

Introduction to Bankruptcy

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Author's Foreword

America is facing its greatest financial crisis since the great depression. Whether it is because its great economic expansion since World War II has lost steam, or alternatively, debt levels have reached saturation point, it seems clear we can no longer spend our way out of economic doldrums. Our financial assumptions and beliefs have proven suspect and people who are getting ready to retire and their children face a very different financial prospect than one contemplated less than a decade ago. Whether this is a particularly nasty business cycle, or a paradigm shift, many of people's basic assumptions appear to be going out the window.

Although tough economic times have come and gone, it appears this time there is perhaps a seismic shift where more people are upside down, real estate has gone from an asset to a liability and credit card companies are charging double digit interest rates that would have been deemed usurious and illegal not so many years ago. Many people, who made business assumptions that were once considered only good sense, find themselves entrapped by a falling real estate market unable to afford the mortgages that were peddled by banks and Wall Street and then securitized and sold to other unsuspecting investors, while being shorted by those packaging these weapons of mass financial destruction. (For an excellent discussion of the subprime mortgage meltdown and the shenanigans foisted on the American people by mortgage brokers, banks and Wall Street, the author suggests the book "The Big Short; Inside the Doomsday Machine" by Michael Lewis (Publisher: **W. W. Norton & Company, (2010), New York**). **This book outlines how lenders and Wall Street ignored traditional lending standards to create loans which would then be securitized and sold for investment, and then created Collateral Debt Obligations ("CDO's) to feed their profits and ultimately shorted their own investments they created.**)

The subprime meltdown has greatly diminished the wealth of America, and now the plucky bankruptcy attorney is charged with getting those people whose wealth has been decimated a fresh start under the bankruptcy law. The purpose of this book and seminar is to introduce both the experienced and inexperienced practitioner to the nuts and bolts of bankruptcy law.

Legal and Basis of Bankruptcy

The constitutional basis of bankruptcy law, is Article one, Section 8, under the "Powers of Congress" section which states that "Congress shall have the Power. [t]o establish uniform laws upon the subject of bankruptcies."

Article one, Section 10 of the Constitution is entitled "Powers Prohibited of the States," and it provides that "No State shall pass any Law impairing the Obligations of Contract." These two constitutional provisions effectively preempt state insolvency law when it conflicts with Federal Bankruptcy Law.

The statutory basis of Bankruptcy law is Title 11 of the United States Code also known as the Bankruptcy Code. The modern Bankruptcy Code arose when Congress passed and President Jimmy Carter signed into law the Bankruptcy Reform Act of 1978, and the present law is derived from that bill, as amended. This law gave Bankruptcy Judges "general" jurisdiction over all bankruptcy issues. However, in 1982, the Supreme Court in the case of *Marathon Oil v. Northern Pipeline* 102 S.C. 2858; 458 U.S. 50 declared that the new jurisdictional basis for Bankruptcy Judges violated Article III of the Constitution due to the fact that Bankruptcy judges were not lifetime judges. The Bankruptcy Rules were later amended to provide that "core" proceedings, which were matters generally circumscribed by the statutory law in the Bankruptcy Code could be resolved by the Bankruptcy Judges initially while non-core matters would remain in the province of the District Court. As a practical matter most matters related to a bankruptcy case would be "referred" back to the Bankruptcy Judge, and decided by the

Bankruptcy Court with special appeal rights to the District Court.

In 2005, the Bankruptcy Code was amended so that individuals whose debts were primarily consumer debts must pass a "means test" to qualify for Chapter 7. The purpose was to force more people into Chapter 13 who could pay a "significant" portion of their debts over time, instead of the straight liquidation proceeding under Chapter 7. (See below for more discussion of the various chapters of the Bankruptcy Code.)

In addition to the Bankruptcy Code, there are the Bankruptcy Rules which to a certain extent parallel many of the provisions of the Federal Rules of Civil Procedure and are effective nationwide. However, in order to practice bankruptcy, one must also be familiar with the Local Rules of each court. California is divided into four federal court districts, the Central District of California which is centered in Los Angeles and covers a large portion of Southern California, the Southern District of California, which is centered in San Diego, the Eastern District which is centered in Sacramento and the Northern District which is centered in San Francisco. Each district has its own set of local rules, and any practitioner who chooses to practice in that district should become familiar with the local rules.

Finally there are related Statutory Provisions of the United States Code such as Bankruptcy Crimes which are found in 18 U.S. C. 151 through 158, The related statutory provisions can be found in the Collier *Pamphlet Edition of the Bankruptcy Code*.

Understanding Bankruptcy

The key to understanding bankruptcy is to think of it as a living probate. In a probate, someone dies and his or her property creates an estate. The property is then administered and divided through the laws of probate, which here in California is the California Probate Code. Under the law the property is divided either through a trust, a will or intestate. If it is the latter two, a court entitled a probate court is almost always required, and sometimes when a trust is involved court intervention is necessary. From the decedent's estate, his or her property will first be distributed to pay debts, then administrative claims, then to the beneficiaries or heirs as determined either by the testamentary instrument or through intestate priorities under the law. It is a legal scheme and system to deal with the last remains of the dead, so that property can be divided and distributed according to priorities set by law.

Bankruptcy, like probate, deals with the distribution of a person's property when he is **insolvent**. "Insolvent" is defined as "[t]he condition of a person who is unable to pay his debts". *Black's Law Dictionary*, Revised Fourth Edition. However unlike probate, bankruptcy does not involve a physical death, but merely a financial one, and unlike a deceased person, a successful bankruptcy allows a person a fresh start, either not encumbered by [most of] the pre-bankruptcy debts or alternatively to pay them off through a plan of reorganization, usually at a discount. Upon the filing of a bankruptcy petition, a bankruptcy estate is created which consists of all of the debtor's assets at the time of the filing of the bankruptcy petition. From the bankruptcy estate, the Debtor is allowed to exempt certain items of property so that he or she is not left without the basic necessities of life. Understanding the allowable exemptions is the key to obtaining the most benefit of a Bankruptcy and *by failing to seek advice of competent bankruptcy attorney too late, clients often lose the ability to maximize those exemptions or to lose them entirely.*

Property of the Bankruptcy Estate

Upon the filing of a bankruptcy petition, a bankruptcy estate is created which basically includes all property and contract rights the debtor holds at the time of filing. Bankruptcy Code §541 states in pertinent part as follows:

"§ 541. Property of the estate

(a) The commencement of a case under section [301](#), [302](#), or [303](#) of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section [329 \(b\)](#), [363 \(n\)](#), [543](#), [550](#), [553](#), or [723](#) of this title."

Therefore in effect all legal and equitable interests that the debtor owns as of the time of filing are property of the estate. Certain property comes into the estate if it is obtained within six months of the filing, usually consisting of bequests, or payments of life insurance. Bankruptcy Code §541(a) (5) brings property or rights acquired within 180 days of filing by including property of estate as:

"(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan. "

Bankruptcy Code § 541 (b) describes what is not included as property of the estate and states as in pertinent part as follows"

"(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 ([20 U.S.C. 1001](#) et seq.; [42 U.S.C. 2751](#) et seq.), or any accreditation status or State licensure of the debtor as an educational institution -" Bankruptcy Code § 541 (b) goes on to list other esoteric interests not included, some relating to 529c college accounts, pensions, etc. and should reviewed when such issues are raised by a client's fact situation.

There are three things to generally remember, one is that until proven otherwise all legal and equitable rights of the debtor are property of the estate if they existed at the time of filing, secondly certain rights acquired within 180 days of filing may be brought into the estate post petition and they usually relate to inheritance rights. (§541(a)(5)). Finally some property, usually held for the benefit of third parties may be excluded from the estate under Bankruptcy Code § 541 (b).

The Structure of the Bankruptcy Code

As stated earlier, the substantive law of Bankruptcy is found in Title 11 of the United States Code, and is referred to as the Bankruptcy Code. The Bankruptcy Code is divided into nine (9) chapters; all being odd numbers, except for Chapter 12. Apparently this was so additional chapters may be enacted and placed between other chapters or else Congress could not count consecutively. The first three chapters, chapters 1, 3 and 5, are all administrative in nature, and affect all of the various types of bankruptcies. Chapters 7, 9, 11, 12, 13 and 15 are each different types of bankruptcies designed for different purposes and Debtors. The Chapters are as follows:

Chapter 1—**General Provisions** consisting of §§101 et. seq. Two of the more important sections are §101 which contains Definitions and §109 which is entitled “Who may be a debtor”.

Chapter 3—**Case Administration** consisting of §§301 et. seq. This chapter contains many important provisions, including §362, the Automatic Stay provision. One of the most important provisions of the bankruptcy Code, §362 creates an automatic injunction preventing legal action against the Debtor preventing creditor’s from racing to court, to allow an even administration of the Debtor’s bankruptcy estate.

Chapter 5—**Creditors, the Debtor, and the Estate-** consisting of §§501, et. seq. and which deals with the administration of claims, preferences, avoiding powers and dischargability issues. The muscle and sinew of the bankruptcy code is contained in this Chapter.

Chapters 7, 9, 11, 12, 13 and 15 are each types of bankruptcy. More we will be discussed below, but Chapter 7 is a straight liquidation proceeding. Chapter 9 involves **Adjustment of Debts of a Municipality**, an area this author predicts will be very active in the next decade, but not within the scope of this seminar, as is Chapter 12 which involves **Adjustment of Debts of a Family Farmer or Fisherman With Regular Annual Income**. Chapter 15 involves **Ancillary and Other Cross-Border Cases** which is based on the Model Law on Cross-Border Insolvency promulgated by the United Nations, which is also beyond the scope of this seminar.

Chapter 11 involves Reorganization bankruptcies where a debtor, usually a business or corporation has a cash flow issue and through a plan can reorganize its debts in order to keep a going concern going. Chapter 11 proceedings are paperwork intense and administratively very costly and usually beyond the resources of a consumer debtor, although consumer are not technically disqualified from Chapter 11, but as a practical matter would have to be a high income earner to be considered a feasible candidate.

Chapter 13 entitled **Adjustment of Debts of an Individual with Regular Income** which is probably the second most common consumer bankruptcy proceeding and whose goal is to use future income to pay all or a pro-rata portion of one’s debts through a plan submitted by the debtor, approved by the court and administered by a Chapter 13 trustee. Chapter 13 is a very useful and powerful chapter that allows home owners to reinstate mortgages in default by allowing them to amortize the arrearages over a period of 3 to 5 years, while keeping the regular mortgage payments current. In addition, Chapter 13 cases are filed by those people who need bankruptcy relief, but cannot qualify under the “Means Test” of Chapter 7. (See Bankruptcy Code § 707.)

Therefore the structure of the Bankruptcy Code is that Chapters 1, 3 and 5 relate to all of the Chapters, while the remaining Chapters 7, 9, 11, 12, 13 and 15 stand apart from each other and consist of the substantive bankruptcy for each type of bankruptcy proceeding. Below will be some introductory discussion are the two most important Chapters for consumers, Chapter 7 and 13, and some brief discussion on Chapter 11.

Various Types of Bankruptcy Proceedings

The typical bankruptcy proceeding the bankruptcy practitioner will see are Chapters 7, 11 and 13. From these chapters, the bar is usually divided from those who do business reorganizations under Chapter 11, which require a substantial amount of staffing and are very front heavy in work and therefore are quite expensive. It is not unusual to require five to six figure retainers for Chapter 11 work, depending on the size of the debtor to be reorganized, and the likelihood of reorganization is often less than optimal. However, if a business has a reasonable business model and a short term cash flow problem, Chapter 11 reorganization is a powerful tool to help that business survive.

However, from an individual’s standpoint, a Chapter 11 is often impracticable because of the bookkeeping and legal cost requirements. Therefore the two most common bankruptcies for the average person is Chapter 7 and 13, which will be discussed in some detail below and in much more further detail in the materials that follow.

Chapter 7 Bankruptcies

A chapter 7 bankruptcy is a straight liquidation bankruptcy. The Debtor in effect is stating to the court that here is all of my assets, and all of my liabilities, and from those assets I will take back those minimal amount of property the law allows me to keep called exemptions, and the remainder if any, shall be used first to pay administrative expense and the rest to pay off creditors. There are basically three types of creditors, administrative, secured and unsecured. The secured have a perfected interest in certain property and they are entitled to the full value of that security and to be paid in full for that security. The administrative creditors are

those professionals or other creditors given a priority such as taxes owed to a governmental entity. These administrative creditors are paid in full before the unsecured creditors receive anything, and they are usually paid only a pro-rata share. Often unsecured creditors are paid nothing and these are often called no-asset estates.

In a Chapter 7 bankruptcy a Chapter 7 trustee is appointed. This is the court official who is in charge of administering the estate. He or she will review the debtor's schedules, conduct the first meeting of creditors per Bankruptcy Code § 341 and ultimately decide whether or not the estate is worth administering for the benefit of creditors or whether it is a no-asset estate and close it.

The Chapter 7 debtor will exempt out all of the property he or she is entitled to, and then receive a chapter 7 discharge that will discharge all the unsecured debt that is dischargeable. Some debts are automatically non-dischargeable such as most taxes, alimony, child support and other debts that public policy dictates should not be dischargeable, such as fines, penalties or forfeitures to and for the benefit of a governmental entity (11 U.S.C. 523(a)(7)). For those debts that are automatically not dischargeable, generally see Bankruptcy Code §§523 (a) (1), (3), (5), (7), (9), (10), (11), (12), (13), (14), (14A), (14B), (15), (16), (17) (18) and (19).

There are also certain types of debt that are **potentially** non-dischargeable, which are contained in Bankruptcy Code Sections (a) (2), (4) and (6). Under Bankruptcy Code §523(c) and Bankruptcy Rule 4007, you have sixty (6) days from the date of the first meeting of creditors to file a complaint for non-dischargeability or else the claim of non-dischargeability is barred. It is very important therefore for both bankruptcy and non-bankruptcy practitioners to analyze whether there are any claims for fraud, tortious breaches of fiduciary duty, malicious destruction to property or person, early in the bankruptcy proceeding or else those claims may be barred.

The successful chapter 7 bankruptcy is one where the debtor who is hopelessly burdened with debt is able to get his or her discharge and get a fresh start. With the aging of the baby boomers, many people have found unexpectedly as they approach retirement that they are saddled with debt and lowered income. Bankruptcy is one way where they may shed their impossible debt and begin to restructure their lives on a more streamlined and realistic financial mode.

More discussion will follow in these materials on the specifics of filing a Chapter 7 and the representation of a Chapter 7 debtor.

Chapter 13 Bankruptcy

Chapter 13's are individual wage earner plans. Under Bankruptcy Code § 109 (e) only individuals with a reasonably steady income, (even if self-employed or operating an unincorporated business), are eligible for chapter 13 relief as long as the individual's unsecured debts are less than \$360,475 and secured debts are less than \$1,081,400. 11 U.S.C. § 109(e). These debt limit amounts are adjusted periodically to reflect changes in the consumer price index. A corporation or partnership may not be a chapter 13 debtor.

Chapter 13's are useful for parties who own their own home and have fallen behind in payments. They can reduce or possibly eliminate their unsecured debt while being given time to make up the arrearages on their residence over a period of time, usually 3 to 5 years. In addition in some jurisdictions including the Central District, Chapter 13 under the *In re Lamm* case (*Lam v. Investor Thrift (In re Lam)*, 211 B.R. 36 (BAP 9th Cir. 1997)) even allows the possibility of stripping a second or junior lien that is completely underwater, in other words, has no equity at the time of the filing. A more detailed discussion of Chapter 13 follows in these materials.

Who may be a Debtor under Chapter 7 or 13

§ 109 of the Bankruptcy Code contain the provisions as to who could be a debtor. The pertinent provisions for the purpose of Chapter 7, 11 and 13 are as follows:

“§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this [title \[11 USCS §§ 101 et seq.\]](#).

- (b) A person may be a debtor under chapter 7 of this [title \[11 USCS §§ 701 et seq.\]](#) only if such person is not--
- (1) a railroad;
 - (2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958 [[15 USCS § 689](#)], a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958 [[15 USCS § 681](#)], credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act [[12 USCS § 1813\(h\)](#)], except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act [[12 USCS §§ 611 et seq.](#)], which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 [[12 USCS § 4422](#)] may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or
 - (3) (A) a foreign insurance company, engaged in such business in the United States; or
(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States [[12 USCS § 3101\(b\)](#)]).
- (c) An entity may be a debtor under chapter 9 of this [title \[11 USCS §§ 901 et seq.\]](#) if and only if such entity--
- (1) is a municipality;
 - (2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter [[11 USCS §§ 901 et seq.](#)] by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter [[11 USCS §§ 901 et seq.](#)];
 - (3) is insolvent;
 - (4) desires to effect a plan to adjust such debts; and
 - (5) (A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter [[11 USCS §§ 901 et seq.](#)];
(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter [[11 USCS §§ 901 et seq.](#)];
(C) is unable to negotiate with creditors because such negotiation is impracticable; or
(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this [title \[11 USCS § 547\]](#).
- (e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$ 360,475 and noncontingent, liquidated, secured debts of less than \$ 1,081,400 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts that aggregate less than \$ 360,475 and noncontingent, liquidated, secured debts of less than \$ 1,081,400 may be a debtor under chapter 13 of this [title \[11 USCS §§ 1301 et seq.\]](#).
- (g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if--
- (1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or
 - (2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this [title \[11 USCS § 362\]](#)."

In addition individuals who filing bankruptcy must take pursuant to subsection (h) certain credit counseling courses before filin>

- (h) (1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) [[11 USCS § 111\(a\)](#)] an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis."

The key in determining eligibility is that in Chapter 13's the debtor must be an individual and not exceed the debt ceiling limitations of §109 (g) and entities such as corporation or partnerships are not allowed as Chapter 13 debtors. As to Chapter 7, a consumer debtor must meet the means test. In either chapter they must take the credit counseling course first before filing. This subject will be discussed in more detail in later chapters.

Exemptions

In California, there are two different exemptions schedules, one being the state exemptions and one that is based on the Federal exemptions (CCP§ 703.140(b)). You can only use one of these two schedules and each has a different emphasis. Under the California exemptions, anyone can exempt up to \$75,000.00 or more of equity in their residence and for people over 65 or with physical or mental disabilities, you can exempt up to \$175,000.00 of equity. This means that if you could afford to keep your mortgage current, and had less equity than the homestead and the costs of sale, you might easily keep your residence if you file bankruptcy, as long as you continued to make the mortgage payments and taxes. Therefore, anyone who is saddled with crippling credit card debt, but has some equity in the house, should consider filing bankruptcy or at least get bankruptcy counseling, to determine if they might keep their house while eliminating their unsecured debt. It is better to make that decision sooner rather than later, before equity is eaten up or property foreclosed because one could not afford to pay their mortgage payments and credit card debt.

The Federal type exemptions are more flexible as to the type of property you can keep, but has a very small real estate exemption (\$22,075.00) § 703.140(b)(1) compared to the California exemptions. However, for those people who don't own real property or have no equity the federal exemptions can protect any other property. Under California Code of Civil Procedure § 703.140(b) (5), you can exempt out \$1175.00, plus any amount of the homestead exemption § 703.140(b)(1) not used, for a total of \$23,250.00. Therefore, a renter with a savings account of \$21,000.00 you could theoretically file bankruptcy, discharge all of their credit card and other dischargeable unsecured debt and still keep their savings account. This is a tremendous opportunity to get a fresh start that would be lost if one waited too long to consult a bankruptcy attorney.

Remember if the Debtor has substantial equity in real estate, most likely you will want to use the normal California state exemptions, as the homestead exemptions are the most generous starting at \$75,000.00 and depending on the status and circumstance of the debtor as high as \$175,000.00. If however, the Debtor does not own his own residence, then you will usually want to use the more flexible exemptions that mirror the Federal exemptions, found in California Code of Civil Procedure § 703.140(b), which states as follows (you cannot use both, even if there are joint debtors as stated in § 703.14(a)(1)):

"§ 703.140(b) The following exemptions may be elected as provided in subdivision (a):

(1) The debtor's aggregate interest, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed two thousand seven hundred seventy-five dollars (\$2,775) in value, in one motor vehicle.

(3) The debtor's interest, not to exceed four hundred fifty dollars (\$450) in value in any particular item, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed one thousand one hundred fifty dollars (\$1,150) in value, in jewelry held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed in value nine hundred twenty-five dollars (\$925) plus any unused amount of the exemption provided under paragraph (1), in any property.

(6) The debtor's aggregate interest, not to exceed one thousand seven hundred fifty dollars (\$1,750) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmaturing life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value nine thousand three hundred dollars (\$9,300), in any accrued dividend or interest under, or loan value of, any unmaturing life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive any of the following:

- (A) A social security benefit, unemployment compensation, or a local public assistance benefit.
- (B) A veterans' benefit.
- (C) A disability, illness, or unemployment benefit.
- (D) Alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
- (E) A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless all of the following apply:
 - (i) That plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under the plan or contract arose.
 - (ii) The payment is on account of age or length of service.
 - (iii) That plan or contract does not qualify under [Section 401\(a\)](#), [403\(a\)](#), [403\(b\)](#), [408](#), or [408A of the Internal Revenue Code of 1986](#).
- (11) The debtor's right to receive, or property that is traceable to, any of the following:
 - (A) An award under a crime victim's reparation law.
 - (B) A payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - (C) A payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of that individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.
 - (D) A payment, not to exceed seventeen thousand four hundred twenty-five dollars (\$17,425), on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent.
 - (E) A payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor."

The § 703.140(b) exemptions are much more flexible because you can combine subsections (1) and (5) (consisting of the unused homestead exemption and \$925.00) for a free floating exemption "in any property" such as a bank account. Also the amount is adjusted triennially, so the present amount of the free floating exemption is a combined \$23,250.00, as the homestead exemption is presently \$22,075.00 and the (5) exemption is \$1175.00. Considering that a Chapter 7 debtor could conceivably discharge of his or her unsecured debt, while keeping \$23,250.00 in the bank, bankruptcy can be a powerful tool to giving debtors a fresh start. It is unfortunate that many people wait too long before they see a bankruptcy attorney and often come to an attorney's office when they don't have enough to pay a bankruptcy flat fee. Hopefully, as this country works its way out of the morass that Wall Street and Lenders put it in requiring taxpayer bail outs, more people who have been taken in will realize that they serve a higher purpose getting a fresh start than trying to avoid the inevitable and the stronger they come out of bankruptcy the better for them and the better for society.

Conclusion

This is a simplification of the bankruptcy system, as requirements for filing and actual filing are complex and will be discussed in more detail in subsequent chapters. Some people simply make too much money to file Chapter 7 bankruptcy. However, the determination of income is called the "means test." It is usually based on the debtor's last six months of income, and if they are retired or have been out of work, they may easily qualify. The important message is that to file bankruptcy intelligently, one must plan and one is best served by having a qualified and experienced attorney guide their client earlier rather than later through the system. Let your clients know it is better to see you too soon, rather than too late, as filing bankruptcy is never easy or pleasant, but often it is the most intelligent thing to do in difficult times. If they wait too long they may make mistakes or miss opportunities to get their best fresh start