

United States Bankruptcy Court
Western District of Kentucky

601 West Broadway
Louisville, KY 40202
(502) 627-5700

www.kywb.uscourts.gov

Guide for Pro Se Filers



The Bankruptcy Clerk's Office is prohibited by 28 U.S.C. Section 955 from giving legal advice or assisting with the preparation of forms.

Except as permitted by law, debtors, all parties in interest, or employees of a party in interest shall refrain from ex parte meetings and communications with the judge/court concerning matters affecting a particular case or proceeding per Federal Rule of Bankruptcy Procedure 9003(a).

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Preface

The laws, codes and rules governing bankruptcy procedures are complicated and intricate in detail. This guide is not intended to serve as a “how to” manual, nor is it intended to advise debtors of their legal rights or responsibilities under bankruptcy. The purpose of this guide is simply to shed light on some common misconceptions and answer frequently asked questions posed to the Clerk by debtors filing bankruptcy without the assistance of legal counsel (Pro Se). A Pro Se Debtor is responsible for all proceedings of their case.

UNITED STATES BANKRUPTCY COURT NOTICE TO INDIVIDUAL CONSUMER DEBTOR UNDER § 342(b) OF THE BANKRUPTCY CODE (Form B201)

In accordance with § 342(b) of the Bankruptcy Code, this notice: (1) Describes briefly the services available from credit counseling services; (2) Describes briefly the purposes, benefits and costs of the four types of bankruptcy proceedings that may be commenced; and (3) Informs the debtor about bankruptcy crimes and notifies that the Attorney General may examine all information supplied in connection with a bankruptcy case. Debtor(s) are cautioned that bankruptcy law is complicated and not easily described. Thus, debtor(s) may wish to seek the advice of an attorney to learn of rights and responsibilities should they decide to file a petition. Court employees cannot give legal advice.

1. Services Available from Credit Counseling Agencies

With limited exceptions, § 109(h) of the Bankruptcy Code requires that all individual debtors who file for bankruptcy relief on or after October 17, 2005, receive a briefing that outlines the available opportunities for credit counseling and provides assistance in performing a budget analysis. The briefing must be given within 180 days before the bankruptcy filing. The briefing may be provided individually or in a group (including briefings conducted by telephone or on the Internet) and must be provided by a nonprofit budget and credit counseling agency approved by the United States trustee or bankruptcy administrator. A list of all approved agencies may be found on the Bankruptcy Court’s website at www.kywb.uscourts.gov or the United States trustee’s website at www.usdoj.gov/ust/eo/bapcpa/ccde/.

In addition, after filing a bankruptcy case, an individual debtor generally must complete a financial management instructional course before they can receive a discharge. The Clerk and the United States Trustee’s office also have a list of approved financial management instructional courses.

2. The Chapters of the Bankruptcy Code Available to Individual Consumer Debtors

Chapter 7: Liquidation

A. Chapter 7 is designed for debtors in financial difficulty that do not have the ability to pay their existing debts. Debtors whose debts are primarily consumer debts are subject to a “means test” designed to determine whether the case should be permitted to proceed under Chapter 7. If income is greater than the median income for the state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss the case under § 707(b) of the Code. It is up to the court to decide whether the case should be dismissed.

B. Under Chapter 7, debtors may claim certain property as exempt under governing law. A trustee may have the right to take possession of and sell the remaining property that is not exempt and use the sale proceeds to pay creditors.

C. The purpose of filing a Chapter 7 case is to obtain a discharge of existing debts. If, however, debtors are found to have committed certain kinds of improper conduct described in the Bankruptcy Code, the court may deny discharge and, if it does, the purpose for which the bankruptcy petition was filed will be defeated.

D. Even if the debtor receives a general discharge, some particular debts are not discharged under the law. Therefore, they may still be responsible for most taxes and student loans; debts incurred to pay non-dischargeable taxes; domestic support and property settlement obligations; most fines, penalties, forfeitures, and criminal restitution obligations; certain debts which are not properly listed in the bankruptcy papers; and debts for death or personal injury caused by operating a motor vehicle, vessel, or aircraft while intoxicated from alcohol or drugs. Also, if a creditor can prove that a debt arose from fraud, breach of fiduciary duty, or theft, or from a willful and malicious injury, the bankruptcy court may determine that the debt is not discharged.

Chapter 13: Repayment of All or Part of the Debts of an Individual with Regular Income

A. Chapter 13 is designed for individuals with regular income who would like to pay all or part of their debts in installments over a period of time. Debtors are only eligible for Chapter 13 if their debts do not exceed certain dollar amounts set forth in the Bankruptcy Code.

B. Under Chapter 13, debtors must file with the court a plan to repay creditors all or part of the money that is owed them, using future earnings. The period allowed by the court to repay debts may be three years or five years, depending upon income and other factors. The court must approve the plan before it can take effect.

C. After completing the payments under the plan, debts are generally discharged except for domestic support obligations; most student loans; certain taxes; most criminal fines and restitution obligations; certain debts which are not properly listed in bankruptcy papers; certain debts for acts that caused death or personal injury; and certain long term secured obligations.

Chapter 11: Reorganization

Chapter 11 is designed for the reorganization of a business but is also available to consumer debtors. Its provisions are quite complicated, and any decision by an individual to file a Chapter 11 petition should be reviewed with an attorney.

Chapter 12: Family Farmer or Fisherman

Chapter 12 is designed to permit family farmers and fishermen to repay their debts over a period of time from future earnings and is similar to Chapter 13. The eligibility requirements are restrictive, limiting its use to those whose income arises primarily from a family-owned farm or commercial fishing operation.

3. Bankruptcy Crimes and Availability of Bankruptcy Papers to Law Enforcement Officials

A person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury, either orally or in writing, in connection with a bankruptcy case is subject to a fine, imprisonment, or both. All information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General acting through the Office of the United States Trustee, the Office of the United States Attorney, and other components and employees of the Department of Justice.

WARNING: § 521(a)(1) of the Bankruptcy Code requires that debtors promptly file detailed information regarding creditors, assets, liabilities, income, expenses and general financial condition. Bankruptcy case may be dismissed if this information is not filed with the court within the time deadlines set by the Bankruptcy Code, the Bankruptcy Rules, and the local rules of the court.

BANKRUPTCY LAW IS FEDERAL LAW. THIS SHEET GIVES YOU SOME GENERAL INFORMATION ABOUT WHAT HAPPENS IN A BANKRUPTCY CASE. HOWEVER, THE INFORMATION HERE IS NOT COMPLETE. YOU MAY NEED LEGAL ADVICE.

When You File Bankruptcy

You can choose the kind of bankruptcy that best meets your needs:

Chapter 7 - A trustee is appointed to take over your property. Any property of value will be sold or turned into money to pay your creditors. You may be able to keep some personal items and possibly real estate depending on the law of the state where you live.

Chapter 13 - You can usually keep your property, but you must earn wages or have some other source of regular income and you must agree to pay part of your income to your creditors. The Court must approve your repayment plan and your budget. A trustee is appointed and will collect the payments from you, pay your creditors, and make sure you live up to the terms of your repayment plan.

Chapter 12 - Like Chapter 13, but it is only for family farmers or fishermen.

Chapter 11 - This is used mostly by businesses. In Chapter 11, you may continue to operate your business, but your creditors and the Court must approve a plan to repay your debts. There is no trustee unless the Judge decides that one is necessary; if a trustee is appointed, the trustee takes control of your business and property.

If you have already filed bankruptcy under Chapter 7, you may be able to change your case to another Chapter.

Your bankruptcy may be reported on your credit record for as long as ten years. It can affect your ability to receive credit in the future.

What Is A Bankruptcy Discharge and How Does It Operate?

One of the reasons people file bankruptcy is to get a "discharge." A discharge is a Court order which states that you do not have to pay most of your debts. Some debts cannot be discharged. For example, you cannot discharge debts for...

- most taxes;
- child support;
- alimony;
- most student loans;
- Court fines and criminal restitution; and
- personal injury caused by driving drunk or under the influence of drugs.

The discharge only applies to debts that arose before the date you filed. Also, if the Judge finds that you received money or property by fraud, that debt may not be discharged.

It is important to list all your property and debts in your bankruptcy schedules. If you do not list a debt, for example, it is possible the debt will not be discharged. The Judge can also deny your discharge if you do something dishonest in connection with your bankruptcy case, such as destroy or hide property, falsify records, or lie, or if you disobey a Court order.

You can only receive a Chapter 7 discharge once every eight years. No one can make you pay a debt that has been discharged, but you can voluntarily pay any debt you wish to pay. You do not have to sign a reaffirmation agreement or any other kind of document to do this.

Some creditors hold a secured claim (for example, the bank that holds the mortgage on your house or the loan company that has a lien on your car). You do not have to pay a secured claim if the debt is discharged, but the creditor can still take the property.

What is a Reaffirmation Agreement?

Even if a debt can be discharged, you may have special reasons why you want to promise to pay it. For example, you may want to work out a plan with the bank to keep your car. To promise to pay that debt, you must sign and file a reaffirmation agreement with the Court. Reaffirmation agreements are under special rules and are voluntary. They are not required by bankruptcy law or by any other law.

Reaffirmation agreements:

- must be voluntary;
- must not place too heavy a burden on you or your family;
- must be in your best interest; and
- can be canceled before the Court issues your discharge or within 60 days after the agreement is filed with the Court, whichever gives you the most time.

If you are an individual and you are not represented by an attorney, the Court must hold a hearing to decide whether to approve the reaffirmation agreement. The agreement will not be legally binding until the Court approves it.

If you reaffirm a debt and then fail to pay it, you owe the debt the same as though there was no bankruptcy. The debt will not be discharged and the creditor can take action to recover any property on which it has a lien or mortgage. The creditor can also take legal action to recover a judgment against you.

IF YOU WANT MORE INFORMATION OR HAVE QUESTIONS ABOUT HOW THE BANKRUPTCY LAWS AFFECT YOU, YOU MAY NEED LEGAL ADVICE.

THE TRUSTEE IN YOUR CASE IS NOT RESPONSIBLE FOR GIVING YOU LEGAL ADVICE.

Protecting Your Social Security Number

Individuals filing bankruptcy will place only the last four digits of their Social Security Number on the bankruptcy petition. Individual debtors are required to submit, with the bankruptcy petition, a separate Statement of Social Security Number(s) (Form 21). This form will include the full Social Security Number of the debtor(s). The Statement of Social Security Number(s) is not part of the public record and will not be available to the public. Official Form 21 is available on-line at:

www.uscourts.gov/bkforms/bankruptcy_forms.html#official

The responsibility for redacting personal identifiers rests solely with counsel and the parties. The Clerk will not review each document for compliance with this rule.

The Fair Credit Reporting Act

The Fair Credit Reporting Act, 6 U.S.C. § 605, is the law that controls credit reporting agencies. The law states that in most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.

Debtors may want to contact the Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, <http://www.ftc.gov/bcp/online/edcams/credit/index.html> or telephone them at (202) 326-2222 and request the publications "How to Dispute Credit Reporting Errors" and "Fair Credit Reporting."

Credit Ratings & Reports

The U.S. Bankruptcy Court Clerk's Office is not responsible for credit reports. Bankruptcy records are public records and the information contained in them can be retrieved by anyone. Any disputes with a credit agency must be resolved by the debtors and that agency.

The three Credit Reporting Agencies are:

Experian
Profile Maintenance
P.O. Box 9558
Allen, TX 75013
(888) 397-3742
www.experian.com

Equifax
P.O. Box 740241
Atlanta, GA 30374
(800) 525-6285
www.equifax.com

TransUnion Corporation
Attn: Public Records Department
555 West Adams Street
Chicago, IL 60661
(800) 680-7289
www.transunion.com

Chapter 7 Filing Requirements

General Information

Any person (including a corporation or partnership) may file a Chapter 7, with the exception of railroads, insurance companies, banks, savings and loan associations or similar institutions. Chapter 7 bankruptcy is referred to as a “liquidation of debts” filing.

Associated Fees

\$299.00 filing fee. See [Fee Chart](#)

Note: the fee may be filed in installments if the petition is accompanied by an application to pay the filing fee in installments or waived if the petition is accompanied by an application to proceed In Forma Pauperis (Chapter 7 individual debtors only)

Requirements

- Statement of Social Security Number
- Voluntary Petition Official Form 1 (Page 1-3)*
- Application to Pay Filing Fee in Installments (if applicable)*
- Application to Proceed *In Forma Pauperis* (if applicable)*
- Exhibit D Concerning Credit Counseling (individual debtors only)*
- Statement of Current Monthly Income and Means Test Calculation (individual debtors WITH PRIMARILY CONSUMER DEBTS only)*. *Note: if Family Violence Expenses are listed in answer to Question #30, the expense listing should be filed separately.*
- Certification of Pre-petition Credit Counseling* (individual debtors only) *Note: motion/order is required to request an extension of time/exemption from credit counseling requirements*
- Corporate Resolution (required only in corporations)*
- Corporate Ownership Statement (required only if the corporation has a corporate parent)
- Mailing Matrix*
- Additional Schedules:

Statement of Financial Affairs

- a. Question 1 - 18 for Individual or Joint debtor(s)
- b. Question 1 - 25 for Business or Corporate debtor

Declaration of Statement of Affairs (signature page)

Statement of Intention (required for individual debtors with secured consumer debts)

Schedule A - Real Property

Schedule B - Personal Property (Questions 1-33)

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Non-Priority Claims

Schedule G - Executory Contracts & Unexpired Leases

Schedule H - Co-Debtors

Schedule I - Income of Individual debtor (not required for business filings)

Schedule J - Expenditures of Individual debtor (not required for business filings)

Summary of Schedules

Statistical Summary (required for individual debtors WITH PRIMARILY CONSUMER DEBTS only)

Declaration Concerning debtor(s) Schedules (signature page)

Disclosure of Fees (not required for pro se filings)

Certification and Signature of Non-Attorney bankruptcy petition preparer (required only if pro se debtor has obtained a processing service to complete their petition)

*These documents are required to file a “skeletal” petition. All remaining schedules must be filed with the Court within fourteen (14) days from the date of filing. The Statement of Social Security Number must be filed with the Court within seven (7) days from the entry of the Notice of Deficiency.

Chapter 13 Filing Requirements

General Information

Chapter 13 is designed to provide financially distressed individual debtors the opportunity to propose and carry out a repayment plan under Court supervision and protection. A person who operates a small business as a sole proprietor may also file under this Chapter; however, a corporation or partnership may not be a Chapter 13 debtor.

Associated Fees

\$274.00 filing fee. See [Fee Chart](#) *Note: the fee may be filed in installments if the petition is accompanied by an application to pay the filing fee in installments*

Requirements

- Statement of Social Security Number*
- Chapter 13 Plan
- Certificate of Service to the Chapter 13 Plan
- Voluntary Petition Official Form 1(Page 1 - 3)*
- Exhibit D Concerning Credit Counseling* (individual debtors only)
- Application to Pay Filing Fee in Installments (if applicable)*
- Statement of Current Monthly Income and Disposable Income Calculation* (individual debtors WITH PRIMARILY CONSUMER DEBTS only) *Note: if Family Violence Expenses are listed in answer to Question #30, the expense listing should be filed separately*
- Certification of Pre-petition Credit Counseling* (individual debtors only) *Note: motion/order is required to request an extension of time or exemption from credit counseling requirements*
- Mailing Matrix*
- Additional Schedules:

Statement of Financial Affairs

- a. Question 1 - 18 for Individual or Joint debtor(s)
- b. Question 1 - 25 for Business debtor

Declaration of Statement of Affairs (signature page)

Schedule A - Real Property

Schedule B - Personal Property (Questions 1-33)

Schedule C - Property Claimed as Exempt

Schedule D - Creditors Holding Secured Claims

Schedule E - Creditors Holding Unsecured Priority Claims

Schedule F - Creditors Holding Unsecured Non-Priority Claims

Schedule G - Executory Contracts & Unexpired Leases

Schedule H - Co-Debtors

Schedule I - Income of Individual debtor (not required for business filings)

Schedule J - Expenditures of Individual debtor (not required for business filings)

Summary of Schedules

Statistical Summary (required for individual debtors WITH PRIMARILY CONSUMER DEBTS only)

Declaration Concerning debtor(s) Schedules (signature page)

Disclosure of Fees (not required for pro se filings)

Certification and Signature of Non-Attorney bankruptcy petition preparer (required only if pro se debtor has obtained a processing service to complete their petition)

*These documents are required to file a “skeletal” petition. All remaining schedules and the Chapter 13 Plan must be filed with the Court within fourteen (14) days from the date of filing. The Certificate of Service to the Chapter 13 Plan must be filed within (21) days from the date of filing. The Statement of Social Security Number must be filed with the Court within seven (7) days from the entry of the Notice of Deficiency.

FORMAT FOR CREDITOR MATRIX
(Please refer to last page for diskette guidelines)

*In this district, a mailing matrix is required when filing the following:

- a new petition
- new schedules upon conversion if five or more creditors are added*
- an amendment to schedules adding five or more creditors*

*The matrix need only reflect the **new** creditors.

In order to ensure that the matrix you file can be properly read by optical scanner, we ask that you observe the following guidelines:

1. Lists must be typed in one of the following standard typefaces or print styles.
 - Courier 10 pitch
 - Prestige Elite
 - Letter Gothic
2. List should be left-justified with a one-inch left margin.
3. Lists should be typed on a single page in a single column rather than in three columns (see attached example).
4. Lists must be typed so that no letters are closer than ½ inch from any edge of the paper.
5. Each name/address must consist of no more than 5 (five) total lines, with at least *one blank line* between each of the name/address blocks.
6. Each line must be 40 characters or less in length.
7. DO NOT include the following people. They will be retrieved automatically by the computer for noticing.
 - i. Debtor
 - ii. Joint Debtor
 - iii. Attorney for the Debtor(s)

Things to Avoid

Although the Court is using sophisticated equipment and software to ensure accuracy in creditor list reading, certain problems can still occur. By following these guidelines, the Court will avoid delays or additional effort in mailing notices.

The following problems can prevent your lists from being read by the optical scanner, requiring you to re-submit your creditor list in an acceptable form.

AVOID:

1. Extra marks on the list - such as letterhead dates, debtor name, coffee stains, or handwritten marks.
2. Non-standard paper such as onion skin, half-sized paper, or colored (such as yellow) paper.
3. Poor quality type caused by submitting a photocopy or carbon, using an exhausted typewriter, or using a typewriter with a fabric ribbon.

4. Unreadable type faces or print styles such as proportionally spaced fonts, dot-matrix printing, or exotic fonts (e.g. *Olde English* or *Script*). Use only Courier 10, Prestige Elite, or Letter Gothic.
5. Misaligned lists caused by removing the paper from the typewriter before completing the list, or inserting the paper into the typewriter crooked.
6. Incorrect typewriter settings will cause unreadable lists. Make certain that your typewriter is set for 10 pitch type style.
7. Stray marks should be avoided. Do not type lines, debtor name, page numbers, or anything else on the front of a creditor list. Any identifying marks you choose to add can be typed on the back of the list.
8. Upper case only (all capital letters) should be avoided. Type in upper and lower case as you would on a letter.
9. Zip code must be on the last line. Nine digit zip codes should be typed with a hyphen separating the two groups of digits. **DO NOT** type attention lines or account numbers on the last line; put these on the second line of the name/address if needed. (The zip code must be at the end of the zip code sorting equipment to find it).
10. Fabric Ribbons should be avoided. They produce letters which are too fuzzy to be properly scanned.

WARNING: DO NOT USE DOT MATRIX PRINTERS

SAMPLE CREDITOR LIST

First City Natn'l Bank
of Beaumont
P.O. Box 3391
Beaumont, TX 77704

Flex Northwest
1540 NW 46th Street
Seattle, WA 98372

General Welding Supply Co.
P.O. Box 3617
Baltimore, MD 20984

George S. Bush Export, Inc.
1400 Exchange Building
Buffalo, NY 10984

Place of Filing

U.S. Bankruptcy Clerk's Office
601 West Broadway, Ste. 450
Louisville KY 40202

Number of Copies of Petitions, Statements, Schedules, and Lists

In a case filed under Chapter 7, 9, 11, 12, 13 or 15, an original of the petition, lists, schedules and statements must be filed with the Clerk's Office. Include a complete copy and a self-addressed stamped envelope to receive a file stamped copy from the Court.

Retaining Your Records

It is advisable that debtors keep copies of the petition, schedules, Order of Discharge, and if applicable, an Order of Dismissal. If additional copies are required, they may be obtained from the Court for a fee.

Additional Responsibilities of the Pro Se Debtor

11. Both debtors and joint debtors are required to sign and submit all requested forms.
 12. The Code requires the Chapter 7 or 13 debtor(s) attend a meeting of creditors which is held 21-60 days after filing. At this meeting, the debtor and joint debtor are under oath while both the trustee and creditors have the opportunity to ask the debtor and joint debtor questions. The debtor and joint debtor are required to answer questions regarding their financial affairs and property. Debtor(s) must also provide any financial records or documents that the trustee requests.
- While not considered a deficiency at the time the petition is filed, the following document must be received by the court in order for the debtor(s) to receive a discharge of their debts. An individual debtor in a Chapter 7 or Chapter 13 case shall file a certificate of completion of a course in personal financial management (Debtor Education Course). **This requirement is not satisfied by the credit counseling certificate provided with the original petition.** The Debtor's Certification of Completion of Instructional Course Concerning Financial Management shall be filed in the 45 days after the first date set for the meeting of creditors in a Chapter 7 case. In a Chapter 13 case, the debtor has until the date of the last scheduled plan payment to file the Financial Management Certificate.

Debtor Payment Options

Bankruptcy Rule 1006 states that “every petition shall be accompanied by the filing fee except as provided in subdivisions (b) and (c).” Rule 1006 also defines a debtor’s options regarding payment to the court of the required filing fees. Generally speaking, there are three (3) payment options.

Option 1: Payment in full

The debtor makes payment in the full amount of the filing fee at the time of filing.

Option 2: Payment in installments (Chapter 7, Chapter 13)

The debtor may file an Application to Pay Filing Fee in Installments with the court. This application must accompany the petition and state that the debtor is unable to pay the filing fee, except in installment. (Form B3A).

*****NOTE*****

All installments must be paid in full to the court before the debtor can receive a discharge or Chapter 13 Trustee may make further payments to attorneys or any other person(s) rendering services in the pending bankruptcy.

Option 3: Fee is waived (Chapter 7)

The debtor may file an application requesting a waiver of the filing fee, also known as filing In Forma Pauperis. (Form B3B) If the debtor can demonstrate that their income is less than 150% of the official poverty line the courts may allow for the filing fee to be waived.

Forms of Payment

The Clerk’s Office will only accept payment in the form of a cashier’s check, money order, certified check, or cash from a debtor. The Clerk’s Office cannot accept credit cards or personal checks from debtors.

Notice of Commencement of Bankruptcy Case

A Notice of Case Commencement (Form B9) will be served by the court to the debtor, all parties listed on the creditor mailing list, case trustee, and U.S. Trustee. Because service may take a few days, if necessary, a form is available from the Clerk’s Office to serve immediately on creditors who may be ready to take steps against the debtor’s property. It is important to notify creditors immediately when the petition is filed to take advantage of the automatic stay; for example, if a utility provider has threatened to terminate service. A utility provider cannot terminate service even if they are listed as a creditor, but the utility can insist upon a new, reasonable deposit for future services.

The Automatic Stay

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor’s property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a

stay. If a creditor attempts to collect a debt or take other action in violation of the Bankruptcy Code, they may be penalized. Consult a lawyer to determine your rights.

Role of the Bankruptcy Judge and Trustee

A bankruptcy judge may decide any matter connected with a bankruptcy case, such as eligibility to file or whether a debtor should receive a discharge; however, much of the bankruptcy process is administrative. In cases under Chapter 7 or 13, this administrative process is carried out by a case trustee appointed by the United States Trustee, to oversee the case. A debtor's involvement with a bankruptcy judge is usually very limited. Typically, the Chapter 7 debtor will not appear in court and will not see the bankruptcy judge. A Chapter 13 debtor may only have to appear before the bankruptcy judge at a hearing confirming the debtor's plan to pay the debts owed to their creditors.

Except as permitted by law, debtors, all parties in interest, or employees of a party in interest shall refrain from ex parte meetings and communications with the judge/court concerning matters affecting a particular case or proceeding per Federal Rules of Bankruptcy Procedure 9003(a).

APPENDIX A: FREQUENTLY ASKED QUESTIONS

DISCLAIMER: While the information presented in this packet is accurate as of the date of publication, it should not be cited or relied upon as legal authority. It is highly recommended that legal advice be obtained from a bankruptcy attorney or legal association. For filing requirements, please refer to the United States Bankruptcy Code (Title 11, United States Code), the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules), the Court's [Local Rules](#) and the [Clerk's Office Administrative Manual](#).

What is bankruptcy?

Bankruptcy is a legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the Chapters of Title 11 of the United States Code (the Bankruptcy Code).

What is a pro se debtor?

A Pro Se debtor is a person who files bankruptcy without an attorney. A Pro Se debtor is responsible for all proceedings of his/her case. Failure to comply with the Bankruptcy Code and Rules or with court orders may result in the dismissal of the debtor's case. It is recommended that all debtors seek legal advice before filing bankruptcy.

What is the automatic stay?

Generally, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. There are some exceptions provided for in 11 U.S.C. Section 361. If creditors attempt to collect a debt or take other action in violation of the Bankruptcy Code, they may be penalized. Consult a lawyer if you are uncertain of your rights with regard to the automatic stay in a bankruptcy case.

Will filing a bankruptcy stop creditors from calling?

As a pro se debtor, creditors may still contact you for information.

Who can start a bankruptcy?

Any person, partnership, corporation or business trust may file a bankruptcy. If the debtor (person or entity who owes the money) files a petition to start the bankruptcy, it is a voluntary bankruptcy. If the creditors (people or entities to whom the money is owed) file a petition against a debtor to start the bankruptcy, it is an involuntary bankruptcy. If an involuntary case is filed, the debtor has a specific number of days in which to contest the petition and contend it should not be in bankruptcy.

What is a joint petition?

A joint petition is the filing of a single petition by an individual and the individual's spouse. Only people who are married as of the date they file may file a joint petition. Unmarried persons,

corporations and partnerships must each file separate cases. If you are an individual and have a business, you may not file a single petition for yourself and your business, each must be a separate bankruptcy case.

What are the different "Chapters" in bankruptcy?

Chapter 7 is the liquidation Chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases, and may be filed by an individual, corporation or a partnership. Under Chapter 7, a Trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property as exempt. Chapter 7 individuals may receive a discharge, which means that the debtor does not have to pay certain types of debts. Corporations and partnerships do not receive discharges. Consequently, any individuals legally liable for the partnership's or corporation's debts will remain liable. Therefore, individual bankruptcies may be necessary as well as the corporation or partnership bankruptcy.

Chapter 9 is only for municipalities and governmental units, such as schools, water districts and so on.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers or family fishermen. There are debt limitations for Chapter 12, and a certain portion of the debtor's income must come from the operation of a farming or fishing business. Family farmers or fishermen must propose a plan to repay their creditors over a period of time from future income and it must be approved by the Court. Plan payments are made through a Chapter 12 Trustee who also monitors the debtor's farming or fishing operation while the case is pending.

Chapter 11 is the reorganization Chapter available to businesses and individuals who have substantial assets and/or income to restructure and repay their debts. Creditors vote on whether to accept or reject a plan of reorganization which must be approved by the Court. In addition to the filing fee paid to the Bankruptcy Clerk, a quarterly fee is paid to the U.S. Trustee in all Chapter 11 cases.

There is no debt limit under Chapter 11. However, only a Chapter 11 debtor that qualifies as a small business may request expedited treatment under Chapter 11. To qualify as a "small business," the Debtor must be engaged in commercial or business activities, other than the ownership of real property, and the total of secured plus unsecured debts must be less than \$200,000.00. Due to the expense and complexity of Chapter 11, the decision to file a Chapter 11 petition should be made in consultation with an attorney.

Chapter 13 is the debt repayment Chapter for individuals with regular income whose debts do not exceed \$1,230,650 (\$307,675 in unsecured debts and \$922,975 in secured debts), including individuals who operate businesses as sole proprietorships. This Chapter is not available to corporations or partnerships. Chapter 13 generally permits individuals to keep their property by repaying creditors out of future income. Chapter 13 debtor proposes a repayment plan which must be approved by the Court. The amounts set forth in the plan must be paid to the Chapter 13 Trustee who distributes the funds for a small fee. Many debts that cannot be discharged can still be paid over time in a Chapter 13 Plan. After completion of payments under the plan, Chapter 13 Debtors receive a discharge of most debts.

Which chapter is right for me?

You have a choice in deciding which Chapter of the Bankruptcy Code will best suit your needs. The decision whether to file a bankruptcy, and under which Chapter to file depends on the particular circumstances of the debtor. Also, considering your personal facts, comparing them to each Chapter's requirements, and deciding which Chapter to select, is considered legal advice. Clerk's Office staff, Bankruptcy Petition Preparers, typing services and paralegals are prohibited by law from giving legal advice. Only a lawyer can give legal advice.

The decision whether to file a bankruptcy and under what Chapter is an extremely important decision and should be made only with competent legal advice from an experienced bankruptcy attorney after a review of all the relevant facts of the debtor's case.

Where can I get more information concerning bankruptcy and bankruptcy procedures?

The easiest way to get low or no-cost bankruptcy advice is to make an appointment with a private attorney. Many will provide a free initial consultation during which you can have your questions regarding bankruptcy procedures and their application to your situation answered.

Do I need an attorney to file bankruptcy?

While it is possible to file a bankruptcy case "Pro Se," that is, without representation by an attorney, it is extremely difficult to do so successfully. The Court is not able to give legal advice or help fill out forms. Hiring a competent attorney is highly recommended.

What services can a Bankruptcy Petition Preparer provide?

Bankruptcy Petition Preparers are permitted to provide services limited to the typing of forms. They may not advise you in any way. Their services are subject to various statutory requirements and limitations.

Please note that although Bankruptcy Petition Preparers are required to sign all documents prepared for filing, they are not authorized to sign any document on your behalf. Therefore, you and your spouse, if filing a joint petition, must also sign all documents. Copies of all prepared documents should be furnished to you by the Bankruptcy Petition Preparer at the time they are presented to you for signature. Likewise, Bankruptcy Petition Preparers are prohibited by law from collecting or receiving any court fees connected with the filing of your case. Consequently, all court fees connected with the filing of your case, including the filing fee and miscellaneous administrative fee, should be paid directly to the court by you. The failure of any Bankruptcy Petition Preparer to comply with the law should immediately be brought to the attention of the trustee appointed to your case and the local office of the United States Trustee.

Can the Clerk's Office give legal advice?

A bankruptcy case is a legal proceeding affecting the rights of debtors, creditors and other parties in interest. Pursuant to 28 U.S.C. Section 955, the Clerk's Office staff is prohibited from giving information which may be characterized as legal advice.

What does the Clerk's Office do?

The Clerk's Office provides a variety of services to the bankruptcy judges, attorneys and the public. The Clerk's Office staff provides clerical and administrative support to the court by maintaining case-related documents, sending notices and setting hearings. The services provided to attorneys and the public by the Clerk's Office include responding to requests for information and making copies of documents in bankruptcy court files.

Although Clerk's Office staff cannot give you legal advice, the U.S. Bankruptcy Court is a source for many forms and local rules which you will need to file your bankruptcy petition and related documents.

Can the Clerk's Office help me fill out my forms?

No, members of the Clerk's office are prohibited from assisting with the completion of any forms.

What documents do I need to start a bankruptcy?

A list of filing requirements is included as a part of this guide. Please refer to the pages for filing requirements in this document.

Where can I obtain petition forms?

Petition forms can be found at most local office supply stores, through the court's website and at www.uscourts.gov.

How do I know if a debt is secured, unsecured, priority or administrative so I can fill out my schedules correctly?

A. Secured Debt

A secured debt is a debt that is backed by property. A creditor whose debt is "secured" has a right to take property to satisfy a "secured debt". For example, most homes are burdened by a "secured debt". This means that the lender has the right to take the home if the borrower fails to make payments on the loan. Most people who buy new cars give the lender a "security interest" in the car. This means that the debt is a "secured debt" and that the lender can take the car if the borrower fails to make payments on the car loan.

B. Unsecured Debt

A debt is unsecured if you have simply promised to pay someone a sum of money at a particular time and you have not pledged any real or personal property as collateral for that debt.

C. Priority Debt

A priority debt is a debt entitled to priority in payment, ahead of most other debts. A listing of priority debts is given, in general terms, in 11 U.S.C. Section 507 of Bankruptcy Code. Examples of priority debts are some taxes, and wage claims of employees. If you have questions deciding which of your debts are entitled to priority status, you should consult an attorney.

D. Administrative Debt

An administrative debt is also a priority debt and is one created when someone provides goods or services to your bankruptcy estate. The best example of an administrative debt is the fee generated by an attorney or another authorized professional in representing the bankruptcy estate.

What are exemptions?

11 U.S.C. Section 522(b) allows an individual debtor to exempt real, personal, or intangible property from the property of the estate. Exempt assets are protected from distribution to your creditors by state law. Bankruptcy exemptions for the state of Kentucky and the dollar amounts of those exemptions are listed in Chapter 427 of the Kentucky Statute. Typically, exempt assets include jewelry, vehicles up to a certain dollar amount, the equity in your home up to a certain amount and tools of the trade.

Exemptions are claimed on Schedule C. As with all schedules, it is important to complete fully and provide all the information requested. If no one objects to your exemptions in the time frame specified by the bankruptcy court, these assets will not be a part of your bankruptcy estate and will not be used to pay creditors through your bankruptcy case.

Deciding which assets are exempt and how and if you can protect these assets from creditors can be one of the most important and difficult aspects of your bankruptcy case. It is extremely important to consult an attorney if you have any questions regarding the issue of exempt assets.

Where do I file my bankruptcy case?

The bankruptcy court is a Federal Court. The Federal Court system divides the United States into judicial districts. Every state has at least one Federal Judicial District. Some states have more. In Kentucky, for example, there are two Federal Judicial Districts. Our Court handles bankruptcy matters for the Western District of Kentucky. Due to its size, the U.S. Bankruptcy Court for the Western District of Kentucky is split into four divisions, with the Louisville office being staffed by the Bankruptcy Clerk's Office. The Clerk's Office is open from 8:30 a.m. until 4:30 p.m. on all days except Saturdays, Sundays and legal holidays. All correspondence should be mailed to the Clerk's Office at the following address:

Clerk of the Bankruptcy Court
601 W. Broadway, Suite 450
Louisville, KY 40202 - 2264

How do I "file" a document with the Court?

Effective December 1, 2004, all attorneys must file electronically. For non-electronic filers, bankruptcy petitions, pleadings and other papers may be submitted for filing by mail or in person at the Clerk's Office public counters. When unusual and rare circumstances require delivery of a document to a divisional office, a filing after hours or a filing by facsimile, an emergency filing can be arranged by contacting the Louisville divisional Clerk's Office during business hours.

You should prepare an additional copy of every petition and pleading you submit. The Clerk's Office will file stamp and return the additional copy to you. If your petition is mailed, you must include a self-addressed, stamped envelope of sufficient size to obtain your file stamped copy. The file stamped copy will serve as your record that the original document was filed.

Can I file my documents electronically?

At this time, debtors cannot file documents electronically with the Court.

How much are the Court fees to file a bankruptcy?

For information regarding fees, please refer to the Fee Schedule, which is available on the Court's website at http://www.kywb.uscourts.gov/fpweb/fee_schedule.htm or call the Court at 502-627-5700.

The Clerk's Office does not accept personal checks from debtors; payments should be made by cash (correct change), cashier's check, certified check or money order payable to "Clerk, U.S. Bankruptcy Court." For your protection do not send cash in the mail.

What if I can't pay the filing fees?

You can pay installments unless you have a previous case that was dismissed for failure to pay filing fee. To do so, you must complete an application to pay filing fees in installments and submit it with your petition. To obtain a copy of an Application to Pay the Filing Fee in Installments, visit the Court's web site at <http://www.kywb.uscourts.gov/fpweb/forms.htm>.

An individual Chapter 7 debtor may file an application for waiver of the filing fee along with the bankruptcy petition. The application must conform to Official Form 3B. The court may waive the Chapter 7 filing fee for an individual debtor who: (a) has income less than 150 percent of the poverty guidelines last published by the United States Department of Health and Human Services based on family size; and (b) is unable to pay the fee in installments. You will have to justify your request to waive the filing fee and the court will make a determination. If the court denies the fee waiver application, you will be ordered to pay the fee in installments.

What happens after I file bankruptcy?

The court issues a notice of bankruptcy to all creditors advising them of the filing of the bankruptcy, the case number, information regarding actions creditors may take, the name of the trustee assigned to the case (if filed under Chapter 7, 12, or 13), the date set for the Section 341 Meeting of Creditors, the deadline, if any, set for filing objections to the discharge of the debtor and/or the dischargeability of specific debts and instructions for filing a claim.

In a Chapter 7 case involving an individual debtor, the creditors generally have sixty (60) days from the first date set for the meeting of creditors to object to the discharge of the debtor and/or the dischargeability of a specific debt. If the deadline passes without any objections to the debtor's discharge being filed and the debtor has met all requirements for discharge, the court will issue the discharge order. If any objections to the dischargeability of specific debts are filed, they will be heard by the court, but will not delay the granting of a discharge with respect to other debts. An objection to discharge or to the dischargeability of certain debts is considered a separate lawsuit (an adversary proceeding) within the bankruptcy and may result in a trial presided over by the judge assigned to the case. Corporate and partnership Chapter 7 debtors do not receive discharges. If there are no assets from which a dividend can be paid, the trustee will prepare a report of no distribution and the case will be closed. If there are assets that are not exempt, funds will be available for distribution to creditors. The court will set a claims deadline and notify all creditors to file their claims. The trustee will proceed to collect the assets, liquidate them and distribute the proceeds to creditors. When the assets have been completely administered, the trustee will prepare a final report and final accounting and the case will be closed.

In a Chapter 13 case, creditors are given an opportunity to object to the plan. If no objections are filed by creditors or the trustee, the plan may be confirmed as filed. Once the plan is confirmed, the trustee will distribute the proceeds of the debtor's plan payments to creditors until the debtor completes the plan or the court dismisses or converts the case. Upon completion of the Chapter 13 Plan, the trustee will prepare a final report, the court will issue a discharge order if the debtor has met all requirements for discharge and the case will be closed.

In a Chapter 12 case, creditors are given an opportunity to object to the plan. If no objections are filed by creditors or the trustee, the plan may be confirmed as filed. Once the plan is confirmed, the trustee will distribute the proceeds of the debtor's plan payments to creditors until the debtor completes the plan or the court dismisses or converts the case. Upon completion of the Chapter 12 Plan, the trustee will prepare a final report, the court may issue a discharge order if the debtor has met all requirements for discharge and the case will be closed.

In a Chapter 11 case, a debtor's conference is held with the United States Trustee's staff before the creditors meeting. At the debtor's conference, the United States Trustee will go over the responsibilities and restrictions on the debtor-in-possession, explain the quarterly fees and monthly operating reports, and generally discuss the financial situation of the debtor and the scope of the anticipated plan of reorganization. A disclosure statement must be filed with the plan and approved by the court before votes for or against the plan can be solicited. After the estate has been fully administered, the court will enter a final decree closing the case. A Chapter 11 estate may be considered fully administered and closed before the payments required by the plan have been completed.

What is a bankruptcy trustee? Who is the United State Trustee? What is the difference?

In all Chapter 7,12,13 and in some Chapter 11 cases, a trustee is assigned. The trustee's job is to administer the bankruptcy estate, by making sure creditors get as much money as possible, and to conduct the first meeting of creditors (also called the "Section 341 Meeting" because 11 U.S.C. Section 341 of the Bankruptcy Code requires that the meeting be held). The trustee either collects and sells non-exempt estate property, as in a Chapter 7 case, or collects and pays out money on a repayment plan, as in a Chapter 13 case. The trustee can require you to provide, under penalty of perjury, information and documents, either before, during or after the meeting of creditors. You should always cooperate with the trustee, since failure to cooperate with the trustee could be grounds

to have your discharge denied. Trustees are not necessarily lawyers, and they are not paid by the court. They are appointed by the United States Trustee. Trustees report to the court, but their fees come out of the bankruptcy filing fee or as a percentage of the money distributed in the bankruptcy.

The United States Trustee's Office is part of the U.S. Department of Justice and is separate from the court. The United States Trustee's Office is a watchdog agency, charged with monitoring all bankruptcies, appointing and supervising all trustees and identifying fraud in bankruptcy cases. The United States Trustee's Office cannot give you legal advice, but they can give you information about the status of a case, and you can contact them if you are having problems with a trustee, or if you have evidence of any fraudulent activity. In monitoring cases, The United States Trustee reviews all bankruptcy petitions and pleadings filed in cases, and participates in many proceedings affecting the case, but they do not administer the case themselves. They can bring motions in the bankruptcy, such as ones to dismiss the case or to deny the debtor's discharge. The phone number for the local U.S. Trustee's Office is 502-582-6000.

How do I find out who the trustee is in a case?

The trustee's name and address is printed on the notice of the Section 341(a) Meeting of Creditors. You also can obtain the trustee's name from the court's automated public information systems, VCIS 502-627-5660 or 1-800-263-9385 and PACER or by calling the court at (502) 627-5700.

What is the creditors' meeting? What can I expect to happen at the meeting?

A "meeting of creditors" is the single hearing all debtors must attend in any Bankruptcy proceeding. It is held outside the presence of the judge and usually occurs between twenty one (21) and sixty (60) days from the date the original petition is filed with the court. In Chapter 7, Chapter 12 and Chapter 13 cases, the trustee assigned by the court on behalf of the United States Trustee conducts the meeting. In Chapter 11 cases where the debtor is in possession and no trustee is assigned, a representative of the United States Trustee's office conducts the meeting.

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

The meeting is referred to as the " meeting of creditors" because creditors are notified that they may attend and question the debtor about the location and disposition of assets and any other matter relevant to the administration of the case. However, creditors rarely attend these meetings and, in general, are not considered to have waived any of their rights by failing to appear. The meeting usually lasts only a few minutes and may be continued if the trustee or a representative of the United States Trustee's Office is not satisfied with the information provided by the debtor. If the debtor fails to appear at the meeting and/or fails to provide the information requested at the meeting or by an Order to Produce Documents, the trustee or a representative of the United States Trustee's Office may request that the bankruptcy case be dismissed or that the debtor be ordered by the court to cooperate or be held in contempt of court for willful failure to cooperate.

What is a discharge?

The discharge order is issued by the court and permanently prohibits creditors from taking action to collect dischargeable debts against the debtor personally; this does not prevent secured creditors from seizing collateral if payments are not kept up, or other creditors from pursuing property of the estate.

The granting of a discharge does not automatically result in the closing of a case. All contested matters, adversary proceedings, and appeals must be resolved and the appointed trustee or debtor-in-possession must file a final report and account and request entry of a final decree before the Clerk's Office will close the case.

What debts are dischargeable?

11 U.S.C. Section 523 lists exceptions to discharge. In general, all other debts are dischargeable.

Some debts listed in 11 U.S.C. Section. 523, such as those based on fraudulent conduct, embezzlement or willful and malicious injury to another, are discharged unless a complaint to deny discharge of that debt is timely filed with the bankruptcy court. Ordinarily, these complaints must be filed within sixty (60) days of the first date set for the meeting of creditors.

Additionally, debts that were not listed on your bankruptcy schedules or that were incurred after you filed bankruptcy are generally not discharged.

What is the difference between a denial of discharge and a debt being non-dischargeable?

Denial of a discharge applies to the debtor's entire proceeding, while determination of non-dischargeability applies to a particular debt only. A request for denial of discharge is usually granted because the debtor has defrauded a creditor, concealed property of the estate, made a false oath, presented or used a false claim, refused to obey any lawful order of the court and other reasons contained in the Bankruptcy Code. On the other hand, non-dischargeability of a debt excepts a particular debt from the discharge. This means that if the debt is determined non-dischargeable the debtor is still obligated to that creditor.

How do I get a copy of my discharge?

You will receive a copy of your discharge in the mail after it is entered. However, if some time has passed and you have not received your discharge or you need another copy please call the Clerk's Office at 502-627-5700.

After filing, it is very important that the debtor retain his/her bankruptcy papers for future reference. Sometimes the information may be needed for a future home purchase or other business transactions that will require proof of filing and discharge.

What does it mean if a case is dismissed?

A dismissal order ends the case. Upon dismissal the "automatic stay" ends and creditors may start to collect debts, unless a discharge is entered before the dismissal and is not revoked. An order of dismissal itself will not free the debtor from any debt. Often, a case is dismissed when the debtor fails

to do something he/she must do (such as attend the creditors' meeting, answer the trustee's questions honestly, produce books and records that the trustee requests), or if it is in the best interest of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within fourteen (14) days after entry of the order of dismissal, the Clerk may close the case.

What is a motion?

A motion is a written formal statement in which the party who is requesting an action, the movant, sets forth his grounds for the action requested. The party against whom the action is requested is the respondent. An order granting the relief requested must be attached to each motion filed.

What is a reaffirmation agreement?

A reaffirmation agreement is an agreement by which a bankruptcy debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. Such an agreement must generally be filed within sixty (60) days after the first date set for the meeting of creditors.

An original and executed reaffirmation agreement filed with the Clerk no later than 30 days following entry of the discharge order is enforceable without hearing or court order, if the agreement is accompanied by a declaration or an affidavit of the debtor's attorney. The reaffirmation agreement must be filed on form B240. If a reaffirmation agreement is filed without an attorney's declaration or affidavit, or creates presumption of undue hardship, a hearing is required. You must appear in person at the hearing. The judge will ask you questions to determine whether the reaffirmation agreement imposes an undue burden on you or your dependents and whether it is in your best interest. Since reaffirmed debts are not discharged, the bankruptcy court will normally only reaffirm secured debts where the collateral is important to your daily activities.

Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. You can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt.

Since a reaffirmation agreement takes away some of the effectiveness of your discharge, legal counsel is advisable before agreeing to a reaffirmation. Even if you sign a reaffirmation agreement, you have a minimum of sixty (60) days after the agreement is filed with the court to change your mind or rescind. If your discharge date is more than sixty (60) days after the agreement is filed with the court, you have until your discharge date to change your mind. If you reaffirm a debt and fail to make the payments as agreed, the creditor can take action against you to recover any property that was given as security for the loan and you may remain personally liable for any remaining debt.

What is a redemption?

Redemption allows an individual debtor (not a partnership or a corporation) to keep tangible, personal property intended primarily for personal, family, or household use by paying the holder of a lien on the property the amount of the allowed secured claim on the property, which typically means the value of the property. Otherwise, in order to retain the property, the debtor would have to pay the entire amount of the secured creditor's debt, enter into a reaffirmation agreement and become legally obligated on the debt again. The property redeemed must be claimed as exempt or abandoned by the Trustee.

With redemption, a debtor can often get liens released on personal household possessions for much less than the underlying debt on those secured possessions. Unless the creditor consents to periodic payments, redemption must generally be made in one lump sum payment to the creditor.

What are claims and claims objections? How are claims filed?

A. Claims

In the broadest sense, a claim is any right to payment held by a person or company against you and your bankruptcy estate. A claim does not have to be a past due amount but can include an anticipated sum of money which will come due in the future. In filling out your Schedules, you should include any past, present or future debts as potential claims.

B. Claims Objections

You may be entitled to object to any claim filed in your bankruptcy case if you believe that the debt is not owed or if you believe the claim misrepresents the amount or kind of debt (e.g. secured or priority) which you owe. In some circumstances, an objection to claim can be initiated by filing a motion in the bankruptcy court; in other circumstances, it must be initiated by filing an adversary proceeding (like a lawsuit in your bankruptcy case). If you anticipate objection to claims, you should seek the advice of an attorney as soon as possible since the objection process can be complicated and time sensitive.

C. Filing of Claims

The written statement filed in a bankruptcy case setting forth a creditor's claim is called a proof of claim. The proof of claim should include a copy of the obligation giving rise to the claim as well as evidence of the secured status of the debt if the debt is secured. Under the Federal Rules of Bankruptcy Procedure, with limited exceptions, claims filed by creditors, except governmental units, in Chapter 7, 12 and 13 cases must be filed within ninety (90) days after the first date set for the meeting of creditors. If a creditor files a claim after the specified deadline, you may object to the claim as being untimely filed.

For purposes of obtaining your discharge, it may be important for you to file a claim on behalf of a creditor if that creditor should fail to do so. Under the Federal Rules of Bankruptcy Procedure, you (or in Chapter 7 and some 11 cases, the trustee) may file a proof of claim on behalf of a creditor within thirty (30) days after the last day for filing claims.

A proof of claim form is available at the Clerk's Office in Louisville or from the Court's web site at <http://www.kywb.uscourts.gov/fpweb/forms.htm>.

What can I do if a creditor keeps trying to collect money after I have filed bankruptcy?

If a creditor continues to attempt to collect a debt after the bankruptcy is filed, the creditor may be in violation of the automatic stay. You should immediately notify the creditor in writing that you have filed bankruptcy and provide them with either the case number and filing date, or a copy of the petition that shows it was filed. If the creditor still continues to try to collect, the debtor may be entitled to take legal action against the creditor to obtain a specific order from the court prohibiting the creditor from taking further collection action and, if the creditor is willfully violating the automatic stay, the court can hold the creditor in contempt of court and punish the creditor. Any such legal action brought against the creditor will be complex and will normally require representation by a qualified bankruptcy attorney.

What if I need to notify a creditor before the Court sends out notice of my bankruptcy?

If you provide an additional copy of the petition when the bankruptcy petition is filed, the Court will file-stamp and return your copy. However, the Court can also provide you with a file-stamped copy of the first page of the petition or the Notice of Bankruptcy Case Filing for a small fee at any time.

How do I change or correct information in the petition, schedules and statements I already filed with the Clerk's Office?

The information contained in your petition, schedules, and statement of affairs is submitted under penalty of perjury. Therefore, you must be certain that it is correct when you sign these documents. If, however, you later discover that something is inaccurate or missing, the documents may be corrected by the filing of an amendment with the Clerk's Office. A fee must be paid to amend schedules of creditors or lists of creditors. The amendment should be made using Local Form B, which is contained in the Local Bankruptcy Rules for the Western District of Kentucky. All amendments must be served upon the United States Trustee and case trustee, and certain amendments must be served upon the creditors affected by the amendment.

What should I do if I cannot make my Chapter 13 payment?

If the debtor cannot make a Chapter 13 payment on time according to the terms of the confirmed plan, the debtor should contact his or her attorney or the trustee by phone and by letter advising of the problem and whether it is temporary or permanent. Significant changes in the debtor's circumstances may require that the plan be formally modified. If the problem is permanent and the debtor is no longer able to make payments to the plan, the trustee will request that the case be dismissed or converted to another Chapter. The determination of whether to modify, dismiss or convert a case requires the same kind of analysis as is needed for the initial decision whether to file bankruptcy and under what Chapter. Therefore, the debtor should seek counsel from a qualified bankruptcy attorney before attempting to make such a decision. If the debtor delays making a voluntary decision and cannot make the plan payments, the court may dismiss the case.

How many years will a bankruptcy show on my credit report? How long will it take before I can get credit?

The bankruptcy petition, schedules and plan are public documents and are available to the general public for viewing. Credit reporting agencies regularly collect information from the petitions filed and report the information on their credit reporting services. Bankruptcies normally will remain on your credit report for up to ten (10) years and may be taken into consideration by any person reviewing a credit report for the purpose of extending credit in the future. The decision whether to grant you credit in the future is strictly up to the creditor and varies from creditor to creditor depending on the type of credit requested.

How do I get the bankruptcy removed from my credit report?

The bankruptcy court has no jurisdiction over credit reporting agencies. The Fair Credit Reporting Act, 6 U.S.C. Section 605, is the law that controls credit reporting agencies. The law states that credit reporting agencies may not report a bankruptcy case on a person's credit report after ten years from the date the bankruptcy case is filed. Other bad credit information is removed after seven years. The larger

credit reporting agencies belong to an organization called the Associated Credit Bureaus. The policy of the Associated Credit Bureaus is to remove Chapter 11 and Chapter 13 cases from the credit report after seven years to encourage debtors to file under these Chapters.

You may contact the Federal Trade Commission, Bureau of Consumer Protection, Education Division, Washington, D.C. 20580. The telephone number is (202) 326-2222 or at www.ftc.gov. The office can provide further information on re-establishing credit and addressing credit problems. For information on credit practices, contact (202) 326-3324.

How long should I keep copies of my bankruptcy?

As your bankruptcy petition is a legal document, it is advisable to keep bankruptcy records forever.

How do I get copies of documents or certified copies?

Copies of documents and certified copies are available at the Clerk's Office in the Louisville division. There is a cost for photocopying a paper document or printing a document from the court's Electronic Case Files system. A charge is added for a certification.

Who do I notify about a possible fraudulent filing?

The Office of the United States Trustee reviews complaints about possible fraudulent filings and, if appropriate, notifies the U.S. Attorney for further investigation. For more information contact:

Office of the U.S. Trustee
601 West Broadway, Suite 512
Louisville, KY 40202
(502)582-6000
www.usdoj.gov/ust

Where can I get information on credit counseling and financial management?

You must obtain credit counseling and financial management training from an approved agency or provider. Please note that an agency may be approved to provide credit counseling in Kentucky but not financial management training (and vice versa). A list of approved agencies is available on the Internet at the following web site:

http://www.usdoj.gov/ust/eo/bapcpa/ccde/CC_Files/CC_Approved_Agencies_HTML/cc_kentucky/cc_kentucky.htm.

Where can I get information on Statement of Current Monthly Income and Means Testing?

All individual debtors with primarily consumer debts must file a Statement of Current Monthly Income. The official forms and more information regarding the Statement of Current Monthly Income are available on the Court's web site at www.kywb.uscourts.gov/bapcpa_new_2007.

APPENDIX B: BANKRUPTCY TERMINOLOGY

341 meeting The meeting of creditors required by Section 341 of the Bankruptcy Code at which the debtor is questioned under oath by creditors, a trustee, examiner, or the U.S. trustee about their financial affairs. Also called a creditors' meeting.

adversary proceeding A lawsuit arising in or related to a bankruptcy case that is commenced by filing a complaint with the court. A nonexclusive list of adversary proceedings is set forth in Fed. R. Bankr. P. 7001.

automatic stay An injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

bankruptcy A legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the Chapters of title 11 of the United States Code (the Bankruptcy Code).

Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101- 1330), the federal bankruptcy law.

bankruptcy estate All legal or equitable interests of the debtor in property at the time of the bankruptcy filing. (The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.)

bankruptcy judge A judicial officer of the United States district court who is the court official with decision-making power over federal bankruptcy cases.

bankruptcy petition The document filed by the debtor (in a voluntary case) or by creditors (in an involuntary case) which opens the bankruptcy case. (There are official forms for bankruptcy petitions.)

bankruptcy trustee The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the U.S. trustee or bankruptcy administrator. The trustee is a private individual or corporation appointed in all Chapter 7, Chapter 12, and Chapter 13 cases and some Chapter 11 cases. The trustee's responsibilities include reviewing the debtor's petition and schedules and bringing actions against creditors or the debtor to recover property of the bankruptcy estate. In Chapter 7, the trustee liquidates property of the estate, and makes distributions to creditors. Trustees in Chapter 12 and 13 have similar duties to a Chapter 7 trustee and the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.

chapter 7 The Chapter of the Bankruptcy Code providing for "liquidation" (*i.e.* the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors).

chapter 9 The Chapter of the Bankruptcy Code providing for reorganization of municipalities (which includes cities and towns, as well as villages, counties, taxing districts, municipal utilities, and school districts).

chapter 11 The Chapter of the Bankruptcy Code providing (generally) for reorganization, usually involving a corporation or partnership. (A Chapter 11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. Businesses or individuals may seek relief in Chapter 11.)

chapter 12 The Chapter of the Bankruptcy Code providing for adjustment of debts of a “family farmer,” or a “family fisherman” as those terms are defined in the Bankruptcy Code.

chapter 13 The Chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

chapter 15 The Chapter of the Bankruptcy Code dealing with cases of cross-border insolvency.

claim A creditor’s assertion of a right to payment from the debtor or the debtor’s property.

confirmation Bankruptcy judge’s approval of a plan of reorganization or liquidation in Chapter 11, or payment plan in Chapter 12 or 13.

consumer debtor A debtor whose debts are primarily consumer debts.

consumer debts Debts incurred for personal, as opposed to business, needs.

creditor One to whom the debtor owes money or who claims to be owed money by the debtor.

credit counseling Generally refers to two events in individual bankruptcy cases: the “individual or group briefing” from a nonprofit budget and credit counseling agency that individual debtors must attend prior to filing under any Chapter of the Bankruptcy Code.

creditors’ meeting *see* 341 meeting

current monthly income The average monthly income received by the debtor over the six calendar months before commencement of the bankruptcy case, including regular contributions to household expenses from nondebtors and income from the debtor’s spouse if the petition is a joint petition, but not including social security income and certain other payments made because the debtor is the victim of certain crimes. 11 U.S.C. § 101(10A).

debtor A person who has filed a petition for relief under the Bankruptcy Code.

debtor education/financial management The “instructional course in personal financial management” in Chapters 7 and 13 that an individual debtor must complete before a discharge is entered. There are exceptions to both requirements for certain categories of debtors, exigent circumstances, or if the U.S. trustee or bankruptcy administrator have determined that there are insufficient approved credit counseling agencies available to provide the necessary counseling.

defendant An individual (or business) against whom a lawsuit is filed.

discharge A release of a debtor from personal liability for certain dischargeable debts set forth in the Bankruptcy Code. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

dischargeable debt A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

disclosure statement A written document prepared by a Chapter 11 debtor or other plan proponent designed to provide "adequate information" to creditors to enable them to evaluate the Chapter 11 plan of reorganization.

equity The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$100,000 is subject to a \$80,000 mortgage, there is \$20,000 of equity.)

exemptions, exempt property Certain property owned by an individual debtor that the Bankruptcy Code or applicable state law permits the debtor to keep from unsecured creditors. For example, in some states the debtor may be able to exempt all or a portion of the equity in the debtor's primary residence (homestead exemption), or some or all "tools of the trade" used by the debtor to make a living (*i.e.*, auto tools for an auto mechanic or dental tools for a dentist). The availability and amount of property the debtor may exempt depends on the state the debtor lives in.

ex parte Except as permitted by law, debtors, all parties in interest, or employees of a party in interest shall refrain from ex parte meetings and communications with the judge/court concerning matters affecting a particular case or proceeding per Federal Rules of Bankruptcy Procedure 9003(a).

family farmer or family fisherman An individual, individual and spouse, corporation, or partnership engaged in a farming or fishing operation that meets certain debt limits and other statutory criteria for filing a petition under Chapter 12.

fraudulent transfer A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

fresh start The characterization of a debtor's status after bankruptcy, *i.e.*, free of most debts. (Giving debtors a fresh start is one purpose of the Bankruptcy Code.)

insider (of an individual debtor) Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or a corporation of which the debtor is a director, officer, or person in control.

insider (of a corporate debtor) A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the debtor.

joint petition One bankruptcy petition filed by a husband and wife together.

lien The right to take and hold or sell the property of a debtor as security or payment for a debt or duty.

liquidation A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

liquidated claim A creditor's claim for a fixed amount of money.

means test § 707(b)(2) of the Bankruptcy Code applies a "means test" to determine whether an individual debtor's Chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring dismissal or conversion of the case (generally to Chapter 13). Abuse is presumed if the debtor's aggregate current monthly income (see definition above) over 5 years, net of certain statutorily allowed expenses is more than (i) \$10,000, or (ii) 25% of the debtor's nonpriority unsecured debt, as long as that

amount is at least \$6,000. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income.

motion to terminate, modify, condition or annul the automatic stay A request by a creditor to allow the creditor to take action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

no-asset case A Chapter 7 case where there are no assets available to satisfy any portion of the creditors' unsecured claims.

nondischargeable debt A debt that cannot be eliminated in bankruptcy. Examples include a home mortgage, debts for alimony or child support, certain taxes, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime. Some debts, such as debts for money or property obtained by false pretenses and debts for fraud or defalcation while acting in a fiduciary capacity may be declared nondischargeable only if a creditor timely files and prevails in a nondischargeability action.

objection to dischargeability A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts. Common reasons include allegations that the debt to be discharged was incurred by false pretenses or that debt arose because of the debtor's fraud while acting as a fiduciary.

objection to exemptions A trustee's or creditor's objection to the debtor's attempt to claim certain property as exempt from liquidation by the trustee to creditors.

party in interest A party who has standing to be heard by the court in a matter to be decided in the bankruptcy case. The debtor, the U.S. trustee or bankruptcy administrator, the case trustee and creditors are parties in interest for most matters.

petition preparer A business not authorized to practice law that prepares bankruptcy petitions.

plan A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

plaintiff A person or business that files a formal complaint with the court.

post-petition transfer A transfer of the debtor's property made after the commencement of the case.

preference or preferential debt payment A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's Chapter 7 case.

priority claim An unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Priority refers to the order in which these unsecured claims are to be paid.

proof of claim A written statement and verifying documentation filed by a creditor that describes the reason the debtor owes the creditor money. (There is an official form for this purpose.)

property of the estate All legal or equitable interests of the debtor in property as of the commencement of the case.

reaffirmation agreement An agreement by a Chapter 7 debtor to continue paying a debt (such as an auto loan) after the bankruptcy, usually for the purpose of keeping collateral (*i.e.* the car) that would otherwise be subject to repossession.

secured creditor A creditor holding a claim against the debtor who has the right to take and hold or sell certain property of the debtor in satisfaction of some or all of the claim.

secured debt Debt backed by a mortgage, pledge of collateral, or other lien; debt for which the creditor has the right to pursue specific pledged property upon default. Examples include home mortgages, auto loans, and tax liens.

schedules Detailed lists filed by the debtor along with (or shortly after filing) the petition showing the debtor's assets, liabilities, and other financial information. (There are official forms available to debtors.)

small business case A special type of Chapter 11 case in which there is no creditors' committee (or the creditors' committee is deemed inactive by the court) and in which the debtor is subject to more oversight by the U.S. trustee than other Chapter 11 debtors. The Bankruptcy Code contains certain provisions designed to reduce the time a small business debtor is in bankruptcy.

statement of financial affairs A series of questions the debtor must answer in writing concerning sources of income, transfers of property, lawsuits by creditors, etc. (There is an official form a debtor must use.)

statement of intention A declaration made by a Chapter 7 debtor concerning plans for dealing with consumer debts that are secured by property of the estate.

transfer Any mode or means by which a debtor disposes of or parts with the debtor's property.

U.S. Trustee An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties.

undersecured claim A debt secured by property that is worth less than the full amount of the debt.

unliquidated claim A claim for which a specific value has not been determined.

unscheduled debt A debt that should have been listed by the debtor in the schedules filed with the court but was not. (Depending on the circumstances, an unscheduled debt may or may not be discharged.)

unsecured claim A claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien; a debt for which credit was extended based solely upon the creditor's assessment of the debtor's future ability to pay.

voluntary transfer A transfer of a debtor's property with the debtor's consent.