degree of discrimination is in direct proportion to its rationale. *Genco* at 242. The Debtor can show she is acting in good faith and that there is a reasonable basis for discrimination, but the Trustee does not believe the degree of discrimination is in direct proportion to her rationale. The massive student loan burdens affecting other debtors in this district may have warped the Trustee’s perspective, but it does not appear fair to allow the Debtor to ignore other unsecured claims in favor of allowing her to reduce the balance on a student loan. The second prong of the *Genco* test appears inapplicable. Another court in the Second Circuit propounded a similar test in *In re Strausser*, 206 B.R. 58 (Bankr. W.D.N.Y. 1997) in determining whether a debtor under Chapter 13 unfairly discriminated in proposing to pay a single cosigned consumer debt in full and only five percent of the claims of the remaining unsecured creditors. The *Strausser* Court found the debtor needed to show 1) there was a rational basis for discriminating, 2) the classification was necessary to the debtor’s rehabilitation under Chapter 13, 3) the discrimination is proposed in good faith, and 4) there was a meaningful payment to the class discriminated against and 5) the difference between what the discriminated class would receive if there were no discrimination. The Debtor satisfies prongs 1 and 3 of the *Strausser* test. There is a reasonable basis for the discrimination, and she proposes the discrimination in good faith. If the Debtor paid general unsecured claims *pro rata*, the principal on the Student Loan claim will remain close to the same; the Debtor will have cured the mortgage and tax arrearages on her property, and she will receive a fresh

start. She proposes no meaningful payment to the General Unsecured Class, which will receive substantially less than it would receive if there were treated *pro rata* with the Student Loan Claim.

# THE INTERSECTION BETWEEN BANKRUPTCY AND OTHER AREAS OF THE LAW A PRACTITIONER'S BRIEF GUIDE

## I. OVERVIEW

This presentation examines provides limited examples and explanations of where and how the US Bankruptcy Code intersects with other areas of law, with a primary focus on family law. This presentation is not exhaustive of all areas where bankruptcy intersects with other legal matters; instead the goal is to offer the practitioner an awareness of what issues can, and often do, arise when advising a client that is considering, or should be considering filing for a personal bankruptcy.

## II. BANKRUPTCY AND FAMILY LAW

Arguably no area of law intersects more with the Bankruptcy Code than family law. Married couples facing divorce are often experiencing severe financial problems. In fact, their financial difficulties may be the main reason for the divorce. Financial problems will often be exacerbated by a dissolution of marriage and filing a bankruptcy might be a solid option.

### 1. DIVORCE INTAKE

#### A. Is your Client eligible?

For the family law practitioner, the starting point is determining whether or not filing for Bankruptcy is a viable option. When it comes to filing for a Chapter 7, the Practitioner needs to know if the client has ever received a discharge in the past. Under the Code, the Client cannot file a new Chapter 7 petition for a period of 8 years from the date of filing of the prior petition<sup>1</sup>. Technically you cannot file a new Chapter 13 until 2 years from the filing date of your last dismissed Chapter 13. Since almost all Chapter 13 cases are 3 to 5 year plans, you can basically file immediately.

#### B. Your Client 's Income Matters

There are two ways to qualify for a Chapter 7 under the means test, the first part of the means test requires the client to be at or below the median income for the state of Connecticut. Presently, the Median Income for Connecticut is as follows<sup>2</sup>:

<i>Household of 1</i>	<i>Household of 2</i>	<i>Household of 3</i>	<i>Household of 4</i>	<i>Each Additional</i>
<i>\$65,117.00</i>	<i>\$83,597.00</i>	<i>\$100,836.00</i>	<i>\$116,897.00</i>	<i>Member add \$9,000</i>

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<sup>1</sup> 11 USC §727(a)8

<sup>2</sup> The median income is subject to change, the practitioner should always consult US DOJ website for updates.

In the event that the client is not eligible under the median income rules, the means test then requires that a much more complicated mathematical formula be computed to determine s eligibility.<sup>3</sup>

## **2. Timing is Everything. Should the Client File Bankruptcy Before or After the Divorce is Final?**

A client sometimes can only qualify for a Chapter 7 if they file before, or if they file after, their divorce is completed. By way of example assume the following is true:

- a. Client is married with three children.
- b. Client earns gross income of \$110,000 annually.
- c. Client's spouse is not employed.
- d. The non-working spouse will be the primary parent after the divorce.

Here, the client is presumably only eligible to file for bankruptcy before his or her divorce is finalized. If the client doesn't file until after the divorce is finalized, the client will be over the income threshold for a household of one. This client would be left with proving their eligibility to file under the mathematical formula of the means test.

## **3. Should the Divorce Client File for Bankruptcy Individually or Jointly with their Spouse? The Problem with Jointly-Held Debts.**

A married client can choose to file for bankruptcy either individually or jointly. As a practitioner, it is typically recommended, for a married couple, going through a divorce, to file their petition jointly<sup>4</sup>. The reason filing jointly is generally preferred is because a jointly filed bankruptcy often resolves most, if not all, of the *unsecured non-priority debts* between the parties.

By contrast, a client who files their bankruptcy individually is only relieved of their own personal obligations to pay back their creditor(s) on any of their joint debts. Meaning that such creditors can continue to pursue the non-filing spouse and collect from said spouse. The non-filing spouse is entitled to pursue the client for help in paying the joint debts. While this issue may be avoided by a divorce decree that releases the client from all obligations to the spouse on joint debts, it is not usually expected that the non-filing spouse will be willing to release the client from such liability.

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<sup>3</sup> As the means test was already explained by other panel members, it will not be expounded on here

<sup>4</sup> Obviously a bankruptcy petitioner representing the parties jointly is strongly advised against representing only one of the parties in the divorce. A separate bankruptcy attorney should be used by the parties in such instances to avoid obvious conflicts and other ethical issues.

#### **4. Domestic Support Obligations & Bankruptcy**

In October 2005, the Bankruptcy Code was dramatically changed by the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (hereinafter referred to as “BACPA”). BACPA brought sweeping reforms. Arguably, the most significant reform for the family law practitioner was the expansion of non-dischargeable Domestic Support Obligations (hereinafter DSO)<sup>5</sup>.

Generally speaking a DSO, as defined under BACPA, includes all marital and domestic relations obligations, whether they are in the nature of alimony, maintenance, support or property division, so long as the obligation incurred during the course of a divorce or separation or was established in connection with a separation agreement, divorce decree, or other order of a court of record. Under BACPA such a DSO is not dischargeable. Accordingly the family law practitioner should advise their client that in addition to not being able to discharge any child support or alimony obligations, the client will may have other spousal obligations not excluded from their discharge.

Finally in the context of a Chapter 13, a Domestic Support Obligation claims a first priority status pursuant to 11 USC §507. This means that all other creditors are subordinate to debts owed to the spouse, former spouse, or child of the debtor, etc. While Domestic Support Obligation claims have first priority among unsecured claims, they are still subordinate to administrative fees and expenses incurred by the trustee in administering the estate.

#### **5. THE AUTOMATIC STAY & DIVORCE**

A common question is what exactly happens to the divorce process when a Chapter 7 petition is filed in the middle of a pending divorce. The short answer is that the Bankruptcy filing stays the divorce proceeding. Meaning that the divorce should not proceed until the Bankruptcy is finalized. As a Bankruptcy is generally completed within 90 plus days from the date of its filing, many practitioners will just wait out the Chapter 7 discharge; however there are two ways that the divorce could proceed before the Bankruptcy is finalized. The first way to proceed is to file a “Motion for Relief from Stay” with the Bankruptcy Court. The second possibility is to have the parties enter a “consent order” from the Bankruptcy Court.

It is important to note that not all family issues are automatically stayed following the filing of a bankruptcy petition. The following types of family matters are not stayed:

- a. the establishment of paternity - 11 USC §362(b)(2)(A)(i)
- b. matters involving domestic support orders - 11 USC §362(b)(2)(A)(ii)
- c. matters for custody and visitation - 11 USC §362(b)(2)(A)(iii)
- d. the dissolution of a marriage (unless the proceeding seeks equitable distribution of property of the estate) - 11 USC §362(b)(2)(A)(iv)
- e. issues regarding domestic violence -11 USC §362(b)(2)(A)(v)

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<sup>5</sup> the definition of a DSO can be found at 11 USC Sec (14A)

### **III. OTHER AREAS OF THE LAW THAT INTERSECT WITH BANKRUPTCY**

#### **1. Real Property**

##### **A. Foreclosure**

A bankruptcy is one of the most effective ways to stop a foreclosure and save a client from losing their residence. A client involved in a foreclosure can elect to file a Chapter 7 or a Chapter 13 depending on their circumstance. For example if the home has negative equity and the client is unable and/or uninterested in keeping their home, a Chapter 7 would be a recommended strategy. For such a client, a Chapter 7 would temporarily stop the foreclosure<sup>6</sup> and would also remove any personal liability for the amount of money owing to the bank once the home is finally sold at auction or taken back by the bank. It's important to note that a debtor may also be able to save their home by filing a Chapter 7. The Chapter 7 could stall the sale and buy the debtor time to save money and attempt to negotiate with the bank.

The better option for a client that is truly looking to save their home from foreclosure may be to file a Chapter 13. A Chapter 13 bankruptcy, allows the debtor to pay off the late payments over the length of a repayment plan provided the debtor can also afford to pay the mortgage as well. Another benefit of a Chapter 13 is that the debtor may be able to *strip down* (eliminate) junior liens such as second or third mortgages or other judicial liens that are not completely secured by the fair market value of the home.

##### **B. Judicial Liens**

When a debtor, who owns real property, fails to pay on a court ordered judgment of an unpaid debt, the judgment creditor may impose a judicial lien on the debtor's real property. Once the debt is placed onto the real property as a judicial lien, the debt is now considered a secured debt and thus the debt is not dischargeable in a Chapter 7 bankruptcy<sup>7</sup>. The process for removing these judicial liens requires the practitioner to file and prosecute a "motion to avoid lien" in the bankruptcy court pursuant to 11 USC §541(f). A motion to avoid lien may avoid the lien in full or in part depending on the extent that it impairs the debtor's exemption.

##### **C. Transfers of Real Property Made Before Filing for Bankruptcy**

A debtor that is contemplating a bankruptcy cannot simply transfer real property out of their name to a friend, family or spouse to keep said real property out of the

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<sup>6</sup> There are caveats to this statement. The automatic stay provisions of 11 USC §362 does generally stay a foreclosure until the Bankruptcy is completed; however, a creditor could move to have the stay lifted by the Bankruptcy Court so that the Creditor may continue to proceed against the debtor for foreclosure in the state court.

<sup>7</sup> In general Chapter 7 discharges unsecured non-priority debts it does not discharge debts that are secured by an asset that the debtor intends to keep.

bankruptcy estate. Likewise the debtor cannot sell the property for an amount less than the fair market value of the real property. 11 USC § 548 considers such a transfer to be a “fraudulent conveyance” and gives the trustee the power to avoid the transfer. This means that the trustee can essentially cancel the sale (as though it never occurred) and take ownership of the real property and sell the real property and distribute the proceeds to the creditors.

Avoidance actions by the Trustee must be brought under §548 before the later of two years after the entry of the order for relief (the date of the bankruptcy filing in voluntary cases) or one year after a trustee is appointed, if the appointment occurs before the expiration for the original two-year period. Note, that once the Trustee’s right to bring a fraudulent conveyance claim in bankruptcy expires, a creditor is able to bring their own action in state court for the same fraudulent conveyance. Connecticut law permits a four year look back on such fraudulent conveyances.

If a trustee finds that the fraudulent transfer was significant, the debtor could be referred for a criminal investigation.

## **2. Landlord Tenant Law**

### **A. Eviction**

Many practitioners are surprised to learn that the filing of a Chapter 7 or a Chapter 13 will not prevent a landlord that already received a judgment of eviction from continuing with the eviction. Accordingly the automatic stay provisions of 11 USC §362 does not prevent a creditor from enforcing an eviction judgment. By contrast, a Landlord cannot start an eviction process (under most circumstances) once the Tenant files for bankruptcy.

### **B. Unpaid Rent**

A tenant filing a Chapter 7 can discharge their unpaid rent. If a tenant wishes to stay in the rental property, during the pendency of the bankruptcy, the tenant must inquire as to whether or not the Trustee (administering their bankruptcy petition) will “assume or reject” the lease pursuant to 11 USC §362. If the Trustee assumes the lease, then a tenant has 30 days to deposit the unpaid rent with the clerk at the superior court to stay any eviction.

## **3. Criminal Law**

11 USC §523(a)(7) makes non-dischargeable a debt which is “a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss.” Accordingly, criminal restitution orders are not dischargeable in bankruptcy court. Also, the automatic stay provisions of 11 USC §362 do not apply to criminal matters.

#### **4. Trusts and Estates**

An important aspect of bankruptcy law is determining whether or not something qualifies as an asset of a bankruptcy estate. With respects to trusts the main issue involves whether a trust is revocable or irrevocable. A revocable trust is essentially a trust that can be revoked, or taken away, by the grantor of the trust. If a debtor is named on a revocable trust it does not create any issue for the bankruptcy as the revocable trust is not considered an asset of the bankruptcy. By contrast, an irrevocable trust is an asset of the bankruptcy estate and will have to be included as such.

It is important to note that a client that is expecting to inherit money in the near future from a friend or family member should be advised that the future inheritance is potentially subject to liquidation. The rule is that if someone were to die within 180 days from the date of filing the bankruptcy, and the creditor receives or has the right to receive an inheritance, the Trustee must be notified immediately as that inheritance is now an asset of the bankruptcy estate.