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Debtors' Duties

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 was intended to prevent higher-income debtors from discharging debt if it they had the ability to pay at least a portion of that debt. To implement that goal, Congress added numerous requirements—some might say hurdles—to obtaining a discharge in both Chapter 7 and Chapter 13 cases. These requirements include increased filing fees, pre- and post-petition counseling, the completion of a complicated means test containing more than fifty parts, and penalties for repeat filers in the form of an abbreviated automatic stay or no stay at all (the automatic stay is discussed in chapter 4). This chapter is intended to assist attorneys representing individuals filing personal bankruptcy cases navigate the filing and other requirements that are prerequisites to a discharge.

Overview

Q 3.1 What are attorneys' initial considerations in advising clients about their duties?

Whether the debtor elects to file a Chapter 7 or Chapter 13 petition, an attorney must consider whether the debtor has filed one or more prior bankruptcy petitions, as multiple filings will affect whether the automatic stay arises, and if it does, its duration.[1] An attorney also must advise a potential debtor about the need to accumulate records, as the debtor will have to produce tax returns, pay advices, and other information, as well as the names and addresses of all creditors.

In a Chapter 7 bankruptcy, an attorney must evaluate the results of the means test in order to advise clients whether Chapter 7 is a viable option for them or whether it would likely generate a motion to dismiss their case for abuse.[2]

Of course, a debtor choosing to file a Chapter 13 petition has additional duties, the most important of which is to file a plan. The duties

of Chapter 13 debtors are discussed more extensively in chapter 6 of this book. An attorney advising an individual or couple contemplating filing a Chapter 13 petition must first determine whether eligibility criteria are satisfied.

Eligibility Requirements

Q 3.2 Who is eligible to file under Chapter 7?

An individual or an individual and his or her spouse are eligible for relief under Chapter 7 of the Bankruptcy Code.[3] All individual debtors must obtain a credit counseling briefing (discussed in detail below). Assuming the fulfillment of all required duties and the absence of a presumption of abuse arising after completion of the means test calculations embodied in Official Form 22A (discussed in chapter 5 of this book), an individual proceeding under Chapter 7 can expect to have the case resolved within four to six months, absent litigation involving, for example, the trustee's strong-arm powers or issues arising under sections 523 and 727 of the Bankruptcy Code.

Q 3.3 Who is eligible to file under Chapter 13?

The eligibility requirements for relief under Chapter 13 are more stringent than those under Chapter 7:

> 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. . . .[4]

As with Chapter 7, to be eligible for relief under Chapter 13, all individual debtors must obtain a credit counseling briefing (discussed in detail below). Chapter 13 requirements are discussed in more depth in chapter 6 of this book.

Q 3.3.1 What if the debtor has filed prior bankruptcy cases?

There are distinct eligibility requirements for debtors who have filed prior bankruptcy cases. The Bankruptcy Code precludes an individual from being a debtor if he has been a debtor in a case at any time within 180 days if his prior case was dismissed by the court for willful failure to abide by orders of the court or to appear in proper prosecution of the case.[5] Additionally, an individual may not be a debtor if he requested and obtained a voluntary dismissal of his case after a creditor has filed a request for relief from the automatic stay.[6]

Q 3.3.2 What is "willful failure" to abide by court orders?

The term "willful" is not defined in the Code. Courts have interpreted it to mean deliberate or intentional, rather than accidental or beyond the debtor's control.[7] The Bankruptcy Code is silent about when a finding of willful failure by the debtor is to be made—that is, upon dismissal of the prior case, or at the time of the filing of the new case within 180 days of the prior case. The majority of courts holds that a court may make a finding of willfulness in the subsequent case when asked to determine whether an individual is eligible to be a debtor.[8] The majority of courts also holds that attendance at the section 341 meeting is mandated by court order, and failure to attend may constitute a willful failure to abide by a court order.[9]

Initial Filing Requirements

Q 3.4 What are the debtor's immediate duties?

To obtain relief under the Bankruptcy Code, a debtor must initially do three things, in this order:

(1) obtain a pre-petition credit counseling briefing;
(2) file a petition that comports with Official Form 1; and
(3) pay the filing fee.

Except for filing the petition, there are exceptions to each of the other two requirements (discussed below). These three requirements are only the first step, though. There are considerably more.

Credit Counseling Briefing

Q 3.5 What is a credit counseling briefing?

Debtors are required to obtain a briefing that outlines "the opportunities for available credit counseling" and provides assistance in performing a budget analysis.[10] The debtor must obtain the briefing, either individually or in a group, from an approved nonprofit budget and credit counseling agency, in person, over the telephone, or via the Internet, "during the 180-day period preceding the date of the filing of the petition."[11] The trend is to permit the briefing on the same day that the petition is filed.[12]

The credit counseling requirement is not regarded as jurisdictional.[13] For example, in *In re Warren*,[14] the Ninth Circuit upheld the bankruptcy court's refusal to dismiss the debtor's case where the debtor had failed to obtain a pre-petition credit counseling briefing and to file financial information required by section 521(a)(1) within forty-five days. The Ninth Circuit focused on the interplay of sections 521(a) and 521(i), holding that the bankruptcy court acted within its discretion in issuing an order waiving the filing requirements of section 521(a) even though the section 521(i)(1) deadline had passed.

Q 3.5.1 Are there exceptions to the credit counseling briefing requirement?

Yes, but they are limited. The requirement does not apply if the court finds, after notice and a hearing, that the debtor is unable to complete the requirement because of:

(1) incapacity;
(2) disability; or
(3) active military duty in a combat zone.

"Incapacity" means that the debtor is impaired by mental illness or mental deficiency so that he is incapable of realizing and making rational decisions about his financial responsibilities.

"Disability" means that the debtor is so physically impaired that he or she is unable, "after reasonable effort," to participate in a briefing in person, on the telephone, or via the Internet.[15]

A temporary waiver of the credit counseling briefing may be obtained if the debtor files a certification that (1) describes exigent circumstances, and (2) states that the debtor requested credit counseling services but was unable to obtain them during the seven-day period beginning on the date on which the debtor made the request. The certification also must be satisfactory to the court.[16] The temporary exemption expires thirty days after the debtor files the petition, although the court, for cause, may order an additional fifteen-day extension.[17]

Q 3.5.2 What are the consequences of failing to meet the credit counseling briefing requirements?

When filing a petition, the debtor must indicate on page 2 of Official Form 1 that he has attached a completed and signed Exhibit D, "Individual Debtor's Statement of Compliance with Credit Counseling Requirement," which enables an individual debtor to certify that he has received a credit counseling briefing prior to filing the petition, as required by section 109(h), or to request a temporary waiver of, or exemption from, the requirement (discussed below). Exhibit D includes directions to attach required documentation or, if the debtor requests a temporary waiver or an exemption, a motion so that the issue of the debtor's entitlement to a waiver or exemption may be determined by the court. Exhibit D also sets forth the consequences for failing to obtain the credit counseling briefing:

> BAPCPA's credit counseling requirement has spawned numerous decisions, and a split of authority has emerged as to whether a case filed without the proper certification should be dismissed or stricken.[18] Some courts view section 109(h)(3)(A)(i)'s requirement that the debtor show exigent circumstances narrowly, holding that foreclosure sales scheduled to occur within days of the bankruptcy filing do not constitute exigent circumstances.[19] There is also disagreement about whether the certification must be made under penalty of perjury.[20] Whether a debtor's case is dismissed or stricken—and the majority view is that dismissal is the appropriate consequence for failure to properly file the certificate of credit counseling[21]—the ramifications are important if the debtor elects to refile because of the automatic stay provisions set forth in subsections 362(c)(3) and (c)(4).

WARNING: You must be able to check truthfully one of the five statements regarding credit counseling listed below. If you cannot do so, you are not eligible to file a bankruptcy case, and the court can dismiss any case you do file. If that happens, you will lose whatever filing fee you paid, and your creditors will be able to resume collection activities against you. If your case is dismissed and you file another bankruptcy case later, you may be required to pay a second filing fee and you may have to take extra steps to stop creditors' collection activities.

The Petition

Q 3.6 What is Official Form 1?

Official Form 1 (Voluntary Petition) commences the bankruptcy case. It is largely self-explanatory, requiring the debtor to provide his name, other names used in the past eight years, street address, mailing address, and the last four digits of his Social Security number. It also requires the debtor to indicate the type of debtor he is—individual (or joint), corporation, partnership, or "other"—the nature of any business, the chapter under which the petition is filed, and various types of statistical information relative to estimated number of creditors and the estimated value of assets and extent of liabilities. The debtor must also list all prior bankruptcies within the last eight years, as well as those of his spouse, partner, or an affiliate.

Q 3.6.1 Does the petition require the debtor to disclose information about a lease of residential real property?

Yes. Page 2 of the petition contains a "Certification by a Debtor Who Resides as a Tenant of Residential Property," where a tenant of residential real property must state whether a landlord has a judgment for possession of the premises, whether under applicable nonbankruptcy law the debtor would be permitted to cure the monetary default, and whether the debtor has made the appropriate deposit with the court. This addition to the form implements section

362(*l*). A box also is provided that allows the debtor to certify that he has served the landlord with the certification as required by section 362(*l*)(1).[22]

Q 3.6.2 What other information is required on the petition?

The petition requires the signature of the debtor's attorney in cases where the debtor's debts are primarily consumer debts, attesting to the delivery of information about relief available under Chapters 7, 11, 12, and 13.[23]

Exhibit C to the petition requires the debtor to attest to whether he owns or has possession of any property that poses or is alleged to pose a threat of imminent and identifiable harm to public health and safety.

The debtor must provide information about venue.

The debtor also must sign the petition under penalty of perjury, and if a non-attorney bankruptcy petition preparer or an attorney is involved in the case, the appropriate signatures are required.[24] The attorney signature box sets forth the condition that, in a case in which section 707(b)(4)(D) applies, the attorney's signature constitutes a certification that the attorney has no knowledge, after an inquiry, that the information in the schedules filed with the petition is incorrect.[25]

The Filing Fee

Q 3.7 How much is the filing fee?

The filing fee for a Chapter 7 petition is $299.

The filing fee for a Chapter 13 petition is $274.[26]

Q 3.7.1 Do all debtors have to pay the filing fee with the petition?

No. The bankruptcy court may waive the filing fee for Chapter 7 debtors whose income is less than 150% of poverty guidelines last published by the Department of Health and Human Services, applicable to the debtor's family size, if the debtor is unable to pay the fee in installments.[27] To obtain a waiver, the debtor must meet the

income requirement and, under penalty of perjury, sign and file Official Form 3B.

Q 3.7.2 Does a debtor who does not qualify for a waiver of the filing fee have other payment options?

A debtor whose income exceeds 150% of the HHS poverty guidelines may apply to pay the applicable fee in installments. A request can be made using Official Form 3A. On the form, the debtor must state that he will not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with the case until the filing fee is paid in full. The number of installments may not exceed four, and the last payment must be made not later than 120 days after the filing of the petition. For cause, the court may extend the time until 180 days after the date of filing the petition. In a Chapter 13 case, the trustee may not make any further payments to an attorney until the filing fee is paid in full.[28]

Other Official Forms

Q 3.8 What other documents must the debtor file in conjunction with the petition?

The debtor is required to file numerous documents with the petition or within fourteen days thereafter, except as noted below. The debtor may obtain an extension of time within which to file documents, but only on motion, for cause shown, and on notice to the U.S. trustee.[29] Thus, in addition to the petition, Official Form 3A or 3B (if applicable), and the certificate evidencing receipt of a credit counseling briefing, Chapter 7 debtors must file the following documents:

- Official Form 6 (Schedules A–J, a Summary of Schedules, and a Declaration);[30]
- A statement that appears on the bottom of Schedule I, disclosing any reasonably anticipated increase in income or expenditure over the twelve-month period following the filing of the petition;
- Official Form 7 (Statement of Financial Affairs);
- Official Form 22A (Statement of Current Monthly Income and Means Test Calculation);
- A creditor matrix and Verification of Creditor Matrix;[31]
- Official Form 21 (Statement of Social Security Number);[32]

- A notice that the debtor received the information provided under section 342(b);[33]
- A statement disclosing compensation paid or to be paid to an attorney in accordance with Rule 2016(b);
- Copies of payment advices or other evidence of payment received by the debtor from an employer within sixty days before the filing of the petition;
- A record of any interest the debtor may have in an education individual retirement account or state tuition program described in section 521(c); and
- A statement as to whether there is a proceeding pending in which the debtor may be found guilty of a felony of a kind described in section 522(q)(1)(A) or found liable for a debt described in section 522(q)(1)(B), if a debtor claims an exemption in property described in section 522(p)(1) with a value in excess of the value set forth in section 522(q)(1).[34]

Chapter 7 debtors must also file Official Form 8 (Statement of Intention), discussed below.

Chapter 13 debtors must also file Official Form 22C instead of Official Form 22A, and they also must file a Chapter 13 plan.

Beyond these pre-petition forms, an individual Chapter 7 or Chapter 13 debtor must file Official Form 23 (Debtor's Certification of Completion of Postpetition Instructional Course Concerning Personal Financial Management) to obtain a discharge. The statement must be filed within forty-five days after the first date set for the meeting of creditors in a Chapter 7 case, or not later than the date when the last payment was made under the debtor's plan or the filing of a motion for a hardship discharge in a Chapter 13 case.[35]

Q 3.8.1 Where are the Official Forms located?

The Official Forms may be purchased at office supply and stationery stores. Many bankruptcy courts have websites that allow access to the forms. The forms also are available through Westlaw and Lexis. Additionally, software programs are available to assist attorneys in completing the forms.

Preparing the Forms

Q 3.9 In preparing the schedules and other required documents, are there forms that need particular care or attention?

Attorneys should be aware that hastily prepared schedules that contain errors and omissions trigger close scrutiny by Chapter 7 and Chapter 13 trustees. The following list highlights areas that are commonly subject to mistakes and that require particular care:

Schedule A (Real Property)

- Determine whether property is held in trust. If real property is held in trust, it should be listed on Schedule B, *not* on Schedule A, and it cannot be claimed as exempt as a homestead on Schedule C, unless there is a merger of the legal title and equitable title—a circumstance that only occurs when the trustee and beneficiary are the same.[36]
- Determine whether real estate has been transferred and, if there has been a divorce proceeding, whether a separation agreement affects the debtor's rights to proceeds in the event of a sale.
- Check encumbrances on the property and review the debtor's credit report. Statutory and judicial liens, such as real estate tax liens, should be listed on Schedule D. Judicial liens may be avoidable as impairing the debtor's exemptions.[37]
- Determine the value of the debtor's real estate and other property. Understating the value of property may result in litigation involving the debtor's entitlement to a discharge.[38]

Schedule C (Property Claimed as Exempt)

- If the debtor has options, determine what exemptions best protect the debtor and make sure the debtor is entitled to the exemptions he claims.[39] The state or local law that is applicable to the debtor's exemptions on the date of the filing of the petition is the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition, or if the debtor's domicile has not been located at a single state for

such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place.[40] If the domiciliary requirement renders a debtor ineligible for any state exemptions, the debtor may elect to use the federal exemptions pursuant to the catch-all provision of section 22(b)(3).[41] In all instances, the full amount of the available exemption should be claimed.

Schedules D, E, and F (claims of creditors)

- Be sure to indicate whether the debts are joint debts, debts owed by both the husband and wife, debts for which there is a co-debtor, or marital community-type debts. Be sure to indicate whether the debts are contingent, unliquidated, or disputed. Priority debts often include domestic support obligations and taxes, which should be listed on Schedule E.
- Ascertain the value of motor vehicles and balances in bank accounts belonging to the debtor. They should review the debtor's tax returns to determine whether the debtor is likely to be entitled to a tax refund.

Failure to File

Q 3.10 What happens if the debtor does not file the required documents?

The debtor's case may be dismissed. The reason is simple: Absent compliance with the requirements to file schedules, a statement of financial affairs, either Official Form 22A or 22C, and other documents, a trustee's ability to administer the bankruptcy case is thwarted. The debtor's failure to fulfill his duty to file required documents strongly suggests a lack of seriousness about, or entitlement to, the protection of the Bankruptcy Code and receipt of discharge.

Q 3.10.1 What should a debtor do to avoid dismissal for failure to file documents?

Section 521(i) of the Bankruptcy Code provides that, subject to certain exceptions, the failure to file the required documents warrants dismissal automatically on the forty-sixth day of a case, unless the debtor requests within the forty-five days, and is allowed,

an additional period to file the documents, not to exceed forty-five days, if the court finds justification for the extension.[42] A creditor also may seek dismissal for failure to file the documents set forth in section 521(a)(1), and the court, subject to section 521(i)(4), is required to enter the order of dismissal "not later than 7 days after such request."[43] Section 521(i)(4), however, provides that, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if it finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) concerning pay advices, and that the best interests of creditors would be served by administration of the case.[44]

Two recent circuit court cases affect dismissal of cases when debtors attempt to manipulate the provisions of section 521(a)(1) to take advantage of automatic dismissal after the trustee has discovered assets. In *In re Warren*[45] and *In re Acosta-Rivera*,[46] the Ninth Circuit and the First Circuit, respectively, held that the bankruptcy court had discretion to waive the filing requirements set forth in section 521.[47]

To avoid unproductive litigation involving the convoluted provisions of section 521(i), attorneys should not file a bankruptcy petition until the schedules and other documents have been completed. If this is impossible because of an imminent foreclosure sale or other emergency requiring an immediate filing, attorneys should, at the very least, get the documents filed before the section 341(a) meeting to avoid the risk of having the case dismissed.

Statement of Intention

Q 3.11 What is a Statement of Intention and why is it so important?

The Statement of Intention is the means by which the debtor informs secured creditors whether he intends to surrender, redeem, or reaffirm debts that are secured by property of the estate. BAPCPA added new and onerous requirements with respect to filing the Statement of Intention and performing the intentions stated in it. "Under BAPCPA, termination of the automatic stay may occur through either

of two independent provisions: section 521(a)(6) or the combination of sections 521(a)(2)(C) and 362(h). These provisions use some similar terminology, but differ in important respects."[48]

Q 3.11.1 How do these provisions governing the automatic stay relate to the filing of the Statement of Intention?

The first provision, section 521(a)(6), provides that a Chapter 7 debtor may not retain possession of personal property for which a fully or partially secured creditor has an allowed claim for the purchase price, unless the debtor, not later than forty-five days after the first meeting of creditors under section 341(a), either enters into a reaffirmation agreement pursuant to section 524(c)[49] or redeems the property pursuant to section 722.[50] If the debtor fails to act within the forty-five-day period, the stay under section 362(a) (discussed in chapter 4 of this book) is terminated with respect to the personal property of the estate or of the debtor. The property then is no longer property of the estate, and the creditor may take whatever action is permitted by applicable nonbankruptcy law.

The Bankruptcy Code carves out an exception, however. If the trustee files a motion before the expiration of the forty-five-day period and the court determines, after notice and a hearing, that the property is of consequential value or benefit to the estate, the stay is not terminated. The court may order appropriate adequate protection of the creditor's interest and order the debtor to deliver any collateral in his possession to the trustee.[51]

The second provision, section 521(a)(2)(A), provides that within thirty days after the date of the filing of a Chapter 7 petition, or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, an individual debtor *must file* the Statement of Intention with respect to the retention or surrender of property, both real and personal. The debtor must specify that the property is claimed as exempt, that he intends to redeem the property, or that he intends to reaffirm debts secured by the property.[52]

Section 521(a)(2)(B) provides that, within thirty days after the first date set for the meeting of creditors under section 341(a), or within such additional time as the court, for cause, within such thirty-

day period, fixes, the debtor *must perform* his stated intention with respect to the property.

Section 521(a)(2)(C) of the Bankruptcy Code provides, however, that "nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the trustee's rights with regard to such property . . . except as provided in section 362(h)."[53]

Section 521(d) references both section 521(a)(6) and section 362(h). It applies to leased and bailed property, as well as to property in which a creditor holds a security interest. It provides that the Bankruptcy Code is not intended to prevent or limit the operation of so-called ipso facto clauses that have the effect of placing the debtor in default by reason of the commencement of the bankruptcy case.

> In other words, if a debtor fails to comply with whichever automatic-stay-termination regime applies, the automatic stay is terminated, and any ipso facto clause in the contract, as well as the lien, becomes enforceable. The creditor would then be able to seek relief against the debtor in state court under state law, including (1) seeking to repossess the encumbered personal property and (2) seeking to obtain a deficiency judgment against the debtor *in personam*.[54]

Q 3.11.2 What are the consequences for failure to meet the Statement of Intention filing requirements?

Section 362(h) implements the provisions of section 521(a)(2). If an individual debtor fails within the applicable time to file the Statement of Intention required under section 521(a)(2), the stay provided by section 362(a) is terminated with respect to personal property of the estate or of the debtor if the personal property secures, in whole, or in part, a claim and the personal property ceases to be property of the estate.[55] The stay also will terminate if the debtor fails to indicate in the Statement of Intention whether he will either surrender the personal property or retain it and, if he intends to retain it, whether he intends to redeem it pursuant to section 722 or to enter into a reaffirmation agreement pursuant to section 524(c).[56] Additionally, the stay will terminate if the debtor fails to timely take the action he specified in the Statement of Intention, unless the statement specifies the debtor's intention to reaffirm the debt on the original contract terms

and the creditor refuses to agree to the reaffirmation on those terms.[57] Again, there is an exception if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2) and after notice and a hearing, that the personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and delivery of the collateral in the debtor's possession to the trustee.[58]

Q 3.11.3 Does section 362(h) apply to leases?

Section 362(h) also applies to unexpired leases of personal property. The debtor must take action to assume the lease. If a lease of personal property is not assumed by the trustee, the leased property is no longer property of the estate.[59] The Chapter 7 debtor may notify the creditor in writing of a desire to assume the lease. Upon receipt of the notification, the lessor may notify the debtor that it is willing to have the debtor assume the lease, subject to the cure of any defaults on terms set forth in the contract. Any liability will be assumed by the debtor, not the bankruptcy estate.[60]

Q 3.12 What is the status of the "ride-through"?

The viability of the "fourth option," or the "ride through"—where the debtor retains collateral and makes contract payments without redeeming or reaffirming the debt[61]—is affected by section 521(a)(2), as well as related sections 521(a)(6), 521(d), and 362(h). Since BAPCPA, most (but not all) courts have determined that for personal property the so-called fourth option has been eliminated;[62] however, issues remain. Some courts have held that the changes made by BAPCPA do not apply to real property.[63] Other courts have determined that, if the debtor has timely filed a Statement of Intention to redeem or reaffirm and taken action to carry out that intention, the provisions of sections 362(h) and 521(d) do not apply, even if the stated intention is not actually carried out because of the court's disapproval of a reaffirmation agreement. Under those circumstances, the debtor can keep the collateral and make contract payments.[64]

Redemption

Q 3.13 What is redemption?

Section 722, which governs the retention of "tangible personal property intended primarily for personal, family, or household use, from a lien securing a dischargeable consumer debt,"[65] allows a debtor to redeem property "by paying the holder of such lien the amount of the allowed secured claim of such holder that is secured by such lien in full at the time of redemption."[66]

Q 3.13.1 What steps must the redeeming debtor take to stop automatic termination of the stay under section 362(h)?

In *In re Parker*,[67] the court addressed the question of how much "action" is required to maintain the automatic stay where the debtors had not actually paid the secured creditor. It concluded:

> The simple answer is that the prudent debtor will file a motion to redeem or a reaffirmation agreement prior to the end of the 45-day period following the first meeting of creditors. Such a bright line test would help both debtors and creditors know whether the automatic stay remains enforceable. Moreover, the debtors have ample time, between 65 and 85 days from the petition date, to file this precautionary motion.[68]

The court did not reject the possibility that the debtor could comply with his duties in less formal ways, noting that the debtor could call the creditor to obtain consent to an extended performance period. Nevertheless, the court held that a debtor who stops making regular monthly payments, fails to keep the creditor apprised, and fails to file a motion to redeem forfeits the protection of the automatic stay. In short, according to the court in *Parker*, the debtor has not demonstrated "the minimal effort needed to perform his stated intentions."[69]

Even if the debtor fails to timely redeem personal property resulting in the termination of the automatic stay, his right to redeem does not terminate when the stay terminates, and the redeemed property need not be property of the bankruptcy estate.[70]

Q 3.13.2 What is the proper date for valuation of the collateral—the petition date or the date of the hearing on the redemption motion?

Courts disagree as to the proper date for valuation of collateral. Some courts utilize the hearing date,[71] while others utilize the petition date.[72] Local authority, if any, should be consulted.

Q 3.13.3 What valuation standard applies to redemption of property?

The Bankruptcy Code does not specify a particular standard, so courts refer to section 506(a)(2). Courts have adopted a variety of methods, including the *Kelly Blue Book* private party value, the *Kelly Blue Book* retail value, or the midpoint between those values.[73]

Reaffirmation

Q 3.14 What are the requirements of an enforceable reaffirmation agreement?

The general requirements are set forth in section 524(c). Reaffirmation agreements are strictly construed as "run[ning] contrary to the concept of the 'fresh start.'"[74] In sum, the following requirements apply:

> Reaffirmation agreements must be in writing and entered into prior to the granting of the discharge. The debtor must be advised that reaffirmation agreements are purely voluntary. He or she must be advised of the consequences and effect of a reaffirmation agreement, either by counsel or the Court. A debtor also has an absolute right to rescind a reaffirmation agreement within certain time frames. In addition, in order for a reaffirmation agreement to be binding, one of two additional events must take place: if a debtor is represented by counsel, his or her counsel must file a declaration or affidavit stating that the reaffirmation agreement was voluntarily and knowledgeably entered into by the debtor, that counsel explained the effects and consequences of the reaffirmation, and that, in the attorney's opinion, reaffirmation of the debt at issue does not impose an undue hardship upon the debtor or any of his or her dependents. If a debtor is not represented by counsel, then

> the Court must hold a hearing at which the debtor must appear. At that hearing, the Court must explain to the debtor the legal effect of the reaffirmation agreement, and find that reaffirmation of the debt at issue does not impose an undue hardship upon the debtor or any of the debtor's dependents.[75]

Because the effect of an enforceable reaffirmation agreement is the survival of a dischargeable debt, attorneys should study the many complex and detailed provisions of section 524 carefully and assess whether local bankruptcy rules or local forms apply. Official Form 27, the Reaffirmation Agreement Cover Sheet, is now required. BAPCPA has shifted much of the responsibility to debtor's counsel for oversight and approval of reaffirmation agreements.[76]

Tax-Related Obligations

Q 3.15 What are the debtor's obligations with respect to tax payments and tax returns?

There are many significant duties imposed on debtors with respect to tax payments and reporting obligations. In particular, not later than seven days before the date *first set* for the first meeting of creditors, the debtor must provide the trustee with a copy of the federal income tax return required under applicable law for the most recent tax year ending immediately before the commencement of the case and for which a federal income tax return was filed.[77] If a creditor timely requests a copy or the return, the debtor, at the same time he provides the trustee with a copy of his return, must provide a copy to the creditor.[78]

Additionally, at the request of the court, the United States trustee, or any party in interest in a Chapter 7 or Chapter 13 case, the debtor must file with the court a copy of each federal income tax return required under applicable law at the same time he files it with the taxing authority for each tax year ending while the case is pending.[79] The same requirement applies to federal income tax returns that the debtor had not filed with the taxing authority at the commencement of the case and that are "subsequently filed for any tax year of the debtor ending in the three-year period ending on the date of the

commencement of the case."[80] The requirement also applies to amendments.[81]

In Chapter 13 cases, an individual must file under penalty of perjury a statement of income and expenditures during the most recently concluded tax year, as well as a statement of monthly income that shows how monthly income is calculated. The statement must be filed on the date that is either ninety days after the end of the tax year or one year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before the later date.[82] The Bankruptcy Code also requires that the statement be filed annually after the plan is confirmed and until the case is closed. The filing must occur not later than the date that is forty-five days before the anniversary of the confirmation of the plan.[83]

Specifically, the statements require the debtor to disclose:

(A) the amount and sources of the income of the debtor;
(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and
(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.[84]

Q 3.15.1 What are the consequences for failure to meet these requirements?

If the debtor fails to provide the trustee or creditor with a copy of the federal income tax return (as described above), the court is required to dismiss the case unless the debtor demonstrates that his failure to comply was due to circumstances beyond his control.[85] If the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing the return, the taxing authority may move to convert or dismiss the case. If the debtor fails to file the required return or obtain the extension within ninety days after a request is filed by the taxing authority, the court is required to convert or dismiss the case, whichever is in the best interests of creditors and the estate.[86]

Debtors' Other Duties

Q 3.16 What other duties do debtors have with respect to the section 341 meeting and other matters?

The debtor must appear at the section 341 meeting of creditors, be sworn under oath,[87] and cooperate with the trustee or auditor serving under 28 U.S.C. § 586(f), as necessary to enable the trustee to perform his duties.[88] Chapter 7 debtors must surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate.[89]

Q 3.17 Does the Chapter 7 debtor have to appear in court absent the commencement of an adversary proceeding?

Yes, if he seeks to reaffirm a debt and is unrepresented by counsel.[90] A bankruptcy court in Oklahoma has held that it is impermissible for an attorney to attempt to limit his services to exclude representation of the debtor in the negotiation of a reaffirmation agreement.[91]

In some jurisdictions, a hearing is not held if the debtor is represented by an attorney and the reaffirmation agreement does not impose an undue hardship. If the debtor is represented by counsel, but counsel does not submit an affidavit or declaration with respect to the criteria set forth in section 524(c)(3), the court may schedule a hearing to consider approval of the reaffirmation agreement. Additionally, court review of reaffirmation agreements is required if the debtor's budget reflects a monthly income less than monthly expenditures.[92]

Q 3.18 What are the debtor's obligations with respect to Rule 2004 examinations?

If the trustee or a creditor wishes to further examine the debtor under oath, he must appear at a Rule 2004 examination.[93] That examination may relate only to the acts, conduct, or property of the debtor or to his liabilities and financial condition, as well as any matter that may affect the administration of the debtor's estate or the debtor's

right to a discharge. The scope of the examination "is very broad and great latitude of inquiry is ordinarily permitted."[94] Nevertheless, courts will limit "fishing expeditions" if it is clear the 2004 examination is intended to harass the debtor or circumvent the discovery rules applicable to adversary proceedings.[95]

In a Chapter 13 case, the examination may pertain to the operation of any businesses and the desirability of their continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan, and the consideration given or offered, as well as any other matter relevant to the case or formulation of a plan.[96]

Notes

1. See chapter 4 for an explanation of the automatic stay.
2. 11 U.S.C. § 707(b).
3. *See supra* chapter 1, text at notes 43 and 44, for a brief discussion of the Defense of Marriage Act, 1 U.S.C. § 7.
4. 11 U.S.C. § 109(e). These amounts are indexed. *See* 11 U.S.C. § 104(a).
5. 11 U.S.C. § 109(g)(1).
6. 11 U.S.C. § 109(g)(2).
7. *In re* Wen Hua Xu, 386 B.R. 451, 455 (Bankr. S.D.N.Y. 2008) (citing cases).
8. *Id*.
9. *Id*. at 456.
10. 11 U.S.C. § 109(h)(1).
11. *Id*. There is a split of authority as to whether the counseling must take place at least one calendar day prior to the date of filing. *See In re* Cole, 347 B.R. 70 (Bankr. E.D. Tenn. 2006) (the day before filing is the last possible date); *In re* Murphy, 342 B.R. 671 (Bankr. D.D.C. 2006) (same). *Contra In re* Francisco, 390 B.R. 700 (B.A.P. 10th Cir. 2008) (interpreting language of section 109(h)(1) "during the 180-day period preceding the date of filing of the petition by such individual" to allow briefing on day of filing); *In re* Moore, 359 B.R. 665 (Bankr. E.D. Tenn. 2006); *In re* Spears, 355 B.R. 116 (Bankr. E.D. Wis. 2006) (same); First Shore Fed. Sav. & Loan Ass'n v. Hudson (*In re* Hudson), 352 B.R. 391 (Bankr. D. Md. 2006) (same); *In re* Warren, 339 B.R. 475 (Bankr. E.D. Ark. 2006) (same). If the credit counseling briefing takes place more than 180 days prior to filing, the better reasoned conclusion is that the statute has not been satisfied. *In re* Jones, 352 B.R. 813 (Bankr. S.D. Tex. 2006). *Contra, In re* Bricksin, 346 B.R. 497 (Bankr. N.D. Cal. 2006).
12. *In re* Francisco, 390 B.R. 700 (B.A.P. 10th Cir. 2008) (interpreting language of section 109(h)(1) "during the 180-day period preceding the date of filing of the petition by such individual").
13. Mendez v. Salven (*In re* Mendez), 367 B.R. 109, 116 (B.A.P. 9th Cir. 2007).
14. Wirum v. Warren (*In re* Warren), 568 F.3d 1113 (9th Cir. 2009). The Ninth Circuit implicitly determined that the debtor's chapter 7 case could proceed even though the debtor had failed to comply with 11 U.S.C. § 109(h).
15. 11 U.S.C. § 109(h)(4). Incarceration is neither an incapacity nor a disability. *In re* Anderson, 397 B.R. 363, 366 (B.A.P. 6th Cir. 2008) (citing cases). One court, however, granted a permanent waiver because the debtor had no telephone or computer access in prison. *In re* Vollmer, 361 B.R. 811, 814–15 (Bankr. E.D. Va. 2007). *See also In re* Hubel, 395 B.R. 823 (N.D.N.Y. 2008) (incarceration is not an exigent circumstance).
16. The more conservative cases require that the "certification" be under "penalty of perjury" as provided for in 28 U.S.C. § 1746, *see In re* Hubbard, 333 B.R.

373, 376 (Bankr. S.D. Tex. 2005), but there is authority to the contrary, *see In re* Graham, 336 B.R. 292, 298 (Bankr. W.D. Ky. 2005) (citing cases).

17. 11 U.S.C. § 109(h)(3)(A), (B). There are numerous decisions in which courts have discussed issues relating to section 109(h), and attorneys should evaluate local precedent. For example, is a foreclosure sale an exigent circumstance? Does the debtor need to make the request for a briefing within seven days before the date of the filing of the petition?

18. *See In re* Ross, 338 B.R. 134 (Bankr. N.D. Ga. 2006), discussing the issue of whether to dismiss or strike petitions if debtors fail to comply with 11 U.S.C. § 109(h) and discussing cases. Resolution of the issue is important because if the case is dismissed the provisions of 11 U.S.C. § 362(c)(3) and (c)(4) may jeopardize the debtor's ability to obtain and/or retain the benefits of the automatic stay. The court stated the following:

> [E]ligibility under § 109 in general and under § 109(h) in particular is not jurisdictional and that, therefore, the filing of a petition by a debtor ineligible to do so nevertheless commences a bankruptcy case that is neither a "nullity" nor void ab initio. Consequently, upon timely determination that an individual ineligible to be a debtor under § 109(h) has filed a petition, the proper remedy is dismissal of the case.

338 B.R. at 136. *See also In re* Falcone, 370 B.R. 462, 466 (Bankr. D. Mass. 2007), noting that "a majority of courts have ruled that dismissal is the proper remedy on the grounds that because a bankruptcy court retains jurisdiction to decide eligibility, it has a case before it that can only be disposed of by way of dismissal."

19. *See* Dixon v. LaBarge (*In re* Dixon), 338 B.R. 383, 388 (B.A.P. 8th Cir. 2006). *But see In re* Childs, 335 B.R. 623, 630 (Bankr. D. Md. 2005).

20. *See In re Dixon*, 338 B.R. at 387 (citing *In re* Hubbard, 332 B.R. 285, 289 (Bankr. S.D. Tex. 2005) (requiring a certification that is sworn under penalty of perjury)); *but see In re* Graham, 336 B.R. 292, 295–96 (Bankr. W.D. Ky. 2005) (stating that a certification need not be sworn under penalty of perjury).

21. *See* note 18, *supra*.

22. 11 U.S.C. § 362(*l*). *See* chapter 4 of this book.

23. *See* 11 U.S.C. § 342(b).

24. *See* 11 U.S.C. § 110. That section defines "bankruptcy petition preparer" and sets forth rules governing a preparer's conduct as well as consequences for failure to abide by those rules.

25. *See* "Certification/Representations to the Court" in chapter 2, *supra*, for further discussion about an attorneys' signatures/certifications.

26. *See* 28 U.S.C. § 1930(a)(1), setting forth filing fees of $245 and $235 for Chapter 7 and Chapter 13 cases, respectively. The Judicial Conference of the United States has prescribed additional fees pursuant to 28 U.S.C. § 1930(b), which has increased the fee structure set forth in section 1930(a). Pursuant to the Judicial Conference Schedule of Fees, there is a $39 administrative fee for all cases filed under title 11 and an additional $15 fee for payment to trustees applicable to Chapter 7 cases.

27. 28 U.S.C. § 1930(f)(1). FED. R. BANKR. P. 1006(c).
28. FED. R. BANKR. P. 1006(b).
29. FED. R. BANKR. P. 1007(c). *See also* FED. R. BANKR. P. 1007-I(c).
30. The schedules include:

Schedule A	Real Property
Schedule B	Personal Property
Schedule C	Property Claimed as Exempt
Schedule D	Creditors Holding Secured Claims
Schedule E	Creditors Holding Unsecured Priority Claims
Schedule F	Creditors Holding Unsecured Nonpriority Claims
Schedule G	Executory Contracts
Schedule H	Codebtors
Schedule I	Current Income of Individual Debtor(s)
Schedule J	Expenditures of Individual Debtor(s)

31. Courts may be reluctant to permit the debtor an extension of time within which to file the matrix, as this list is used to notify creditors of the section 341 meeting of creditors at which the trustee examines the debtor under oath and creditors also may examine the debtor. Creditors are entitled to twenty-one days' notice of the meeting of creditors, *see* FED. R. BANKR. P. 2002(a)(1), and the United States trustee must schedule the meeting no fewer than twenty-one and no more than forty days after the order for relief. *See* FED. R. BANKR. P. 2003(a).
32. *See* 11 U.S.C. § 342(c).
33. This information includes a brief description of Chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each, and the types of services available from credit counseling agencies. It also includes statements specifying that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case shall be subject to fine, imprisonment, or both and that all information supplied by a debtor in connection with a case is subject to examination by the attorney general. *See* 11 U.S.C. § 342(b).
34. Section 522(q) caps the amount of the homestead to $146,450 if fraud or criminal activity was involved in its acquisition. It provides:

> (q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $146,450 if—
>
> (A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or
>
> (B) the debtor owes a debt arising from—

> (i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;
>
> (ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;
>
> (iii) any civil remedy under section 1964 of title 18; or
>
> (iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.
>
> (2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

11 U.S.C. § 522(q). In *In re* Larson, 340 B.R. 444 (Bankr. D. Mass. 2006), *aff'd*, 2007 WL 1444093 (D. Mass. May 15, 2007), *aff'd*, 513 F.3d 325 (1st Cir. 2008), the bankruptcy court examined the issue of whether the debtor's claimed exemption must be reduced to the statutory cap as a result of an accident which caused the death of a creditor's spouse. Specifically, the court had to decide whether the accident constituted a "criminal act" for purposes of 11 U.S.C. § 522(q)(1)(B)(iv). The debtor had been charged with vehicular homicide, but had not been "convicted" of a crime; the state judge made findings sufficient to establish guilt and continued the matter without a finding for one year while the debtor was on supervised probation. A civil judgment was entered in the amount of $1 million. The bankruptcy court concluded that the state court's findings were sufficient for him to conclude that the accident constituted a "criminal act" under section 522(q).

35. FED. R. BANKR. P. 1007(b)(7) and (c); INTERIM FED. R. BANKR. P. 1007-I(b)(7) and (c).

36. Houghton v. Szwyd (*In re* Szwyd), 370 B.R. 882, 888 (B.A.P. 1st Cir. 2007).

37. 11 U.S.C. § 522(f).

38. 11 U.S.C. § 727(a)(4).

39. The following states have enacted opt-out provisions so that debtors must rely upon the state exemptions rather than the federal exemptions: Alabama, Alaska, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming.

40. 11 U.S.C. § 522(b)(3).

41. *Id*. *See In re* Urban, 375 B.R. 882, 889 (B.A.P. 9th Cir. 2007) ("The combined effect of the 730-day domicile period for determining the applicable

state exemption law and the 180-day period for determining venue is that the law for exemptions may be different from the law of the forum. In such a case, 'the court must give effect to those exemptions allowed by the law of the state of domicile, and it makes no difference where the property is situated or where the petition is filed, so long as the property is exempt under the law of the domiciliary state.'"(citation omitted)). In *Urban*, the court concluded that section 522(b)(3) did not violate the Uniformity Clause of the Constitution, *see* U.S. CONST. art. I, § 8, cl. 4.

42. 11 U.S.C. § 521(i)(1) and (3).

43. 11 U.S.C. § 521(i)(2).

44. 11 U.S.C. § 521(i)(4).

45. Wirum v. Warren (*In re* Warren), 568 F.3d 1113 (9th Cir. 2009).

46. Segarra-Miranda v. Acosta-Rivera (*In re* Acosta-Rivera), 557 F.3d 8 (1st Cir. 2009).

47. *But see In re* Bonner, 374 B.R. 62, 64–65 (Bankr. W.D.N.Y. 2007) (holding dismissal under section 521(i) is automatic and that an order waiving the section 521(a)(1) filing requirement must be filed before the expiration of the period set out in section 521(i)); *In re* Calhoun, 359 B.R. 738, 740–41 (Bankr. E.D. Mo. 2007); *In re* Lovato, 343 B.R. 268, 270 (Bankr. D.N.M. 2006); *In re* Ott, 343 B.R. 264, 268 (Bankr. D. Colo. 2006); *In re* Fawson, 338 B.R. 505, 514 (Bankr. D. Utah 2006).

48. Coastal Fed. Credit Union v. Hardiman, 398 B.R. 161, 172 (E.D.N.C. 2008).

49. 11 U.S.C. § 524(c).

50. 11 U.S.C. § 722.

51. 11 U.S.C. § 521(a)(6).

52. 11 U.S.C. § 521(a)(2)(A).

53. 11 U.S.C. § 521(a)(2)(C).

54. *Hardiman*, 398 B.R. at 176.

55. 11 U.S.C. § 362(h)(1)(A).

56. *Id.*

57. 11 U.S.C. § 362(h)(1)(B).

58. 11 U.S.C. § 362(h)(2).

59. 11 U.S.C. § 365(p)(1).

60. 11 U.S.C. § 365(p)(2)(A) and (B). Additionally, the Bankruptcy Code provides that neither the automatic stay nor the discharge injunction is violated by notification by the debtor and negotiations of cure. 11 U.S.C. § 365(p)(2)(C).

61. Ten different courts of appeals addressed the issue of whether debtors could utilize the fourth option is the subject of ten different decisions of the courts of appeals. Five courts of appeals held that debtors were not limited by the options enumerated in current section 521(a)(2)(A). Five others held to the contrary. *See* Coastal Fed. Credit Union v. Hardiman, 398 B.R. 161, 171 (E.D.N.C. 2008). *Compare* Price v. Del. State Police Fed. Credit Union (*In re* Price), 370 F.3d 362, 379 (3d Cir. 2004); McClellan Fed. Credit Union v. Parker (*In re* Parker), 139 F.3d 668, 673 (9th Cir.), *cert. denied*, 525 U.S. 1041 (1998); Capital Commc'n Fed. Credit Union v. Boodrow (*In re* Boodrow), 126 F.3d 43, 51 (2d Cir. 1997), *cert. denied*, 522 U.S. 1117 (1998); Home Owners Funding Corp. v. Belanger (*In re* Belanger), 962 F.2d 345, 347–48 (4th Cir. 1992); Lowry Fed. Credit Union v. West,

882 F.2d 1543, 1547 (10th Cir. 1989) (fourth option available), *with* Bank of Boston v. Burr (*In re* Burr), 160 F.3d 843, 849 (1st Cir. 1998); *In re* Taylor, 3 F.3d 1512, 1517 (11th Cir. 1993); *In re* Edwards, 901 F.2d 1383, 1387 (7th Cir. 1990). The Sixth Circuit rejected an argument that approximated ride-through shortly before Congress amended the Bankruptcy Code in 1984 to include the language that gave rise to the ride-through dispute. *See* Gen. Motors Acceptance Corp. v. Bell (*In re* Bell), 700 F.2d 1053, 1054–55, 1058 (6th Cir. 1983) (fourth option unavailable).

62. *See* Dumont v. Ford Motor Credit Co. (*In re* Dumont), 581 F.3d 1104 (9th Cir. 2009), *aff'g*, 383 B.R. 481, 488 (B.A.P. 9th Cir. 2008) (where debtor failed to comply with BAPCPA requirement, the stay is lifted and the secured creditor may exercise nonbankruptcy law remedies). *But see In re* Hart, 402 B.R. 78 (Bankr. D. Del. 2009) (debtors failed to rebut presumption of undue hardship, but court held fourth option was not precluded by disapproval of reaffirmation agreement). *See also In re* Visnicky, 401 B.R. 61 (Bankr. D.R.I. 2009); *In re* Moustafi, 371 B.R. 434, 439 (Bankr. D. Ariz. 2007) (discussing issue and citing cases).

63. *See, e.g., In re* Schmidt, 397 B.R. 481(Bankr. W.D. Mo. 2008); *In re* Caraballo, 386 B.R. 398 (Bankr. D. Conn. 2008) (courts have concluded that the ability of a debtor to choose the ride though option as it relates to real property was not abrogated by BAPCPA.); *In re* Wilson, 372 B.R. 816, 820 (Bankr. D.S.C. 2007); *In re* Bennett, 2006 WL 1540842, at *1 (Bankr. M.D.N.C. May 26, 2006).

64. *In re* Baker, 390 B.R. 524, 527–30 (Bankr. D. Del. 2008), *aff'd*, 400 B.R. 136 (D. Del. 2009); *In re* Chim, 381 B.R. 191, 198 (Bankr. D. Md. 2008); *In re* Moustafi, 371 B.R. 434, 438–39 (Bankr. D. Ariz. 2007); *In re* Husain, 364 B.R. 211, 218–19 (Bankr. E.D. Va. 2007); *In re* Blakeley, 363 B.R. 225, 228, 232 (Bankr. D. Utah 2007). *But see In re* Jones, 397 B.R. 775 (S.D. W. Va. 2008), *aff'd*, 591 F.3d 308 (4th Cir. 2010).

65. 11 U.S.C. § 722.

66. *Id*.

67. *In re* Parker, 363 B.R. 621 (Bankr. M.D. Fla. 2007).

68. *Id*. at 625.

69. *Id*. at 626.

70. *In re* Militante, 2009 WL 779798 (Bankr. N.D. Cal. Feb. 6, 2009) (citing 11 U.S.C. § 521(a)(2)(C)).

71. *In re* Cook, 415 B.R. 529, 532 (Bankr. D. Kan. 2009).

72. *In re* Morales, 387 B.R. 36, 39–40 (Bankr. C.D. Cal. 2008).

73. *See Morales*, 387 B.R. at 42 (collecting cases).

74. *In re* Reed, 403 B.R. 102, 104 (Bankr. N.D. Okla. 2009). The court added: "Debt that would otherwise be trapped within the snare of the bankruptcy discharge, if reaffirmed, remains the debtor's personal liability and burden." *Id*. (citing Jamo v. Katahdin Fed. Credit Union (*In re* Jamo), 283 F.3d 392, 398 (1st Cir. 2002)).

75. *In re* Reed, 403 B.R. at 105 (footnotes omitted). *See also In re* Riggs, 2006 WL 2990218, at *4–*5 (Bankr. W.D. Mo. Oct. 12, 2006).

76. *In re* Minardi, 399 B.R. 841, 853 (Bankr. D. Okla. 2009).

77. 11 U.S.C. § 521(e)(2)(A)(i).

78. 11 U.S.C. § 521(e)(2)(A)(ii). *See In re* Fontaine, 397 B.R. 191 (Bankr. D. Mass. 2008).
79. 11 U.S.C. § 521(f)(1).
80. 11 U.S.C. § 521(f)(2).
81. 11 U.S.C. § 521(f)(3).
82. 11 U.S.C. § 521(f)(4).
83. *Id.*
84. 11 U.S.C. § 521(g)(1). The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) are to be available to the U.S. trustee, the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of BAPCPA regarding privacy.
85. 11 U.S.C. § 521(e)(2)(B) and (C).
86. 11 U.S.C. § 521(j)(1) and (2).
87. 11 U.S.C. § 343.
88. 11 U.S.C. §§ 341(a), 521(a)(3).
89. 11 U.S.C. §§ 341(a), 521(a)(4). *See In re* Ventura, 375 B.R. 103, 111 (Bankr. E.D.N.Y. 2007) ("it is plain that in the appropriate case, and based on the appropriate record, a bankruptcy court has the discretion to order prejudicial and prospective relief, including a bar to filing a future bankruptcy case, in response to a debtor's failure to comply with a random audit under BAPCPA").
90. 11 U.S.C. §§ 521(a)(5), 524(d). If the court is required to hold a hearing because the debtor is unrepresented by an attorney, the court must inform the debtor (1) that the agreement is not required under the Bankruptcy Code, under nonbankruptcy law, or under any agreement not made in accordance with the provisions of subsection (c) of this section; and (2) of the legal effect and consequences of a reaffirmation agreement, a default under a reaffirmation agreement. The court then must determine whether the agreement that the debtor desires to make complies with the requirements of subsection 524(c)(6), if the consideration for the reaffirmation agreement is based in whole or in part on a consumer debt that is not secured by real property of the debtor. *See* 11 U.S.C. § 524(d).
91. *In re* Minardi, 399 B.R. 841, 848 (Bankr. D. Okla. 2009).
92. 11 U.S.C. § 524(m).
93. *See* FED. R. BANKR. P. 2004.
94. *In re* Kelton, 389 B.R. 812, 819–20 (Bankr. S.D. Ga. 2008).
95. *Id.* at 820 (collecting cases).
96. *Id.*