

The Basics You Should Know

- Bankruptcy works for people who have reached a point where their financial problems cannot be solved by personal efforts. You should not file for bankruptcy if in six months your money problems will only reappear.
- Bankruptcy is a court process. The first step is filing a petition with a federal bankruptcy court. A petition is a piece of paper you sign requesting relief from your debts. Bankruptcy discharge is the court order that says you don't have to pay most or all of your debts.
- **You must receive budget and credit counseling within 180 days before you file the petition.**
- You must notify anyone you owe money to of the bankruptcy filing. This includes all your creditors. You need to send special notices to all your creditors telling them that you have filed.
- Your financial situation will be public record. You will be required to file with the bankruptcy court the following:
 - A list of anything you own (your assets) with the approximate value
 - A list of all your creditors or people you owe
 - A report on most of your major financial transactions and anything you recently gave away during the year before you file
 - Information on your employment, expenses, budget, etc.
 - Federal Tax return from most current year (Chapter 13 must be current on tax returns for the previous four years)
- As part of the bankruptcy process, you will be required to attend what is called the "first meeting of creditors," or the "341 Meeting." At this meeting, the bankruptcy trustee (an officer of the court) and other creditors will appear and ask you about your financial affairs. They will have the documents that you filed. You will be required to answer their questions under oath.
- The 341 Meeting can be relatively short. If there are no complications (no unusual debts, no questions regarding fraud, etc.) you will get your bankruptcy discharge within a few months.

The Realities – What Bankruptcy CAN Do

Bankruptcy can help people out of financial trouble. Here are some of the things bankruptcy can do for you:

- It can stop bill collectors from calling
- It can at least temporarily stop mortgage foreclosures from being completed
- It can allow you to work out a payment plan with the IRS
- It can discharge debts you can't pay, and could never pay
- It can stop your wages from being garnished

Bankruptcy Will NOT Discharge the following Debts

- **Child Support & Alimony** or debts from this obligation, such as attorneys' fees
- **Student loans**
- **Income taxes** less than 3 yrs. due or assessed within previous 240 days
- **Filing Fees** imposed by a court
- **Fines & penalties** such as traffic tickets, income tax penalties
- **Many last minute credit card charges**
- **Debts or judgments based on fraud or illegal activities**
Dischargability of credit card debt has been restricted. There is a presumption of nondischargability for fraud in use of a credit card. If you charge \$500 or more for luxury goods within 90 days of filing or withdraw \$750 or more in cash advances 70 days before filing, your purchase or withdraw will be presumed to be fraudulent and will not be discharged.
- **No longer delays or stops eviction actions**
- **Any debts you forgot to list in your bankruptcy filing**

There Are Many Myths About Bankruptcy

- *"I can only file against some of my creditors."* This is false. When you file bankruptcy, it affects all of your creditors. When you file, you are required under penalty of perjury, to list all of your creditors, and to list how much you owe them. (Including those debts you want to keep; i.e. mortgages, cars)
- *"I don't have to include all of my property"* This is false. When you file for bankruptcy, you are required to file with the court a list of all the property you

own, along with an estimate of its value. It is criminal to intentionally leave out some assets. This includes assets you received as a gift.

- “*They can’t take my home.*” This is false. In Utah, homeowners can exempt – that is, keep away from creditors - up to \$20,000 of the equity in their residence. This does not apply to second homes and there is no similar benefit for people who rent. If you have more equity than \$20,000, the trustee may be able to force a sale of your home.
- “*They can’t take my car.*” This is false as well. In Utah, you can keep up to \$2,500 of the equity in your car. If you have more equity in your car than \$2,500 and don’t use the car in your employment, the trustee can force a sale of the car.

Assess Your Financial Situation

If you are considering bankruptcy, you should carefully assess your financial situation.

- **Review Your Credit History:** You may request a free copy of your credit report through www.annualcreditreport.com. This site is sponsored by the following three credit reporting companies Equifax (www.equifax.com, 800-685-1111) Experian (www.experian.com, 888-397-3742) and TransUnion (www.transunion.com, 800-888-4213). You may also contact them to obtain a copy of your credit report. If you find inaccuracies in your report, call the company to file a dispute.
- **Speak with your Creditors:** Discuss your situation and explain that you are willing to pay off your debts. You may be able to arrange payment plans or negotiate a reduced settlement amount.
- **Get Credit Counseling:** Individuals MUST receive an individual or group briefing from a nonprofit budget and credit counseling agency approved by the United States trustee. The fee for the course is approximately \$30 – 50 and can be waived based on your income. The briefing will be done over the phone or on the internet and must outline the opportunities for credit counseling and assist in performing a related budget analysis.
- You must file a certificate from the agency describing the services provided and file any debt repayment plan developed by the agency within 180 days prior to filing bankruptcy. There are many reputable credit counseling organizations offering credit education, credit review, budgeting workshops and debt management plans. Please refer to the www.usdoj.gov/ust/eo/bapcpa/ccde/cc_approved.htm for a current list of the approved credit counseling agencies.

Will you have to give up property you desperately want to keep?

- In both a Chapter 7 and Chapter 13, the list below reflects some examples of property that is exempt from the Bankruptcy estate and you can keep regardless of your financial situation as long as you have lived in Utah for the last two years. All of these exemptions can be stacked or doubled for married couples. §522
 - **House** with equity up to **\$20,000.00** if it is your primary personal residence
 - **There are Special Rules for Debtors who, prior to filing, have either**
 1. Relocated in the previous two years; or
 2. Purchased a new home in the previous 40 months
 - **Two year residency requirement:** If the debtor has moved during those two years, the debtor is limited to the amount of the homestead exemption available in the state in which the debtor lived for the six months prior to the otherwise applicable two year period
 - **Cars** with equity up to **\$2,500.00**
 - **Clothing** that is reasonably necessary (no mink coats)
 - **Burial plot** for you or anyone in your family
 - All **carpets** in use at your house
 - Provisions (**food**) sufficient for 12 months actually provided for individual or family use
 - All **Beds and bedding** for everyone in your immediate family
 - Any **artwork** made by someone in your immediate family or showing someone in your family (unless you own as part of a business)
 - **Sofas, chairs** and related furnishings, up to \$500.00 per debtor
 - **Heirlooms or other items of personal sentimental significance up to \$500.**
 - **One clothes washer & dryer, refrigerator & freezer, stove & microwave, and sewing machine**
 - **\$10,000 in value of jointly owned real property that is not primary personal residence**
 - **Cash value of Life insurance**
 - **Pensions, IRA, 401(K) plans, and retirement plans**
 - **Tools of trade** of your profession up to **\$3,500.00**
 - Portion of unpaid but earned **wages**
 - **Health aids** reasonably necessary
 - **Public Benefits** (Welfare, Social Security, Disability, Unemployment, Medical and Veterans) accumulated in bank account and not commingled with funds from other sources
 - **Alimony, Child Support & QDROs**
 - **\$500.00** Animals, books, musical instruments (78-23-8)

- However, there are also certain items that you **CANNOT** keep if you are going to file bankruptcy: (i.e. Nonexempt property)
 - Nonresidential real estate
 - 2nd home
 - Recreational vehicles
 - 2nd car or truck
 - Expensive musical instruments (unless tools of the trade)
 - Collections (stamps, coins)
 - Cash, bank accounts, bonds and other investments

- If the exempt property has been pledged as collateral for a loan (called a secured debt), the secured creditor will get the property back unless the debt is reaffirmed.
 - For example, if you were loaned money to purchase a mobile home, the agreement you sign usually gives the seller the right to take the item back if you miss payments. This is a secured debt.

- In general, married couples are better filing jointly but you may want to file alone if:
 - You recently married and want to discharge pre-marital debt
 - Your spouse owns separate, valuable property (i.e. home)
 - You both own house as tenancy by the entirety
 - You have separated

How Quickly can I File for Bankruptcy?

- There are some situations that may be avoided by quickly filing bankruptcy; this is called an Emergency filing. When you file for Bankruptcy, this invokes the Automatic Stay which immediately stops your creditors from trying to collect what you owe them.

- To get the Automatic Stay quickly, just file the two page Voluntary Petition, list of creditors, and mailing matrix. But then you **MUST** file the rest of your papers within 15 days. The list below reflects situations that may be avoided by doing an Emergency filing.
 - Prevent a utility disconnection for at least 20 days
 - Stall or Stop a Foreclosure (It is better to file a Chapter 13 in this situation if you want to keep the house)
 - Stop wage garnishment(s) within 2- 3 pay periods

If you do want to file Bankruptcy, you will need to decide if you should file Chapter 7 or Chapter 13?

- A Chapter 7 Bankruptcy is often referred to as the “straight” or “liquidation” Bankruptcy. This type of case will cancel most of your debts that are not secured by collateral or property (i.e. mortgages are secured by the real estate and car loans are often secured by the vehicles)
- But in exchange, you might have to surrender nonexempt property. Your money and assets will be collected by the bankruptcy trustee and sold. The proceeds of this sale will then be distributed to your creditors. The process usually takes only 4 -6 months, costs **\$299** to file a Chapter 7, and requires only one court trip to a creditor’s 341 Meeting.

New Chapter 7 Means Test: Under the “means test” if your current monthly income is less than the median income in your state, you can file for bankruptcy under a Chapter 7. In Utah, the means test applies to any individual whose income is greater than:

- \$42,496 for 1 person
 - \$46,912 for a 2-person family
 - \$52,955 for a 3-person family
 - \$59,879 for a 4-person family
 - \$6,300 for each additional person beyond 4,
- But if your current monthly income is above the median and you can afford to pay \$100 per month, you cannot file a Chapter 7.
 - A Chapter 13 Bankruptcy is a “reorganization” of your financial situation so that you can partially or fully repay debts and still keep some of your property. You need a source of dependable income but you generally get to keep your property. You will have to submit a repayment plan to the court stating what you own and how much everyone you owe gets and when they will be paid.

ADVANTAGE to Chapter 7	DISADVANTAGES to Chapter 7
Will only take 4 – 6 months	Lose all property that is not exempt
Usually requires only one court trip	Will affect ability to obtain credit in the future
Can probably file on your own	Cannot file Chapter 7 again for 8 years Cannot file Chapter 13 for 4 years

ADVANTAGE to Chapter 13	DISADVANTAGES to Chapter 13
Get to keep your property	Complex case so probably need

	attorney
Can stop a house foreclosure (make missed payments and keep or attempt to sell house)	Monthly payments will be deducted from your wages if you begin to miss payments
Pay off back taxes and stop interest from accruing on debt	Must live under strict budget for 5 years buying only essential items
Can File Chapter 13 again in 2 years	Will affect ability to obtain credit in the future

Comparing the affect a Chapter 7 case has on a situation versus a Chapter 13 will help you decide which type of Bankruptcy will be most beneficial.

What happens if	Chapter 13	Chapter 7
Behind on mortgage or car loan	Can make missed payments through your plan and keep property	Either give up property or pay full amount of loan during bankruptcy case
Own exempt property	Keep all exempt property	Keep all exempt property
Have co-debtors on personal loans for consumer debt	Creditor cannot seek payment from co-debtor during the duration of case without a court order	Creditor will go after your co-debtor for payments
Received a Bankruptcy discharge within previous 2 years	If filed Chapter 13, can file Chapter 13 after 2 years. If filed Chapter 7 must wait 4 years to file a Chapter 13.	Cannot file a Chapter 7 again if received discharged within 8 years

What are my Alternatives if I want to avoid filing for Bankruptcy because the consequences will be greater than the benefit?

- Wait until someone sues you. They may threaten, but never follow through.
- Try to negotiate with creditor(s) on your own.
- Do Nothing. You may be judgment proof, meaning your assets and/or income are exempt and a creditor could not get to them. The law also allows you to exempt the money you receive from certain types of accounts, payments. These include:
 - Disability, illness, or unemployment benefits
 - Benefits received for medical care,
 - Veterans benefits
 - Child support money or property
 - Alimony money or property

- Compensatory payments for the wrongful death or bodily injury
 - Proceeds from a life insurance policy
 - Proceeds and avails of any unmatured life insurance contracts you own,
 - Retirement plan payments
- In 10 years the debt will be taken off your credit record without bankruptcy.
 - Get outside help to try to work something out with your creditors.

STEPS FOR FILING CHAPTER 7 BANKRUPTCY

Although filing for Chapter 7 Bankruptcy is a complicated process, the courts allow people to file for bankruptcy without an attorney (“Pro Se”). If you choose to file “pro se,” be sure that all of the information you provide in the documents is correct. There are strict criminal penalties for providing fraudulent information to a court.

If you choose to file for bankruptcy “pro se,” you will need to follow these steps:

Step 1. Attend an approved consumer credit counseling course within 180 days (6 months) prior to filing your petition.

- a. A credit counseling course will probably cost around \$30.00 - \$50.00 and can be done over the phone or the Internet.
www.usdoj.gov/ust/eo/bapcpa/ccde/index.htm

Step 2. Prepare documents (see below)

- b. Make a list of your debts
- c. Make a list of all your property
- d. Use this information to fill out official forms
- e. Create a “Mailing Matrix” (list of addresses for everyone you owe money)
- f. Filing fee waiver form (if you do not qualify for a fee waiver, the filing fee is \$299)

Step 3. File documents with Bankruptcy Court

- g. If you do not submit a filing fee waiver form you must pay a \$299 filing fee at this time.
- h. Include the credit counseling certificate

Step 4. Mailing notice

- i. The court will mail Notice to all the creditors listed on your mailing matrix. This informs them you have filed for bankruptcy protection and the automatic stay has been invoked.

Step 5. Attending Creditor’s Meeting

- j. This is also called a “341 Meeting” and is a chance for creditors (people you owe money) to meet with the Trustee before the court grants you bankruptcy discharge. Most of the time, creditors will not attend this meeting, but you *must* attend this meeting.

Step 6. Paying your debts

- k. The court will determine a way to pay off or discharge your debts

Step 7. Attend Debtors Education Class

- l. This is the second counseling course you must complete. It will probably cost \$45.00 - \$75.00 and can be done over the phone or on the Internet

Step 8. Discharge

- a. If everything is completed properly, the court will grant you a bankruptcy “discharge” of your debts. You will receive a discharge letter about 60 days after your creditor’s 341 meeting. However, in order to finalize “discharge” of your debts, you **must** mail a copy of your discharge notice to everyone that you owe money.

Step 2 Make a List of all your debts

The Forms will ask you to write down all of your debts (all the money you owe) and all your property (every thing that you own—also called “assets”). Before trying to fill in the Forms, it is better to make a separate list of your debts and assets. Use the charts below as a guide.

If you are unsure of the exact amount of your debts, always list as “not yet determined.” If the amount depends on the outcome of a lawsuit, file before and it will stop the suit.

Description of debt/ Name of creditor of debt	Total Amt. of debt	Is Debt Dischargeable (If NO, add amt. of debt)	Is Debt Secured (add value of collateral)
Mortgage & home loans	\$	\$	\$
Car loans	\$	\$	\$
Student loans	\$	\$	\$
Medical bills	\$	\$	\$
Lawyer/acct. bills	\$	\$	\$
Credit & Charge cards	\$	\$	\$
Dept. Store & Gas cards	\$	\$	\$
Alimony & child support	\$	\$	\$
Unpaid taxes	\$	\$	\$
Unpaid utility bills	\$	\$	\$
Bank Rent	\$	\$	\$
Liens	\$	\$	\$

- **Why do you need to distinguish between Secured & Unsecured Debts?**

Your secured creditors have a different classification than the unsecured creditors so you will treat your secured debt differently.

- Unsecured Debts are typically credit cards, back rent, medical bills, alimony & child support, student loans, utility bills, organization dues, etc.
- However, some store credit cards are considered secured debts depending on the collateral which has been charged to the card. For example, if you have charged a refrigerator at Sears instead of clothing, the charge for the refrigerator will be considered a secured debt.
- Secured Debt means you stand to lose specific property if you don't make payments or if a creditor has filed a lien. You can get rid of these debts by giving up the property (collateral) or pay its fair market value. Examples include house or car loans, electrical appliances bought on credit, liens, etc.
- If secured creditors repossess property/collateral shortly before you file, the creditor might not get to keep it if the collateral is worth a lot more than the debt and you arrange to pay the debt.

Make a list of Property:

You need a clear idea of what property you own, how you own it, what it is worth and how much of it you can keep if you file. You also need to determine which property you own is exempt to see what you will lose in a Chapter 7 bankruptcy. Make sure to list everything you own but do not include property you will get after you file.

Property	Retail Value	Amt. You own	Amt. of Liens	Amt. of Equity	Total Amt.
Real Property					
Cash on hand					
Security Deposit					
Household goods					
Books, Art, Coins					
Clothing					
Jewelry					
Hobby Equipment					
Insurance					
Retirement/Stocks					
Wills, Trusts					
Cars, Boats, RVs					
Computers					
Guns					
Family Support					

Total Value of nonexempt \$ _____
(subtotal column 6)

- If you become entitled to an inheritance, divorce decree, settlement, or death benefits like life insurance proceeds within 180 days of your case, you will need to contact your trustee. These assets will likely belong to the bankruptcy estate.
- If you are married but filing alone, all the marriage property is included. A spouse's separate property is not included.
- Be careful not to transfer or use as payment any nonexempt property worth more than \$600 within 90 days before filing. Trustee will also be suspicious of nonexempt property transfers within one year before filing if creditor was close friend or relative.
- It is possible, if a trustee or creditor disagrees with an exemption you claimed, they will file a Written Objection and get a Hearing. The court will then decide whether to allow your exemption or not.

Preparing the documents

There are 21 different official forms you must complete in order to file for bankruptcy. These forms range in length from 1 to 11 pages long and can be quite complicated—so expect to take time filling them out.

1. Preparing your Mailing Lists (“Mailing Matrix”)

You are required to prepare two different Mailing Lists one for all your creditors (called a “Creditors’ Mailing Matrix”) and another for those people you are required to pay alimony, child-support, and other domestic support (called a “Domestic Support Creditors’ Mailing Matrix”).

Once you know the name and address of your Trustee, you must add his name and address to the mailing matrix

2. How to get the forms: Forms can be obtained from the U.S. Court’s Website at: www.utb.uscourts.gov/clerks_office/forms/formsnew.htm.

Here is a list of the forms you will need to file Chapter 7 Bankruptcy:

1. **Statement of Social Security Number**
2. **Petition**
3. **Application for Waiver of Chapter 7 Filing Fee**
4. **Schedule A - Real Property**
5. **Schedule B - Personal Property**
6. **Schedule C - Property Claimed as Exempt**
7. **Schedule D - Creditors Holding Secured Claims**
8. **Schedule E - Creditors Holding Unsecured Claims**
9. **Schedule F - Unsecured Nonpriority**

10. **Schedule G - Executory Contracts / Unexpired Leases**
11. **Schedule H – Co-debtors**
12. **Schedule I - Current Income** (*Form B6I*) [1 page]
13. **Schedule J - Current Expenditures** (*Form B6J*) [1 page]
14. **Summary of Schedules** (*Form 6-Summary*) [1 page]
15. **Statistical Summary of Certain Liabilities** (*Form 6-Summ2*) [1 page]
16. **Declaration Concerning Debtor’s Schedules** (*Official Form 6-Decl.*) [1 page]
17. **Statement of Financial Affairs** (*Official Form 7*) [11 pages]
18. **Chapter 7 Individual Debtor’s Statement of Intention** (*Form 8*) [1 page]
20. **Statement of the Monthly Net Income and Means Test Calculation**
21. **Certificate of Credit Counseling**

Statement of Social Security Number (Form B21) 1 page

Fill this form out to certify to the court your Social Security Number.

Petition (Official Form 1) 3 pages

List the court as the United States Bankruptcy Court of Utah. Be sure that you have completed consumer credit counseling within 180 days of filing out this form and certify that you have done this one page 2.

Application for Waiver of Chapter 7 Filing Fees (Official Form B3B)

Complete and file this form if you cannot afford the \$299 filing fee. A waiver is not always granted. If you do not file this form with the court, you are required to pay the \$299 filing fee by cash or money order, no personal checks.

Emergency Filing Once you have prepared these first five documents: 1). Creditor’s Mailing Matrix, 2). Domestic Support Mailing Matrix, 3). Statement of Social Security Number, 4). Petition, and 5). Application for Waiver of Chapter 7 Filing Fees, you may submit these documents to the court. However, all the other forms must be submitted to the court within 15 days. Therefore, unless there are special circumstances, we recommend that you submit all documents at the same time.

Schedule A (Form B6A) 1 page

This schedule details your “real property” assets. “Real property” refers to any type of real estate—houses, lots, buildings, etc. If you do not own any real estate just fill out the top and write “none” in the column marked “DESCRIPTION AND LOCATION OF PROPERTY”

Schedule B (Form B6B) 3 pages

Include all of your “personal property.” Personal property refers to *everything* you own except real estate (money, cars, furniture, pension accounts, stocks, etc.). Thus, *make sure that everything* (other than real estate) *you own is listed somewhere on the 3 pages of this schedule.* All items should fit into one of the categories listed.

For example: The kitchen table would be included under #4 with “household items” and a bicycle would be included in #8. “Firearms and sports, photographic, and other hobby equipment.”

If you don't own any of the property in the category, put an “X” in the column marked “none.” For example, if you do not own any stocks or other interests in businesses, put an “X” in the column marked none next to item #13.

For property you own give a clear description of the property and state where it is located. Write small and clearly.

In the column marked “Husband, Wife, Joint, or Community” write an “H,” “W,” “J,” or “C.”

For all “tangible property” (things you can physically hold—cars, bikes, housewares, clothes. etc.) you write “H” or “W”—depending on who *earned the money to buy the item*. You would only write a “C” if you bought the property while you were married and living in different state with Community Property laws (Texas, New Mexico, Arizona, Idaho, California, Nevada, Washington, and Wisconsin). So, *unless you moved to Utah from one of these states you would not mark a “C” next to any of your property*.

For “intangible property (things you have a piece of paper saying that you own them, but cannot actually hold in your hand--bank accounts, pension accounts, annuities, stocks, etc.) you *may or may not* need to mark a “J.” Review the policy statement for any intangible property you own to see if both the husband and wife's name are on them saying that you own the policy “jointly” or as “joint tenants.” If so, then mark a “J.” Otherwise, mark “H” or “W” depending on whose name is listed on the policy (only write “C” if you bought the property while you were married and living in one of the states listed above).

Schedule C (Form B6C) 1 page

This schedule is important because it lists all the property that the law allows you to “claim as exempt” from bankruptcy. When you claim the property exempt from bankruptcy, the court allows you to keep the property and it is not sold to pay your debts. However, the law allows you to only claim certain types of property as exempt. Filling out this form can be complicated though—there are 2 different steps. However, even if property is “exempt,” you still may not necessarily be able to keep it if you have a *secured* debt on it. (See how to fill out Form 8 to determine whether you can claim an exemption on secured property.)

Filling out Schedule C:

Towards the top of the form you are asked to check one of two boxes underneath a sentence that reads: “Debtor claims exemptions to which debtor is entitled under.” In Utah you are required to check the second box. Leave the box about a homestead exemption over \$125,000 **unchecked**.

Refer to the exempt property list on page 4 to determine which type of property you own are allowed to be exempt from bankruptcy. Write down a specific description of the property in the first column entitled “DESCRIPTION OF PROPERTY.” Next, in the column called “SPECIFY LAW PROVIDING EACH EXEMPTION” write down which part of the **Utah Code** allows you to claim the property as exempt. The citation is listed in bold and in parentheses. Then write down the amount you are claiming exempt and the total value of the property in the next two columns.

EXAMPLE:

DESCRIPTION OF PROPERTY	SPECIFY LAW PROVIDING EACH EXEMPTION	VALUE OF CLAIMED EXEMPTION	CURRENT VALUE OF PROPERTY WITHOUT DEDUCTING EXEMPTION
Plumbing tools	Utah Code Ann. 78-23-8	\$3,500	\$4,000
Beds/Bedding	Utah Code Ann. 78-23-5	\$600	\$600
Sofa, Chairs, & other furniture	Utah Code Ann. 78-23-8	\$350	\$350
Life Insurance	Utah Code Ann. 78-23-5	\$1,000	\$1,000

Thus, for any exemption where there is **no limit** on the amount that may be exempted, write “Utah Code Ann. 78-23-5” as the law providing for the exemption. But if there is a limit on the amount (even if your property is less than that limit) write “Utah Code Ann. 78-23-8.”

Schedule D (Form B6D) Creditors Holding Secured Claims 2 pgs

Schedule E (Form B6E) Creditors Holding Unsecured Claims 3 pgs

Schedule F (Form B6F) Unsecured Nonpriority 2 pgs

Schedule G (Form B6G) Executory Contracts / Unexpired Leases

Schedule H (Form B6H) Co-debtors 1 page

Schedule I (Form B6I) Current Income 1 page

Schedule J (Form B6J) Current Expenditures 1 page

Summary of Schedules (Form 6-Summary)

After filling out Schedules A through J use the information to fill out this form. You need to have completely filled out Schedules A through J before you will be able to fill out this form correctly.

Statistical Summary of Certain Liabilities (Form 6-Summ2)

This schedule is a list of the total different types of debts.

Declaration Concerning Debtor's Schedules (Official Form 6-Decl.)

This form is where you swear that all the information in Schedules A through J and on the Schedule Summaries is correct and true.

Statement of Financial Affairs (Official Form 7)

This is a very *long* (11 page form). Read each question carefully and complete the information. If the question does not apply check "none." Be sure to sign the last page—declaring that all the information is true to the best of your knowledge.

Statement of Intention (Form 8)

When you file for bankruptcy you have to let the Court know what you will do with *your secured property*. Secured property is anything that you own with collateral. This means that if you don't make payments, the creditor can both (1) sue you for the money; and (2) take back the property. Bankruptcy has the effect of removing your personal liability, but does not automatically remove the lien (thus the creditor can still take the property back). However, in certain circumstances the law allows you to reduce the amount of the lien or get rid of it all together. This form [Form 8—Statement of Intention] is how you let the court know what exactly you intend to do with the property.

It is important to understand what you are filling out in Form 8 because the Trustee will ask you about it at the 341 Meeting.

1. What will you do with your secured property? Now comes the hard part, you have to let the court know what you intend to do with the property. The way bankruptcy works, you have to surrender your nonexempt property. You will only have the chance to keep secured property if all of the following 3 things apply to your situation:

- (1) You are current (or can get current) on your payments,
- (2) You either have no equity in the property or all of your equity in the property is protected by an exemption;
- (3) You are willing to reaffirm the debt or redeem the property (these are discussed below).

(1) Current on payments: If you are not current on your payments for the secured property (and cannot get current), you will probably have to surrender the property. However, if you do not have any equity or all of your equity in the property is covered by an exemption, you could try to negotiate with the creditor to keep the property.

(2) No equity or only exempt equity: You have to surrender the property if the property is worth enough that if you sold it you would have enough money to completely pay off the secured debt and still have money left over (unless the property is exempt).

Example A: If you owe \$3,000.00 (including interest) on a car that is now worth only \$1,000, you do not have any equity in the property. If you reaffirm or redeem this property, you would be able to keep it.

Example B: If you owe \$3,000.00 on a car worth \$5,000.00, you have \$2,000.00 of equity in the car. However, in Utah there is an exemption for cars up to \$2,500.00. You can keep it.

Example C: If you owe \$4,000.00 on a car worth \$7,000.00, you have \$3,000.00 of equity in the car. Because Utah only allows up to \$2,500 to be exempt (not \$3,000.00), you would have to surrender the car to the bankruptcy trustee. However, the bankruptcy trustee would be required to give you \$2,500 from the money he gets from selling your car.

(3) Creditor may ask you to sign a Reaffirmation of Debt promising to repay all or a portion of your debt that would otherwise be discharged. This is only a Chapter 7 issue.

- Creditors must get this document filed with court before your discharge is entered which is approximately 60 days after the 341(a) Meeting. If you are not represented by counsel, a creditor will be required to go to court before agreement is approved.
- Signing this type of agreement is completely voluntary and not required by any law. You can always agree to pay back any debt without signing a reaffirmation agreement
- If you sign an agreement and then later change your mind, you may cancel at any time within 60 days after the reaffirmation agreement is signed or the discharge is entered, whichever is later.
- If you fail to make payments as set forth in the reaffirmation agreement, creditor can take action against you to recover property and you may be personally liable for remaining debt

2. Filling out the Form: After filling out the case name and number, you will see three boxes to check. Check the first two boxes if you completely filled out and submitted (or will submit) all of Schedules A - J. Check the third box to certify that what you fill out below is what you intend to do with your property.

Next, you will see a column to enter in the description and names of creditors for all secured property. You will need to list all the property listed in Schedule D - list all of your secured property. For each item that you list, write down the creditor's name (this is also one Schedule D). Then put an "X" in the column stating what you intend to do with the property.

The bottom part of the form asks what you intend to do with any property you lease. Unless you write down the property you lease, and put an "X" in the third column, you will be discharged from your obligation to finish paying the lease, but you will lose the property or have to move out (if the lease is for an apartment, house, etc.). If you want to keep the lease going, you need to put an "X" in the third column - your obligations under the lease will survive even though you filed for bankruptcy.

Disclosure of Compensation Paid or Promised to an Attorney

You must complete and file this form if an attorney helps you file for Bankruptcy.

Statement of Current Monthly Income and Means Test Calculation (Official Form B22)

This is to show that your income is low enough to qualify to file for Chapter 7 bankruptcy. Here we only explain how to fill out this form if your current monthly income is less than the median income for everyone in Utah. Thus, these instructions are for you only if your income is less than: <http://www.usdoj.gov/ust>

- \$42,496.00 for 1 person
- \$46,912.00 for a 2-person family
- \$52,955.00 for a 3-person family
- \$59,879.00 for a 4-person family (add \$6,300 for each additional person)

NOTE: If your monthly income fluctuates from month to month, use the average of your income from the last 6-months to determine your current monthly income (i.e. add up your income from the last 6 months and divide by 6).

Step 3 File Documents with the Court

Once your documents are carefully prepared you are ready to file at the courthouse. **You will file in Utah if this is where you have lived during the greater part of the previous 180 days.** Your spouse should also sign if you are filing together.

- You will need the original and one (1) copy [two (2) copies if you owe money to the Internal Revenue Service] to the U.S. Bankruptcy Court Clerk’s office.
- The Clerk’s office is located in Salt Lake City at the Frank E. Moss Federal Courthouse 350 South Main Street, #301 or in St. George at 196 East Tabernacle, Courtroom #13 St. George, Utah.
- You will need a cashier’s check or money order in the amount of \$299.00 made payable to the “U.S. Bankruptcy Court.” The clerks will not accept personal checks or credit cards and will accept cash but they will not make change. If you cannot pay the fee, you may apply to have the fee waived using Form B3B as described above.
- Once the clerk has filed the petition and accompanying documents, she will return a “file-stamped” copy to you for your records.
 - File-Stamp is a sticker placed on the lower right-hand corner of the front page of your petition. The file-stamp is evidence that the case has been properly filed with the Court. It also gives you valuable information about your case, such as the case number, judge’s name, Trustee’s name and the date and time for your 341 Meeting of Creditors
 - Add the Trustee to your Mailing Matrix.

Step 4 Mail the Notice

When you file the Petition, the Clerk’s office will mail your creditors a Notice. The Notice tells creditors of the existence of your case and of the bankruptcy law’s protections that are extended to you. It also informs them of the 341 Meeting of Creditors.

The automatic stay is invoked upon filing and ends only upon the closing or dismissal of your case. Even though notice has been mailed to your creditors, it may take several weeks for them to process it. Do not be surprised if you are still receiving notices or phone calls from your creditors. Simply advise them of your bankruptcy and give them your case number.

Creditors CANNOT	Creditors CAN
Continue their collection activities, such as writing letters or calling	Initiate Criminal case if alleging you fraudulently obtained credit
Garnish your wages or go after bank accts	File case to establish paternity, child support, and alimony
File lawsuits or proceed with pending suits	IRS can conduct a tax audit
Terminate utility service or public benefit	Court can lift stay for particular creditor if requested and they successfully argue their debt should survive

Step 5 Attend 341 Creditors Meeting

- When you file, you will receive a time for a Meeting of Creditors (also called a “341 Meeting”). Attendance at the Meeting of Creditors is mandatory. Failure to appear will result in dismissal of your case and the denial of your discharge
- The 341 meetings are located throughout the State
- If you file jointly with your spouse, BOTH of you must appear
- You must provide a picture identification such as a driver’s license and proof of social security number at the meeting.
- The court exercises control through a court-appointed person called a “Bankruptcy Trustee” or “Trustee.” The Trustee is mostly interested in what you own and what property you claim as exempt. This is because the trustee’s primary duty is to see that your creditors are paid as much as possible on what you owe them. The more assets the trustee recovers for creditors, the more the trustee is paid.
- Clerk’s office will have already gotten copies of your file-stamped documents to the Trustee for his file
- The meeting itself is usually rather short; 10 minutes or less
- Debtors are now required to file federal tax return from the most recent tax year no later than seven (7) days before the first Meeting of Creditors. You may get a copy of your return by calling the IRS at 1800-829-1040 or going to the Walk-in Center at 50 South 200 East, SLC, UT or 324 25th Street, Rm. 6025, Ogden, UT.
- You will receive a letter from your Trustee a week or two before the hearing. This letter will advise you to bring several documents to the hearing for the trustee to review. These typically include:
 - Your last two pay stubs or other proof of income
 - Proof of value of all of your vehicles. You may use an appraisal or a copy of the Kelley Blue Book.
 - Last 2 bank statements for all financial accounts (checking, savings, retirement etc.)

- As there are a number of different Chapter 7 trustees, their requests for documents and other information will vary slightly. Make copies for the Trustee, as you will NOT get them back after the hearing.
- Creditors are invited to attend the Meeting of Creditors but most Creditors do not attend. If they have questions, they may contact you either in writing or by phone. These contacts are allowed if you are not represented by an attorney but they may not demand payment. If you are contacted by creditors after the filing of your case and you feel that their conduct is violating the Bankruptcy Code and Rules, you should contact an attorney

Step 6 Pay Creditors

- Trustee will sell your assets and pay creditors in a particular order based on priority. In reality, the secured creditors are paid first, then administrative costs, and whatever left over funds still remain to unsecured creditors. The trustee will also earn a fee from his/her services.
- An individual debtor in a Chapter 7 case must surrender nonexempt personal property collateral or reaffirm the debt or redeem the property within 45 days after the Meeting of Creditors

Step 7 Attend Approved “Debtors Education” Course

- The new law requires that in addition to attending approved consumer counseling before filing, you also have to receive approved Personal Financial Management Course.
www.usdoj.gov/ust/eo/bapcpa/ccde/de_approved.htm

Step 8 Discharge - The Court will then issue the Discharge

- This document will arrive by mail approximately 60 days after your Meeting of Creditors
- A copy of this Discharge will be mailed to all of the creditors and parties listed on your mailing matrix
- If the Trustee at your Meeting of Creditors requires you to take some future action, such as getting him a copy of your next year’s tax return, you are required to comply with his request. Failure to comply with his request will result in the Trustee filing a motion to reopen your case and revoke the discharge.
- You are required to advise the Clerk in writing of the changes in your address for the two-year period following the conclusion of your case. To do this, simply send a letter to the Clerk with your name, bankruptcy case number and change of address

STEPS FOR FILING CHAPTER 13 BANKRUPTCY

(This is a brief overview of a more complicated bankruptcy procedure that will probably require the assistance of an attorney)

- Chapter 13 is fairly complex & will require a lot of work on your part. Most people who file Chapter 13 need an attorney
 - Attorney fees may be paid through Chapter 13 Repayment Plan but it will depend on the individual attorney handling the case
 - Requires a lot of negotiation with creditors and trustee
 - More court hearings and often requires making legal arguments
 - Trustee is not allowed to give you legal advice so you may need a second opinion
- Chapter 13 Checklist: Decide whether your income exceeds the monthly expenses giving you extra funds to pay debts.
 - Add up your debt
 - Calculate your income and expenses
 - Calculate the value of your property and organize according to secured/unsecured and exempt/nonexempt
 - Map out a repayment plan – Must be 5 years
 - Fill out and file your forms – Costs \$194.00
 - Attend two different court meetings
 - Make the payments under your plan and go back to court if any problem arises
 - Obtain your BK discharge (5 years after filing case)
- **How much will you have to repay through the plan?**
 - Look at how much is coming into the household and how much is going out. Any amount left over is considered your disposable income and will be used to pay debts
 - Calculate your disposable income. This includes everything you earn (bonus pay, interest, alimony, pension, public assistance) minus reasonably necessary expenses for supporting yourself and any dependents or continuing the operation of a business
 - If you do not receive the same amount each pay check, average over the last 12 months
 - If the court determines your expense as not reasonable, you could be asked, for example, to move into a more affordable place or get a cheaper car

- **How do I divide my disposable income among creditors?**
 - You will use your disposable income to make payments which equal the value of your nonexempt property plus the original payments on secured debts & reduced payments on unsecured debts over a period of 5 years
 - Determine the total value of your “nonexempt” property. Creditors must receive property with a present value under the plan at least equal to the amount that the creditor would receive if your assets were sold under a Chapter 7. This is called the “Best Interest Test”
 - Example: If debtor has \$10,000 of non-exempt assets which would go to creditors, payments under this plan must have a present value of \$10,000 for same creditors
 - Also add the amount of missed payments you owe to any secured creditors. You will have to make up all the missed payments to keep the property (house or car payments)
 - If the plan includes payments to creditors directly, resume payments on the next due date after the date you filed
 - Court may require you to pay more even if you have little nonexempt property
 - If you disagree with validity of debt, you can contest debt as a part of your Chapter 13 plan. This will require a separate legal proceeding
 - Failure to make payments will result in the dismissal of your case
- With a few exceptions, the steps involved in filing a Chapter 13 are very similar to the steps required for filing a Chapter 7. However, instead of filing a Statement of Intention, you will file a Repayment Plan which will show the court your intentions

Step 1 Prepare the Documents www.utb.uscourts.gov

1. Petition which outlines debtors budget & sources of income with complete list of all creditors and addresses
2. Notice
3. Summary of Schedules
 - 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 Claims
 - Schedule F – Unsecured Nonpriority

- Schedule G – Executory Contracts / Unexpired Leases
- Schedule H – Codebtors
- Schedule I – Current Income
- Schedule J – Current Expenditures
- 4. Statistical Summary of Certain Liabilities (*Form 6-Summ2*) [1 page]
- 5. Declaration Concerning Debtor's Schedules
- 6. Statement of Financial Affairs (Form 7)
- 7. Repayment Plan – usually only 3 -4 pages and must be proposed in good faith
- 8. Certificate of Credit Counseling
- 9. Verification of Matrix
- 10. Mailing Matrix

Step 2 File Documents

1. File Petition with list of creditors. As in a Chapter 7, make three copies, go to the clerk's office to file and pay \$194.00 to clerk in either cashier' check or money order
2. If you decide to do an Emergency Filing: 15 days later, you must file Schedules A – J, Statement of Financial Affairs, and the Repayment Plan

Step 3 Automatic Stay Invoked with Notice

- Notice will be mailed to all of your creditors and interested parties listed on the mailing matrix.
- **Being Making Payments:** You must start making the payments proposed by the plan within 30 days after the plan is filed regardless of subsequent court dates. This means that before the Creditors Meeting is scheduled, you will probably have a payment due. However, if you have not paid by that time, make sure to bring your first payment to the meeting. The trustee is paid directly as detailed in your plan and will distribute the money to your creditors. Trustee will make 10% off your payments to creditors.

Step 4 Creditors Meeting

Attendance at Meeting of Creditors is still mandatory but will be short. Creditors are required to file a claim if they want to collect the debt you owe them.

Step 5 Hearing to Confirm Plan

Creditors will receive 25 day Notice of Hearing to confirm plan.

1. Confirmation hearings must now take place between 20 and 45 days after the 341 Meeting

2. You will meet with the trustee right before the hearing to review your plan. If the trustee sees any problems, she may ask you to modify the plan and will continue your hearing for a later date.
3. If repayment plan is rejected, you can modify.
4. Other instances where plan may be modified after it is confirmed include:
 - a. Trustee can modify plan if circumstances change
 - b. If you are having problems making payments
 - c. Trustee could also give you grace period if problem looks temporary by reducing total monthly payments or extending the repayment period
 - d. Need to add Creditors (very limited)
5. You can ask trustee for help or hire a lawyer just to review the plan
6. At the hearing, the Judge will ask the Trustee for his/her recommendation as to whether your plan is reasonable and should be confirmed by the court
7. If a creditor disagrees with the treatment received by a claim, creditor must file a written objection

Step 6 Order Issued

You are on your own at this stage and must continue to make payments to the trustee. If you begin to miss payments, the trustee will file a Motion to Dismiss for Nonpayment. In order to avoid a dismissal, you should contact the court and they will begin withholding payments from your wages

Step 7 Discharge

You will not receive your discharge until you have made all required payments per your plan.

Indicate your last payment to the trustee. They will do a Final Report & Accounting showing you have completed your plan. Unlike a Chapter 7, you do not need to do anything else at this stage. The trustee will mail this to you