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# G B Bankruptcy and Beyond



# Options for Dealing with Debt

- 1 Do Nothing
- 2 Consolidate or Settle Debts
- 3 File Bankruptcy



# Do Nothing (Part 1)

***If debtors stop paying a debt, creditors may sue them or let the “statute of limitations” expire***

- A “statute of limitations” is the **deadline** to **collect a debt or sue**.
- In California, the statute of limitations for most debts is **four (4) years** **from the “date of default”** (usually the date of last payment).
- However, the statute of limitations **does not change** if a creditor sells the debt to a collection agency.
- Someone who is sued after the statute of limitations expired can ask the court to throw out the lawsuit.
- Debts may still **appear on their credit reports** for **up to seven (7) years** from the date of default, regardless of the statute of limitations.

# Do Nothing (Part 2)

## **What if a creditor sues?**

- Someone who is sued may choose to file an answer to the lawsuit, but **it is not required**. If no answer is filed, a creditor can win the lawsuit **without going trial** (this is called a “default judgment”).
- Filing an answer **usually doesn't stop a creditor from winning**. That's because these lawsuits are about **whether someone owes a debt**—not about someone's ability to pay back a debt.
- However, filing an answer **may help someone with a valid defense** (such as being sued after the statute of limitations expired, or being sued for debt incurred due to someone's identity being stolen).
- Creditors who win can collect the debt by **garnishing wages** up to 25%, **taking money** from bank accounts, or **placing a lien** on a home.



# Do Nothing (Part 3)

**Judgment-proof:** Describes people whose income and assets are protected even if a creditor gets a judgment against them. Example: Someone who earns minimum wage (or has protected income like Social Security), and doesn't have a lot of valuable assets.

**People who are judgment-proof  
may not need to file for bankruptcy**

**Change of income:** People who are judgment-proof because they are unemployed or temporarily disabled may face garnishments or bank account levies if they start working again.



# Do Nothing (Part 4)

**Harassment:** Judgment-proof debtors can mail letters (called “**cease & desist**” letters or “**no-contact**” letters) that instruct creditors to stop contacting them to collect a debt.

***These letters should be sent via certified mail with return receipt to prove the creditors received the letters.***

**Still owe the debt:** After sending letters, debtors still owe the debts. That means the debts will still appear on credit reports, and creditors can still sue them.

**Judgment:** If creditors obtain judgments, debtors can still include these debts in their bankruptcies if they cannot settle the debt or arrange a payment plan.



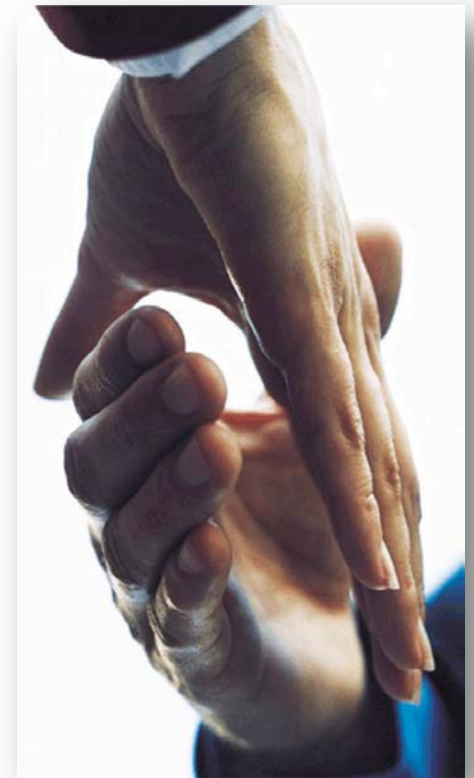
# Consolidate or Settle Debts

**Make a call:** Debtors can always call creditors to try to set up a payment plan or settle debts.

**Always get payment plans or settlements in writing before making a payment**

**Nonprofit agencies:** There are legitimate nonprofit agencies that help with debt consolidation—but there are also many scams.

**Avoid bankruptcy:** Consolidating or settling debts may allow some debtors to avoid having to file for bankruptcy.





# Types of Bankruptcy

The most common types of bankruptcy for individuals are:

## Chapter 7 & Chapter 13



# Filing for Bankruptcy

## Chapter 7

- Eliminate most unsecured debt (debt with no collateral)
- Best for people with few valuable assets
- Debtors usually keep most or all of what they own
- Entire case usually lasts 4-6 months



## Chapter 13

- Repay some or all debts over 3 or 5 years
- Often for people with high incomes
- Can be used to catch up on missed car or mortgage payments
- May let people keep valuable assets they might lose in Chapter 7

# Pros & Cons of Bankruptcy

## Pros

- Eliminates most or all unsecured debt
- Provides a “fresh start”
- Can start rebuilding credit quickly
- Immediately stops most collection activity, garnishments, and bank levies



## Cons

- Listed on credit report for 10 years
- Debtors with a recent bankruptcy filing may have difficulty obtaining credit or renting
- May negatively impact credit rating for a time



# Debts still owed after bankruptcy:

- **Income taxes** (some exceptions for old taxes)
- **Child and spousal support payments or debts**
- **Student loans** (“undue hardship” exception)
- **Traffic tickets and government fines**



# Adversary Proceedings

## What is an “adversary proceeding”?

- Creditors who believe that someone in bankruptcy **incurred a debt through fraud** may try to prevent that debt from being discharged.
- To do so, they would **file a lawsuit** called an “adversary proceeding” in Bankruptcy Court.
- Such lawsuits are rare, and must be filed **within sixty (60) days** after the first scheduled Meeting of Creditors.





# What can debtors keep if they file for Chapter 7 bankruptcy ?

- **Most people** who file for Chapter 7 bankruptcy are able to **keep everything they own.**
- Some people **might lose very valuable assets** (such as a home with a lot of equity)
- There are protections called “exemptions” that determine what debtors can keep in bankruptcy.
- These protections vary by state, and protect items such as jewelry, clothes, household goods, etc.
- California’s “wildcard” exemption can protect **up to \$28K** in additional assets.



# Eligibility (Part 1)

## Prior Bankruptcy?

- Debtors with a previous Chapter 7 bankruptcy must **wait eight (8) years** between filing dates to be eligible for a discharge in a new Chapter 7 case.

## Which Exemptions?

- Debtors who haven't lived in California **continuously for two (2) years** may need to use other exemptions.

## Residency Requirements

- Debtors who have **recently moved** to the Central District **may need wait** to file until they've lived in the district for at least 91 days.



# Eligibility (Part 2)

**All Chapter 7 bankruptcy filers must pass a “Means Test” to be eligible to file**

## **What is the “Means Test”?**

- The first step is to compare pre-tax **household income for the last six months** to the state median household income.
- Those above the median income are subject to a Means Test that compares income and expenses. Those with excess income **may** need to file a Chapter 13 bankruptcy.



# Eligibility (Part 3)

## Credit Purchases and Cash Advances:

- Credit card purchases within **90 days** before filing for bankruptcy—and cash advances within **70 days** before filing—can raise a red flag.
- Debtors who have recently used credit cards or taken out cash advances may need to wait 90 days to file for bankruptcy.
- Also, **any** credit purchases debtors make without intending to repay are considered **fraud** and **may not be dischargeable**.



# Preparing the Forms (Part 1)

## Credit counseling course

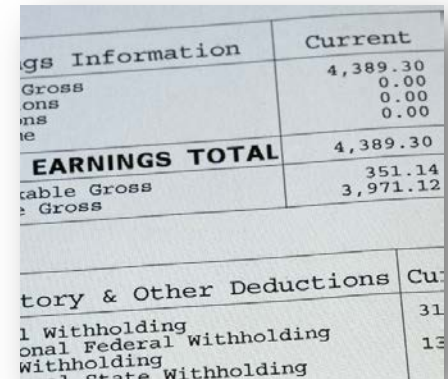
- Take one-hour course (usually online) from approved agency **no more than 180 days** before filing bankruptcy.
- The provider will mail, fax, or email the certificate.

## Paystubs

- Paystubs or other proof of income are needed for debtor (and spouse, if married) for the six (6) months prior to bankruptcy filing date.

## Bills and collection letters

- Gather most recent bills and collection letters.



The image shows a portion of a paystub. It has two main columns: 'Earnings Information' and 'Current'. Under 'Earnings Information', there are rows for 'Gross', 'Deductions', and 'Net'. The 'Current' column shows values: 4,389.30 for Gross, 0.00 for Deductions, and 0.00 for Net. Below this, there is a section for 'EARNINGS TOTAL' with a value of 4,389.30. Further down, there is a section for 'Deductions' with a value of 351.14, and a 'Net' value of 3,971.12. At the bottom, there is a section for 'Deductions' with a value of 31.12, and a 'Net' value of 13.12.

| Earnings Information  | Current  |
|-----------------------|----------|
| Gross                 | 4,389.30 |
| Deductions            | 0.00     |
| Net                   | 0.00     |
| <b>EARNINGS TOTAL</b> | 4,389.30 |
| Net                   | 351.14   |
| Net                   | 3,971.12 |
| <b>Deductions</b>     | 31.12    |
| Net                   | 13.12    |



The image shows a collection letter from a creditor. It is a form with various fields and checkboxes. The letter is dated 08/09/2012. It includes a section for 'Personal, Business, Savings, or Other' with a value of \$233.51. There is also a section for 'Reference No.' with a value of 001. The letter is addressed to the debtor and includes a 'Reference No.' and 'Item No.' field.

| Reference No. | Item No. | Description |
|---------------|----------|-------------|
| 001           | 001      |             |



# Preparing the Forms (Part 2)

## List all debts

- Obtain credit reports to ensure that all debts are listed. Debtors **cannot “pick and choose”** which debts to include.



## Tax returns

- Debtors need tax returns or annual income information for the last two years.

## Income and expenses

- Determine monthly income and expenses.

## Cosigners

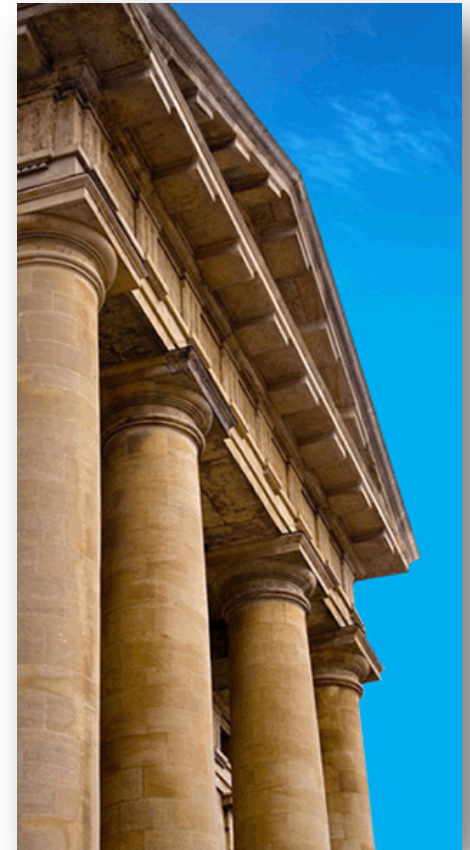
- List names and addresses of cosigners



# Where to File

## Where is the bankruptcy petition filed?

1. Go to [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)
2. Click on **"Court Locator"**
3. Enter zip code in the search box on the left and click **"Search"**
4. Debtors will file in one of the five bankruptcy courts, based on zip code:
  - Los Angeles
  - Santa Ana
  - Woodland Hills
  - Riverside
  - Santa Barbara



# What to File

**Bring the following items** (and a copy for your records):

- **Chapter 7 bankruptcy forms** with original signatures
- **Credit counseling certificate**
- **Proof of employment income** (such as paystubs) received in the 60 days before filing
- **Typed mailing list** of all creditors, debt collectors and cosigners
- **\$335 filing fee**: The Court accepts U.S. Postal Service money orders, cashier's checks, or cash (exact change). Debtors may also apply for a **fee waiver** or **installment payments**.

# After Filing

## After filing the bankruptcy paperwork, debtors will receive:

- Case number
- Date and time of their **341(a) hearing** and case number
- Name, address, and phone number of their **Chapter 7 trustee**

## After filing their petitions, debtors must:

- Mail a **copy** (NOT ORIGINAL) of their **most recently filed taxes**, via certified mail with return receipt, to the Chapter 7 Trustee no later than seven (7) days before 341(a) hearing. They should also bring extra copy to the 341(a) hearing.
- Complete the **financial management course** (also called the debtor education course). THIS COURSE IS MANDATORY!

# Payments on Secured Property

- Debtors with secured property (such as cars) that they want to keep must **continue to make payments** after filing.
- Lenders may stop sending billing statements and cancel automatic payments. If so, debtors can make payments via **U.S. mail, over the phone, or in person.**
- Debtors should **keep proof** of payments they make.





# Financial Management Course

- After filing, all debtors must complete an online financial management course.
- The course provider emails the certificate to the debtor, and may be able to file the certificate electronically with the Court.
- If not, the debtor must file a cover sheet (Form 423) and the certificate in person at the Bankruptcy Court.
- If the certificate is not filed within 60 days after the first scheduled Meeting of Creditors, the Court will **close the case** and **all debts will return**. It costs **\$260** to reopen the case to file the certificate.



# Meeting of Creditors

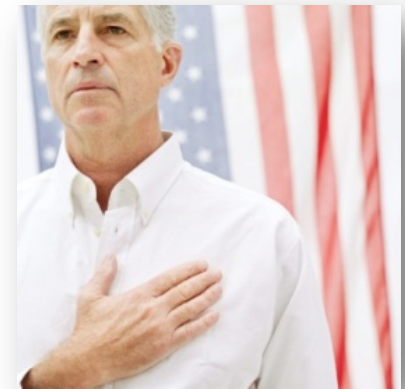
## **Debtors must bring the following:**

- Social Security card
- Driver's license or government-issued photo ID
- Copy of bankruptcy paperwork
- Copy of most recently filed taxes
- Notepad and pen to take notes



## **At the hearing:**

- Debtors should arrive at least 30 minutes early
- Read the green pamphlet and complete the questionnaire provided at the meeting
- The Chapter 7 trustee swears in debtors under oath
- **Debtors must testify truthfully**



# After the Meeting of Creditors

## **Debtors may also need to:**

- Provide the Chapter 7 trustee with any requested information (via certified mail).
- Amend schedules if they need to be corrected.
- Attend continued hearing dates (if required)
- If debtors excused from appearing at a continued hearing, confirm this with the Chapter 7 trustee before the hearing.



**IF A DEBTOR DOES NOT COOPERATE  
WITH THE CHAPTER 7 TRUSTEE, THE  
COURT WILL DISMISS THE CASE**

# Waiting for the Discharge

## **Discharge**

Debtors should receive the discharge notice **2-3 months** after the 341(a) hearing. They should contact the Court if not received after 4-6 months.

## **Change of address**

Debtors must keep their address current with the Court. If debtors move before the discharge, they must file a change of address form with the Court.

## **Keep copy of discharge order**

Debtors may need proof that they received a discharge in case creditors contact them.

