

CHAPTER 7

BANKRUPTCY

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I. INTRODUCTION: CHAPTER 7 BANKRUPTCY

This Bankruptcy Guide is intended to give you an overview of a Chapter 7 bankruptcy practice in the Northern District of Illinois. To represent clients in the U.S. Bankruptcy Court for the Northern District of Illinois, you must be admitted to practice before the United States District Court for the Northern District of Illinois. The information in this guide should help you walk-through a simple uncontested Chapter 7 bankruptcy. In any case, if you have questions or need a more in-depth treatment, feel free to call us.

By the way—the Bankruptcy Court’s website is a great tool. You can find cases filed in the last few years and download or print out the case pleadings and motions, court orders, docketing statement, etc.—all from the comfort of your office or home. The link to the website is: www.ilnb.uscourts.gov. Information on this site was once free. However, there currently is an access fee of \$.10 per page retrieved. This applies to both the pages of search results and the pages of documents you retrieve. Users of the website must now register with the Pacer Service Center to obtain an account. You can register online by using this link: <http://pacer.psc.uscourts.gov/>. You can also register by contacting Pacer at 1-800-676-6856.

Additionally, Chapter 7 bankruptcy petitions can now be e-filed through an online database called CM/ECF. You must complete the District Court's instructor-led CM/ECF training or on-line CM/ECF training to obtain an E-Filing account login and password.

A Chapter 7 bankruptcy is what most people are thinking about when they say they want a bankruptcy. Under a typical Chapter 7, the client is discharged of most debts and, ideally, walks away free and clear. The client gets a “fresh start” and begins life anew, free of debts, but also free of significant non-exempt property.

The other common type of bankruptcy for the average consumer is a Chapter 13, which allows a debtor to keep most property while paying creditors all or part of the debts over a period of time. As a general rule, CVLS does not handle Chapter 13 bankruptcies. However, a brief overview of Chapter 13 bankruptcies is provided at the end of this manual.

II. GETTING STARTED- GATHERING CLIENT DOCUMENTS

Even with simple bankruptcies, it is always helpful for your client to gather up as much information as possible prior to the initial interview. Send your client a letter asking them to bring to the initial interview two recent credit reports, their last three federal and state tax returns, their past six months worth of pay stubs, and any court documents which involve lawsuits in which they have been sued or have sued someone. A person may obtain up to two free credit reports per year at www.annualcreditreport.com. In addition, send your client a bankruptcy questionnaire, creditor information worksheet; a Schedule I (worksheet which calculates the client’s monthly income) and a Schedule J

(worksheet which calculates the client's monthly expenses) and ask them to complete these to the best of their ability prior to the interview. A sample bankruptcy questionnaire, creditor information sheet, Schedule I and Schedule J are attached to the end of this manual. Finally, ask that your client to bring a certified check or money order payable to Chicago Volunteer Legal Services Foundation in the amount of \$335.00. This is the cost to file a Chapter 7 bankruptcy petition. Let the client know that if we are unable to take their case then the amount tendered will be refunded to them.

III. THE INITIAL INTERVIEW

As with any case, this is the crucial first step -- when a client comes to see you for a bankruptcy, find out what, *exactly*, is the client's financial situation. Clients will often ask for a "bankruptcy" without actually knowing what it is or what it entails. Sometimes, it is not in the client's best interests to file for a bankruptcy.

So, what's the best way to start a bankruptcy interview? First of all, get a clear picture of the client's income and property. Review all of information on the bankruptcy questionnaire and the financial documents with the client to ensure that you have the correct information. Often clients misstate the value of their assets and the amount of their expenses. The questionnaire incorporates the same information needed to complete the bankruptcy Petition and Schedules. It will also give you an overview of the client's situation to help determine if a chapter 7 bankruptcy is in the best interests of the client.

A. INCOME AND PROPERTY

Typically we advise client's against filing for bankruptcy when they are "collection proof." This means the client does not have any assets (income and property) that creditors can obtain from them.

Typical assets protected from creditors regardless of whether a bankruptcy is filed include:

- Up to \$371.25 per week (\$742.40 bi-weekly, \$804.37 semi-monthly, \$1,608.75 monthly) in net wages (money from work a client receives after all taxes are taken out). This amount is equal to 45 times the current hourly minimum wage rate.
- Income from Social Security, Supplemental Security Income, Unemployment Compensation, public assistance, disability benefits, Worker's Compensation, maintenance (alimony), child support payments, and Black Lung Benefits.
- Veteran's Administration Benefits with the exception of some US government claims.
- Money in a 401K, IRA, or other retirement account.

- Private Pensions to the extent that they are used for personal support and the support of dependents.
- Up to \$7,500.00 personal injury award to the client or his dependent.
- Crime Victim's Award.
- Wrongful Death Award or Life Insurance payments received by a person the client is a dependent of to the extent reasonably necessary for personal support.

Additionally, creditors may not obtain the following property:

- Up to \$15,000.00, if single, or \$30,000.00, if married, worth of equity in the client's place of residence (house, mobile home, condominium, building, or lot of land occupied as a residence).
- Up to \$2,400.00 worth of equity in one motor vehicle (car, truck, etc.).
- Up to \$1,500.00 worth of implements, professional books or tools for a trade.
- For each family member: necessary clothing, a bible, school books, and family photographs.
- Health aids prescribed by a physician.
- \$4,000.00 worth of any other property, such as money in a bank account, furniture, or jewelry. This amount may also be stacked on to the \$15,000.00 equity in a house exemption or the \$2,400.00 equity in a motor vehicle exemption.

These assets, no matter how much the client owes, are exempt and cannot be taken by creditors for payment of a debt. Therefore, if all of your client's income and property fall into the above categories, advise your client to wait until they have nonexempt assets to file for bankruptcy. Clients who are "collection proof" often want to file for bankruptcy solely because collection agencies are harassing them. Sample letters which your client can use to notify creditors and collection agencies that they are "collection proof" and that they should stop attempting to collect on their debt are attached to the Appendix.

B. EXPENSES AND DEBTS

Once the client's assets are reviewed, the next step is to go over the client's current expenses and debts. This information will be obtained in the bankruptcy questionnaire, along with the Schedule J worksheet, the creditor information sheet, and the credit reports.

Make sure that your client provides you information on all of his or her debts including:

money owed to friends and relatives, parking tickets, utilities bills, unpaid taxes, cable TV bills, and any other debts that they are liable for. You need to know the name and address of the creditor, the date the obligation was incurred, the remaining balance, and the current status of the debt (*i.e.* length of delinquency, whether it is in collection, whether a lawsuit is pending or whether it has gone to judgment and collection).

By reviewing the client's expenses and debts you will be able to determine the following:

- **Whether the client's debts are dischargeable:** While a bankruptcy discharges most debts, there are some debts that are not always dischargeable. Non-dischargeable debts include*:
 - Income taxes unless it is more than 3 years old, the client filed a non-fraudulent tax return at least 2 years ago, the tax was assessed more than 240 days ago, and the debtor did not willfully evade the payment of the tax
 - Student Loans
 - Child Support and Maintenance (Alimony) obligations
 - Debts incurred in the course of a divorce or separation agreement
 - Debts arising from intentional torts
 - Debts for personal injury or death caused by driving while intoxicated
 - Fines or citations for violating the law
 - Debts incurred through a fraudulent act, under false pretenses or false representations
 - Cash advances of more than \$875.00 obtained within 70 days of filing for a bankruptcy
 - Credit card purchases of more than \$600.00 obtained within 90 days of filing for a bankruptcy

**Although for the most part these debts are non-dischargeable, there may be exceptions under certain circumstances.*

- **Whether your client's current monthly income is less than their regular monthly expenses:** A person's debts can only be discharged once every 8 years from a Chapter 7 bankruptcy and once every 6 years from a Chapter 13 bankruptcy. Therefore, if your client will be unable to pay his or her monthly expenses after receiving a discharge then bankruptcy may not be the best option for your client.
- **The total amount of the client's debt:** If the total amount of debt is small then bankruptcy may not be the best option. Try contacting your client's creditors to see if they will enter into a repayment plan.

IV. WHAT A BANKRUPTCY WILL NOT DO

Before we get into the nuts and bolts of filing a bankruptcy, you may need to clarify with your client what this legal procedure will and will not do.

A bankruptcy may not help someone whose monthly income is always less than regular monthly expenses. A bankruptcy allows a debtor to discharge debts owed *as of the date the case is filed*. Debts incurred after that date are not included and, consequently, not dischargeable. A client can only file a Chapter 7 bankruptcy and receive a discharge once every 8 years. If your client is living beyond his means and files bankruptcy without, at the same time, increasing income or reducing expenses, he may be in serious financial trouble a year or two or three later when filing a Chapter 7 is not an option.

Make sure you understand how your client got into financial trouble and whether or not it will be a recurrent problem.

What else will a bankruptcy not do? It will not:

- **Allow a homeowner to keep the house and get out of paying the mortgage at the same time.** In a Chapter 7 a client may be able to discharge the mortgage debt, but that discharge will not erase the lien created by the mortgage. If a mortgage arrearage is not cured or settled by negotiation with the mortgage lender shortly after filing a Chapter 7, the lender can ask the Bankruptcy Court for leave to foreclose, or wait until the Chapter 7 is over and foreclose then. In a Chapter 13 the debtor may cure the pre-petition mortgage arrearage in the Chapter 13 plan, but must remain current in all post-petition mortgage payments or also risk foreclosure.
- **Allow a client to keep secured property without paying the debt.** For example, although the client may be able to reduce the balance of a car loan and the monthly payment in a Chapter 13, in a Chapter 7 he will have to agree to ultimately pay the debt pursuant to a reaffirmation agreement with the creditor or lose the car (*caveat: The car finance company can refuse to allow the debtor to reaffirm the debt*). In Chapter 7 cases, a debtor may be able to “redeem” the property. In redemption, the court holds a hearing to determine the actual value of the property. Once the value is established, the debtor must pay that amount in full (a lump sum) in order to keep the property. Redemption is rare because most bankruptcy clients cannot afford to redeem their property in one lump sum.
- **Allow a client to avoid paying current or past due child or spousal support.** Child and spousal support payments are not dischargeable in a bankruptcy. Attorneys’ fees incurred in collecting or setting those support obligations are usually non-dischargeable.

- **Allow a client to maintain utility services without paying for them.** Although a client can discharge utility bills in a bankruptcy, the utility company will most likely demand a security deposit for future service. The Debtor can ask the Court to set the amount of the security deposit by filing a Motion pursuant to §366(b)¹ within 20 days of the filing of the Bankruptcy Petition.
- **Help a client avoid student loans.** Student loans may only be discharged in cases of extreme hardship. These are very rare -- don't count on it for your client.
- **Automatically discharge debts owed to government authorities --**
 - Generally speaking, personal income taxes are dischargeable only if
 - The tax was due at least 3 years ago;
 - The debtor filed a non-fraudulent tax return at least 2 years ago;
 - The tax was assessed more than 240 days ago; *and*
 - The debtor did not willfully evade the payment of the tax.
 - Parking tickets are not dischargeable, even though they must be listed as a debt.
- **Discharge a judgment incurred as a result of --** death or personal injury caused by the client's use of drugs or alcohol.
- **Discharge in a Chapter 7 any debt incurred as a result of --** willful and malicious injury to any person or his/her property, reasonable reliance on a false financial statement, actual fraud, false pretenses, false representation, or fraud or defalcation while acting in a fiduciary capacity, embezzlement or larceny.

V. WHAT BANKRUPTCY DOES

So, after that list of everything a bankruptcy will not fix, why bother with one? Because for non-collection proof clients a bankruptcy may give them peace of mind and a fresh start. The two most important features of both a Chapter 7 and Chapter 13 bankruptcy are the automatic stay and discharge.

A. AUTOMATIC STAY

Once a creditor is notified that a Petition for Bankruptcy has been filed, all actions to collect a debt must stop. That means that an employer must stop garnishing wages, a bank cannot turn over a garnished bank account, and all pending civil lawsuits must be stayed until the resolution of the bankruptcy case.² This is one of the primary reasons people file for bankruptcy. The automatic stay gives the debtor breathing room and time for the attorney to work something out.

¹ Unless otherwise noted, all references are to the Bankruptcy Code, 11 U.S.C. §101 *et. seq.*

² In some cases, creditors can successfully ask a court to lift the stay while the bankruptcy case is pending.

B. DISCHARGE

A bankruptcy also gives the debtor a “fresh start.” This is the very essence of our bankruptcy law. Once a discharge is granted in either a Chapter 7 or 13, the debtor is freed from any further obligation for the discharged debts. They are gone forever and the debtor is able to start a new life clear of a heavy debt load.

VI. WHO BENEFITS FROM A BANKRUPTCY?

Obviously, as noted above, a bankruptcy is not for everyone. So who will benefit from this legal procedure?

- **A debtor with substantial debt incurred as the result of a non-recurring problem.** For instance, a client who suffered from a serious medical problem or needed major surgery, but had no or inadequate insurance and is left with crushing doctor and hospital bills.
- **A worker who lived on credit while unemployed.** Again, as long as the debtor can reasonably expect to live within his or her means, a bankruptcy makes sense. No one should face a new job under the cloud of a garnishment.
- **A “collection-proof” client whose emotional or physical health is jeopardized by creditors’ repeated collection attempts.** As noted above, if a client has no attachable income and owns no real or substantial personal property, he or she is collection proof and usually does not need a bankruptcy. However, some clients are too emotionally fragile to withstand creditors’ constant and urgent attempts to collect debt. A bankruptcy allows them to preserve their sanity and health by protecting them from harassing creditors. These cases require careful review and counseling by the attorney to ensure that the client will not continue to get into serious debt after the discharge, when bankruptcy is no longer an option.

VII. ALTERNATIVES TO FILING FOR BANKRUPTCY

If after the intake you recommend that your client does not file for bankruptcy, then you may want to explore less drastic alternatives. Often, creditors are more than willing to work out payment plans or reduce a debt to avoid a bankruptcy. It is in their best interests to get something rather than the nothing they will get if their debtor files a Chapter 7.

Hospitals and doctors are often willing to settle claims for lesser amounts. In addition, a lawyer should always double-check the validity of the bills and whether or not a client’s insurance company paid its fair share. (Obviously, this usually applies to debts that have not been reduced to judgment.)

Is it worth negotiating with national credit card companies or loan agencies? It can’t hurt. It

also doesn't hurt to try to work out a settlement with a judgment creditor. Often, the creditor's attorney will agree to settle for a lower figure, especially if the debtor can pay it all at once. Payment plans that stretch out over time will rarely receive much of a discount, but again, the alternative of getting "bubkes" from a bankruptcy court is not very appealing.

What about your client's student loans? You can try and apply for an undue hardship, but this is extremely difficult to get. The best alternative is to contact the department of education and to see what your client's options are. If your client is disabled, he/she may be able to get his loans discharged. All clients may be able to get their loans deferred or may be able to make lesser monthly payments on their loans due to their current financial circumstances.

If you have a fragile judgment-proof debtor, you stand a pretty good chance at getting creditors to go away just by notifying them of your client's financial circumstances. In these cases it is a good idea to use CVLS letterhead and identify yourself as a volunteer with a "legal aid" office. Once creditors -- or their attorneys -- learn that the debtor is eligible for legal aid, a lot of the wind goes out of their sails.

VIII. A FEW LAST THOUGHTS BEFORE FILING . . .

A. CUT UP THE CARDS . . .

Is your client still using credit cards? Hopefully not. If he is, you may have to wait to file. Credit card companies may challenge the dischargeability of their claim if they believe your client deliberately ran up their cards before filing for bankruptcy. Purchases of luxury goods and services to a single creditor aggregating more than \$600.00- obtained within 90 days of filing are presumed to be non-dischargeable -- §523(a)(2)(c). Similarly, cash advances aggregating more than \$875.00 obtained within 70 days of filing are presumed non-dischargeable. The debtor has the burden of rebutting these presumptions.

B. . . . AND WATCH OUT FOR PREFERENCES . . .

A bankruptcy will not allow your client to pay off some creditors (a doctor, friend, or the like), but not others. Sometimes, clients are very upset when they learn that they have to include all debts in the bankruptcy. They are not allowed to pick and choose. Although they may be able to agree to pay certain debts after discharge (a reaffirmation agreement, discussed at page 20), the fact is, debts owed to their doctor, friend or family member will be discharged along with those anonymous and annoying credit card debts.

Make sure your client doesn't pay off any significant debts immediately before filing. The Trustee has the right to void the transfer of property (including money) to an "insider" of the debtor going back one year from the date of the filing of the

bankruptcy petition. Therefore, if your client wants to pay off a brother-in-law, s/he will have to wait at least a year and a day to file for bankruptcy. Payments to creditors that are not insiders (such as the debtor's doctor) are subject to recovery by the Trustee if the payment was made within 90 days of the filing of the bankruptcy petition.

C. . . . INHERITANCES, DIVORCE SETTLEMENTS AND AWARDS

The Bankruptcy Code includes as property of the bankruptcy estate any property to which the debtor becomes entitled within 180 days after the date the Petition is filed:

- *By bequest, devise or inheritance;*
- *As a result of a temporary or final divorce court order or a divorce property settlement agreement;*
- *As beneficiary of a life insurance policy or a death benefit plan.*

Obviously, you and your client probably can't time a bankruptcy filing to avoid the receipt of life insurance, a death benefit or an inheritance, but you can alert your client to this issue if he is in the middle of a divorce. Also, sometimes clients are aware that they stand to inherit some money fairly soon. Warn your client that if Aunt Sophie kicks the bucket within six months of the bankruptcy filing, he will get to see that \$10,000 inheritance fly out the door to the Bankruptcy Trustee for the benefit of creditors.

D. LITIGATION

Check the Cook County Clerk of the Circuit Court's website to see if your client has been involved in any litigation that may have not been disclosed to you.

VIII. FINALLY – PREPARING A CHAPTER 7 BANKRUPTCY PETITION

After your client's documents have been reviewed and you have determined that your client is eligible for a Chapter 7 bankruptcy, the next step is to prepare the bankruptcy petition. Most practitioners file bankruptcy cases online. A Chapter 7 Bankruptcy Petition can be obtained on the bankruptcy court's website. In addition, there are many software programs that allow attorneys to prepare the petition and file it online. At CVLS we use a software program called Best Case. In addition to discussing the essential information required in a simple Chapter 7 bankruptcy petition, this section also discusses how to input this information in Best Case. So let's get started.

A. PRE-FILING CREDIT COUNSELING

In order to receive a discharge through bankruptcy, clients must complete two credit counseling courses from an approved credit counseling agency. The first course is called a pre-filing credit counseling course. This course must be completed within 180 days before the petition is filed. For a complete list of approved agencies click on this link:http://www.justice.gov/ust/eo/bapcpa/ccde/CC_Files/CC_Approved_Agencies_HTML/cc_illinois/cc_illinois.htm. This list can also be found on the clerk's website.

The cost of each course usually runs from \$15.00-\$30.00. The Institute for Financial Literacy (866-662-4932) and the Credit Advisors Foundation (800-625-7725) sometimes offer the classes for free. Notify your client to complete the course as soon as possible and make sure he or she registers for the correct class: Pre-filing credit counseling. After your client completes the course he or she will receive a certificate. You will attach a copy of this certificate to the bankruptcy petition.

B. FILING FEE

Married clients can file jointly or individually. The filing fee for a Chapter 7 bankruptcy, whether for an individual or a married couple, is \$335.00. CVLS has rarely been able to get the fee waived -- every person (or couple) filing a Chapter 7 must pay the \$335.00 filing fee, although the court may permit the fee to be paid in installments.

If you got this case courtesy of the CVLS panel referral program, your client should have already paid the fee before we sent it to you. Call 312.332.3508 when you need the money -- CVLS can provide you a credit card number in a matter of minutes. If you prefer, you can use your firm's credit card and CVLS will reimburse you afterwards. **But always make sure the client has sent CVLS the money before you front the fee.**

C. PREPARING THE PETITION:

A Petition for Bankruptcy consists of numerous forms, schedules, and tests. Our bankruptcy questionnaire conforms to the petition; therefore, you will have all the information required prior to preparing the petition. In order to represent a client in bankruptcy you must be admitted to practice in an Illinois federal district court and will need to provide your ADRC number on the petition.

The following are detailed instructions on how to prepare a Chapter 7 bankruptcy petition in Best Case and file it with the Northern District of Illinois Bankruptcy Court:

1. Getting started: The first step is to open Best Case, click on "New." A box entitled "Create NEW Client File will appear. Select the type of debtor (either individual or joint), type in the debtor(s) name(s), and click on "Okay."

2. Form 1: Voluntary Petition. There are five tabs on this form. This will be the case for most of the forms and schedules you prepare. Make sure you click on all tabs to ensure the appropriate information is filled out. In the "Filing information" tab, change the name in the "Attorney" box to your name and include your ARDC number. Under the "Info2/Exh" tab, click on the "Exhibit D" button that applies to your client and select the most applicable option. Read through all the tabs to ensure you fill out everything that is applicable to your case.

3. Exhibit D: Once your client completes the pre-filing credit counseling course and you will receive a copy of their certificate, scan the certificate and save it on the computer as "CCC.pdf" in C:\ECF\Debtor's name. In Best Case, put your cursor on "Exhibit D" so that it is highlighted. Scroll down to the bottom of the screen and click "Attach." Click "Insert" and choose "Existing PDF File" from the drop down list. Find the CCC.pdf file in the C: Drive and chose it. Check the appropriate box so that the document appears "After Form."

4. Form 3b: Application for Waiver of Filing Fee. This Form is only applicable if you have a Fee Waiver petition.

- a) If you check "waiver" in the Petition section, Form 3b will automatically appear in the available documents
- b) Double click on "Form 3b"
- c) Click "OK" and the Form will automatically be generated.
- d) Review the form to make sure Best Case filled everything in properly.
- e) Click File → Create PDF File
- f) Save the file as "Form 3b" in C:\ECF\Debtor's name. Close the file
- g) Go back to the main menu and put your cursor on "Form 3b" so that it is highlighted. Click on the "Attach" at the bottom of the screen. Click "Insert" and choose "Existing PDF File" from the drop down list. Find the PDF of the fee waiver in the C: Drive and chose it. Check the appropriate box so that the document "Replaces Form."

5. Form 6: Summary of Schedules. This Form will automatically be filled out and you will not have to input any information.

6. Schedules A through C: Client's Assets. This is where your work comes in. These schedules must be filled out carefully and with thought. Everything your client owns must be listed in either Schedule A or B. All of your client's interest combined will equal the bankruptcy estate.

Schedule A: Real Property. If there is no real property then either type in "NONE" or leave this form blank. Valuating your client's real property should not be a problem -- get a market appraisal or at least a current market analysis.

Schedule B: Personal Property. Many clients usually state that they do not have any personal property, which is not true, so make sure you ask all of the questions on the intake questionnaire. It is better to be over inclusive then under inclusive because

property that is not listed in Schedule B can be taken by the bankruptcy trustee. Clients (indeed, probably everybody including you and me) overvalue their personal property. It is hard to accept the fact that the \$1,000 digital TV you bought last month lost 50% of its value the minute you schlepped it through your front door. Clients will often give you the price they paid for their furniture and electronics. Suggest to them that they should consider the price their belongings would fetch late in the afternoon on the second rainy day at a neighborhood garage sale. That is probably a more accurate estimate of the property's actual value. For vehicles, check the Kelly Blue Book.

Also included in Schedule B:

- Lawsuits: Any pending causes of actions which may result in a monetary award must be disclosed. In addition, any potential causes of action that the client has not already filed but may result in a monetary award must also be disclosed.
- Tax refunds and potential tax refunds must be disclosed. If your client has already received a tax refund, then the client may have to explain to the trustee how the money was spent. Earned income tax credit is 100% exempt.

Schedule C: Property Claimed as Exempt. This Schedule is why you must carefully value your client's personal property. Your client gets to keep exempt property -- if the client's belongings are equal to or less than the allowed exemptions; the Bankruptcy Trustee will not claim those items for the bankruptcy estate.

On the other hand, the Trustee is supposed to carefully review these schedules. The Trustee's job is to collect all non-exempt assets for distribution to the creditors. S/he will be on the lookout for fraud, or under-valuation of property. Make sure your client's valuation is reasonable and sustainable.

Schedule C lists all the exemptions you selected to be applicable to your client's property. Review this schedule thoroughly to ensure that all applicable exemptions have been selected.

Property exemptions for bankruptcies filed in Illinois are governed by the Illinois Code of Civil Procedure, 735 ILCS 5/12 - Parts 9 and 10. A schedule of the most common exemptions is attached at the end of this manual. As each individual may claim an exemption listed —married couples filing jointly, in effect, get a double exemption. If your client's property falls substantially above these exemptions, you may want to consider an alternative to a Chapter 7, such as a Chapter 13 or a non-bankruptcy settlement.

7. Schedules D through F: Categorizing your client's debts. These are also schedules that attorneys must carefully review. The forms are fairly easy and self-explanatory. However, clients don't always want to list all of their creditors. They would prefer to list the

credit card companies, but skip their family physician in order to maintain a good relationship. They can't. All debts must be included -- period! Warn your client that the intentional omission of a creditor (or an asset) could lead to losing the discharge and could constitute a federal bankruptcy crime.

A. Schedule D creditors are those holding security interests or liens on the debtor's property. Secured debts include: mortgages, car loans, real property taxes, water bills (only if your client actually owns the property), property held by a pawn broker, IRS liens, and when a citation to discover assets has been issued. If your client does not have any secured debts, check the box that states "NONE."

B. Schedule E includes priority creditors of unsecured debts such as taxing bodies (unless taxes were due more than three years after filing), child support (non-dischargeable) alimony (maintenance), and those with employee or consumer deposit claims against your client.

C. Priority debt versus non-dischargeable debt: A priority debt gets special treatment in a bankruptcy. If money is going to be distributed to creditors, creditors with priority will get it first. A non-dischargeable debt is a debt that your client will still be liable for even though they filed for bankruptcy. A debt can be both priority and non-dischargeable.

D. Schedule F is for general unsecured creditors. This is a catch all schedule and includes all debts not included under Schedules D and E including: student loans (list them even though they are non-dischargeable), credit cards, medical bills, repossession fees, welfare overpayments, and co-signed debts. If your client disputes owing a debt, still list the debt and check the box that states "disputed." All unsecured, non-priority debts should be listed in Schedule F including non-dischargeable debts.

E. Identifying whether a debt is contingent, unliquidated, or disputed. On the very right of schedules D, E, and F, there is the option for you to select "contingent," "unliquidated," or "disputed."

- **Contingent Debts:** This is when your client's liability has not been established yet and is reliant on subsequent events; i.e. a lawsuit is likely to occur but has not been filed yet. Examples of contingent debts include your client being involved in a car accident or your client co-signing a loan and the primary signatory has not paid off the debt.
- **Unliquidated Debts:** This is when the liability has been stabled but the amount has not been determined yet. For example, when a judge rules that your client is negligent but has not ruled on how much your client owes.

- Disputed Debts: These are debts that your client disputes. You client may dispute the amount owed on a debt or the entire liability altogether.

8. Schedule G- Executory Contracts and Unexpired Leases: In Schedule G, you will list your client's pending contracts, including oral and signed leases. An executory contract is a contract in which both parties still have obligations remaining like cell phone contracts and employment contracts. Schedule G does not include terminated contracts and leases. If your client does not have any executory contracts or unexpired leases, check the "None" box. It is good practice to include any party you list on Schedule G on Schedule F, too.

9. Schedule H- Co-debtors: Schedule H requires listing all of the debtor's co-debtors, joint obligors and guarantors. Co-debtors are any other person who is also responsible for your client's debt but is not filing a joint bankruptcy with your client. It is good practice to include any party you list on Schedule H on Schedule F, too.

10. Schedules I and J: Calculating your client's budget- The client's income minus his expenses equals his monthly excess cash. . If your client's income greatly exceeds expenses, verify with your client if he does actually have that amount of money left over each month. If your client does not, then go over the expenses with him again. Your client shouldn't look too rich or the Trustee may have some serious questions about the bankruptcy.

A. Schedule I: Client's Income- There are six tables to fill out in Schedule I. Under the "Wages" tab include your client and their spouse's income. Cash income must be included as well. Under the "other income" tab there is a box for you to input social security and other government assisted income. All income from whatever source must be disclosed in Schedule I. Food stamps and Section 8 housing vouchers are not considered income; therefore, you do not have to include them in Schedule I. However, if your client receives food stamps or housing vouchers then add this information as an attachment in the end so your client can disclose the amount of food stamps and/or subsidize housing he/she is receiving.

B. Schedule J: Client's Expenses- In this schedule list your client's basic living expenses. Do not include payments that your client is making on his credit cards or other debts that are going to be discharged. If your client owns a vehicle and he is planning on keeping the vehicle, then the monthly car payments should be listed. Basically all the monthly expenses your client will continue to incur if his bankruptcy is granted should be included in Schedule J.

11. Form 7: Statement of Financial Affairs- This is a questionnaire regarding your client's financial history and it should be filled out completely and accurately. Questions 1 through 18 are for all debtors to answer. Your client only has to answer questions 19 through 25 if he owns a business.

12. Form 8: Chapter 7 Individual Debtor's Statement of Intention- This form is filled out only if your client has secured debts. The purpose of the Statement of Intention is to tell the creditor what your client would like to do with his property subject to security interests or liens. He can choose to keep the property by redemption or reaffirmation or can choose to surrender the property. For example, your client must declare whether he intends to reaffirm on a car contract, attempt to redeem the auto or surrender it to the creditor.

- Redemption: Your client has the opportunity when filing for bankruptcy to pay the creditor the value of the collateral. He will either pay the current value of the property or the current amount owed. He has to pay this amount in one lump sum.
- Reaffirm the debt: Reaffirming the debt means that the bankruptcy does not affect the creditor at all. Your client agrees to the terms of the creditor that was originally agreed to; as if your client never filed for bankruptcy. The risk of reaffirming a debt is that your client is still responsible for the full value of the loan, regardless of what happens to the property. If your client has a mortgage, then you may not want to recommend reaffirming the mortgaged debt due to the current housing market. You should not recommend reaffirming furniture loans unless the creditor gives your client more favorable terms because furniture values depreciate quickly. Pursuant to 11 USC 524(c)(1), reaffirmation agreements must be signed by both parties (your client and the creditor) and entered by the Court prior to the entry of discharge in order to be enforceable. There is a form agreement on the Bankruptcy Court's website: <http://www.ilnb.uscourts.gov/>. If your client needs to obtain a personal loan to reaffirm a debt then he must get court approval. A copy of the Individual Debtor Statement of Intention Form is sent to the creditors that were listed in the individual debtor statement of intention form. Example: if a car loan, send it to the car creditor.

13. FORM 22A: Statement of Current Monthly Income/Mean Test: The purpose of this test is to test whether your client can afford to pay his debt and should be filing a Chapter 13 bankruptcy or whether he really cannot afford his debts and is correct in filing a chapter 7 bankruptcy.

- In Step 1, calculate your client's 6 month average income. This is a breakdown of the his past six months of wages. Do not include your client's social security benefits, unemployment benefits, foster care benefits, and cash assistance from government (Tan Ex) in this calculation. Do include the spouse's income in this Form. The program will then compare your client's income with the medium income for the state of Illinois. If his income is under the medium income, then he qualifies for a chapter 7 bankruptcy.

14. Signature pages and the declaration authorizing electronic filing: Once the Petition

has been prepared, set up an appointment to go over it with your client. At the appointment, have a print out of the Petition ready so that your client can review each page thoroughly. Verify with your client that everything in the Petition is correct. A new rule, enacted on November 1, 2014, now requires our clients to sign every page on a Petition that has a debtor signature line. These pages are known as signature pages. Once all the signature pages have been signed scan and save them on your computer as C:\ECF\Debtor's name\SigPages.PDF. Keep the original signature pages in a safe place because a bankruptcy trustee may want to see them. The new signature pages rule replaces the previous rule which required our clients to sign a declaration that authorized attorneys to electronically file their Chapter 7 Bankruptcy Petitions. This declaration also signified that the information provided in the petition is correct. Although this declaration is no longer required, some attorneys feel better protected by filing it. The name of this document is called Declaration Re: Electronic Filing (ILN local form) and it could be found under the Local Forms folder in Best Case. If you chose to file the declaration then have your client sign it and save it on your computer as "Declaration" in C:\ECF\Debtor's name. In Best Case, put your cursor on Declaration Re: Electronic Filing (ILN local form) so that it is highlighted. Click "Attach" at the bottom of the screen. Then click "Insert" and choose "Existing PDF File" from the drop down. Find your client's signed Declaration in the C: Drive and chose it. Click on the box that states "Replaces Form."

X. FILING A CHAPTER 7 BANKRUPTCY PETITION

Once the petition is completed and reviewed by the client and the pre-filing credit counseling certificate and signed Declaration to Electronically File have been scanned into Best Case, you will be ready to electronically file the petition.

- Click on "ECF Manager," which is located on the bottom of the screen and then click on "Prepare ECF Filing." Finally click on "One Touch Case Filing." Best Case will do all the work, you just need to sign into the website with your login and password and pay the \$335.00 filing fee by credit card at the end (ask CVLS for a business credit card), unless there is a fee waiver. Best Case will remind you if the Declaration or CCC are not attached properly. Just make sure NOT to touch anything while Best Case does its magic. Once the case has been filed you will get a case number. You should receive an e-mail with links to everything that was electronically filed by the bankruptcy court within 72 hours of filing the Petition.
- If your request to waive the filing fee is denied, then pay the \$335.00 filing fee in person at 219 S. Dearborn Room 713 by check. Contact CVLS and we will issue you a check. Put the case number on the check and make the check payable to: Clerk, Bankruptcy Court.

XI. AFTER THE PETITION IS FILED:

A. POST-FILING DEBTOR EDUCATION: This is the second credit counseling class your client will have to take. Your client is required to complete a post-filing debtor education within 45 days of the first date set for the Meeting of Creditors (Bankruptcy Rules 1007(b)(7) and 1007(c)). However, we recommend advising your client to take the class as soon as possible to ensure that they do not forget to take it. Your client will just need to re-contact with the original agency he used (if the fee was initially waived, then it should still be waived). When your client has completed the course, you have to file Form 23 (available on Best Case, in Supplemental Forms folder) and the certificate as an attachment. To do this:

- i) Scan in Form 23 and the certificate into one document, and save it on your computer as: C:\ECF\ Form 23 – debtor's name
- ii) Log in at: <https://ecf.ilnb.uscourts.gov/cgi-bin/login.pl>
- iii) Under bankruptcy menu, pick "Other"
- iv) Enter case number
- v) Under "Available Events" choose "Debtor's Certification of Financial Management Course," then click Next.
- vi) Select your client's name, then click Next twice
- vii) Browse to find your saved Form 23 and upload. Select no attachments
- viii) Click Next
- ix) Review the docket entry and file it.

B. MEETING OF THE CREDITORS (Trustee's meeting): After the Petition is filed you will receive notice of the Meeting of Creditors. This is as close to a court hearing as the debtor will probably ever get. Impress upon your client that although this hearing is not held in the courthouse, he will be testifying under oath, so penalties of perjury do apply. The meeting usually lasts five to ten minutes.

Prior to the Meeting of the Creditors you may need to tender your client's pay stubs and tax returns to the trustee. You will be emailed the name of the trustee assigned to your case on the notice. The clerk's website has a spreadsheet of the name of each trustee, the documents they require, the method in which they would like to receive the documents, and the deadline in which the documents may be received.

Here is the link to the spreadsheet:

http://www.ilnb.uscourts.gov/ch7_trustees/cook_341_info.cfm

For Cook County cases, the Trustee conducts the Meeting of the Creditors at the Dirksen Federal Building, Room 800, at 219 S. Dearborn Street in Chicago. Anyone entering the building for a creditor's meeting must have a picture I.D. and know the case name and number. Your client must also have a Social Security Card, I.D. or Driver's License with Social Security Number, or a pay stub with Social Security Number. If the client fails to bring this to the Creditors Meeting, the client must obtain a printout at the Social Security Administration building and bring it back to the Creditors Meeting, or the case will be continued for 30 days, at which time the client must have one of these documents.

The Trustee (who may or may not be an attorney) is appointed by the court to serve in this particular case. When you check in, give your client the form Statement of Information sheet on the receptionist's desk. This contains basic information about the discharge and effects of a reaffirmation. The Trustee may ask your client to verify having read it.

Typically in CVLS cases, unsecured creditors (usually credit card companies, department stores and the like) do not appear. However, representatives of secured creditors may show up, seeking either a reaffirmation agreement or turnover of their collateral. At that point, all you want to do is see whether or not they are willing to negotiate on the debt and get time to review their loan documents. Don't feel pressured to resolve the issue at the Meeting of Creditors. Simply agree to advise the creditor of your client's decision within a short time. Never give your client advice on a reaffirmation agreement before reviewing the legal validity of the underlying loan documents.

The Trustee, after swearing in the debtor, will ask about the property and its valuation, the debtor's income and expenses. S/He may go over the schedules, verifying information and eliciting additional explanation if necessary. Make sure your client knows what is in those schedules and understands them.

If creditors are present, they will also be allowed to ask appropriate questions. Your client is obligated to answer them to the best of his ability.

What if an emergency arises and your client absolutely cannot appear at this meeting? The Trustee may, but doesn't have to, agree to a continuance. Obviously, it is much better to attend the meeting as scheduled, but a Trustee does have the discretion to reschedule a meeting, or even to hold it by telephone in extreme cases.

XII. THE DISCHARGE.

Once the Meeting of Creditors is over, all you and your client usually have to do is wait. As long as no creditor files an objection, your client's discharge will be granted and mailed to you within several weeks (about two months). Neither you nor your client need appear in court for this. Once you receive the discharge in the mail, the case is usually over. Send a copy to the client, advising him what it means, and close your file. A sample closure letter is attached in the Appendix.

- A. Forgetting to list a creditor: In a no asset case, the case law in Illinois says that the debt is deemed discharged even if it was not on the schedules (again, only if there were no assets to be distributed). Case: *In re Mendiola*, 99 B.R. 864 (Bankr. N.D.Ill. 1989). This is important to note if your client has forgotten to put a creditor on the petition (this almost always happens). If it is the case that a creditor was forgotten, send the creditor a copy of the Notice of Bankruptcy via regular and certified mail. In addition, send the creditor a copy of the discharge order when you receive it.

- B. Credit report: The bankruptcy will appear on your client's credit report for 10 years from the date of filing. This does not necessarily mean your client will not be able to get a credit card, loan, etc. However it may be difficult and your client may need to put down collateral.

XIII. ADVERSARIAL ACTIONS

What if a creditor or the Trustee files an objection? Then you obviously have a problem -- and a contested case. In a perfect world, no CVLS bankruptcy would ever become contested. However, as neither the world, nor CVLS is perfect, here is a brief discussion of the most common types of adversary complaints.

A. COMPLAINTS TO DETERMINE DISCHARGEABILITY OF DEBTS

A creditor will occasionally file a Complaint to Determine Dischargeability of Debt, alleging that the debtor should not be allowed to discharge its claim. Section 523(a) of the Bankruptcy Code provides for two classes of non-dischargeable claims—

① Those that require the creditor to file and serve an adversary complaint by a certain date; and ② Those that survive a Chapter 7 discharge without creditor action.

Type ① non-dischargeable claims include:

- Debts to the extent obtained by false pretenses, false representation or actual fraud -- §523(a)(2)(A).
- Debts to the extent obtained by false financial statements -- §523(a)(2)(B).
- Debts derived from fraud or defalcation while acting in a fiduciary capacity, embezzling or larceny -- §523 (a)(4).
- Debts derived from willful and malicious injury by the Debtor to an entity or its property -- §523(a)(6).
- Depending on certain factors, debts (other than for child support and maintenance) arising from a divorce decree -- §523(a)(15).

A properly scheduled creditor with proper notice of the Bankruptcy case must file a Complaint to Determine Dischargeability of Debt by the date set on the Notice of Meeting of Creditors, (usually about 60 days after that Meeting). The Bankruptcy Court can extend this date for good cause if the creditor files a motion before the initial filing deadline. If the creditor succeeds in obtaining a judgment, the creditor's claim will not be discharged and will survive the Chapter 7.

Contrary to popular belief, these Complaints to Determine Dischargeability can be easy to defend. Pleading is often highly technical -- fraud must be pled specifically, reliance (whether justifiable or reasonable) must be alleged and proven, and the

burden of proof is generally on the creditor. In addition, most attorneys can usually negotiate a settlement of these cases. The key to successfully defending them, like any other litigation, is to know the appropriate law and to obtain as much factual information as possible.

While a creditor must file the above complaints by a certain date to save their claim, other debts survive the Chapter 7 discharge without creditor action. These type ② non-dischargeable claims include:

- Income tax less than 3 years old, or taxes for which returns have been filed less than 2 years prior to bankruptcy, or taxes which were assessed or were assessable within 240 days of the bankruptcy -- §523 (a)(1).
- Income taxes resulting from the filing of fraudulent returns or willful evasion of payment, regardless of the above dates -- §523 (a)(1).
- Trust fund type taxes -- §523 (a)(1)
- Certain unlisted or unsecured debts -- §523(a)(3)
- Child support and maintenance -- §523(a)(5)
- Student Loans -- §523(a)(8)
- Debts for death or personal injury caused by the Debtor's operation of a motor vehicle while intoxicated from alcohol, drugs or other substances -- §523(a)(9).
- Certain restitution payments -- §523(a)(13).

Sometimes a debtor may wish to file a Complaint for Declaratory Judgment to establish that a debt, in a typically non-dischargeable category, is actually dischargeable, such as:

- Student loans, where extreme hardship is present.
- Income tax liability more than 3 years old for which accurate non-fraudulent returns were filed more than 2 years before, and which were assessed more than 240 days prior to the bankruptcy filing. (*You should wait to file this complaint until immediately after the deadline for creditors to file dischargeability complaints.*)
- Property allocation pursuant to a divorce decree. (*Again, wait to file this complaint until immediately after the deadline for creditors to file dischargeability complaints.*)

These situations illustrate how important it is to properly interview a client before the bankruptcy so that you obtain as much information as possible prior to the filing of a Chapter 7. Consider the poor debtor who filed a Chapter 7 a mere two months before his or her income tax debt would have become dischargeable. What about a client whose divorce judgment with a spousal indemnification and hold harmless provision for marital debts became final two months after a discharge? Proper bankruptcy planning includes waiting until relevant time frames have expired. A little extra pre-bankruptcy work often pays off by avoiding numerous problems and labor post-bankruptcy.

B. COMPLAINTS OBJECTING TO DISCHARGE

A Complaint to Determine Dischargeability challenges a single claim. A Complaint Objecting to Discharge attempts to prevent the Debtor from discharging *all* debts. These complaints, although rare, must be taken very seriously because they may constitute a bankruptcy crime; are difficult to settle (the Court must approve these settlements with notice to all creditors), and, if the Debtor loses, s/he has filed bankruptcy for nothing.

A creditor or Trustee will file a Complaint Objecting to Discharge alleging, among other things, that:

- The Debtor transferred, removed, destroyed, mutilated or concealed property after the bankruptcy filing or within one year prior to the filing -- §727(a)(2);
- The Debtor concealed, destroyed, mutilated, falsified or failed to keep or preserve recorded information from which the Debtor's financial condition or business transactions might be ascertained -- §727(a)(3);
- The Debtor knowingly and fraudulently, in connection with this case, made a false oath or account, presented or used a false claim, improperly gave or received property for service or for forbearing to act, or withheld records with information relating to the Debtor's financial affairs or property -- §727(a)(4);
- The Debtor failed to explain the loss of books and records -- §727(a)(5);
- The Debtor obtained a discharge in a previous Chapter 7 or Chapter 11 within six years of the pending case -- §727(a)(8);

The plaintiff has the burden to prove these claims. However, the defense can be highly technical and difficult. If your client faces this situation, get help.

C. LIEN AVOIDANCE

The Bankruptcy Code allows the Debtor to avoid certain judicial liens (§522(f)(1)(A)) and certain non-possessory, non-purchase-money security interests (§522(f)(1)(B)) to the extent that those liens and security interests impair the Debtor's exempt property. Typically, this applies to security interests given by debtors in their household goods when they use that property as collateral for a new loan. (Such as when your clients put up all of their furniture and appliances as collateral for a \$2,500 loan with the We-Bilk-Em Finance Company.)

In order to avoid such a lien or security interest, the Debtor has to file a Motion and give notice to the appropriate creditor. The court will hold a hearing if necessary, on the value of the goods and whether they have been claimed as exempt.

D. AVOIDANCE OF PRE-PETITION TRANSFERS

The Debtor can file an Adversary Complaint seeking to avoid a pre-petition transfer or setoff of property to the extent that s/he could have exempted such property, if the Trustee does not file a timely avoidance action -- §522(h). For example, if a Debtor repaid a \$700 loan to a neighbor 30 days before filing for Chapter 7 bankruptcy, the Trustee has the right to recover that money as a preference. If the Trustee does not bother, because the amount is inconsequential or the funds are exempt as part of the Debtor's "wild card" exemption, the Debtor can seek an avoidance of the pre-petition transfer -- in other words, take the money back from the neighbor and keep it, if exempt. While this probably won't make for good neighborly relationships, it will give the Debtor enough money to build a tall, sturdy fence.

IVX. CHAPTER 13

As a rule, CVLS does not handle Chapter 13 bankruptcies. A debtor must have regular income in order to file a Chapter 13. Most attorneys who handle 13's will accept their fee in plan payments from the Trustee. Therefore, even low-income CVLS clients can usually afford to pay an attorney to handle a Chapter 13 for them. However, in order to understand and be able to counsel a client on the benefits of the different bankruptcy options, here is a brief overview.

A Chapter 13 is a "debt reorganization" for individuals who owe less than \$360,475.00 in non-contingent, liquidated unsecured debt and \$1,081,400.00 in secured debt. A debtor generally pays from 10% to 100% of most unsecured debts over a period of time ranging from 3 to 5 years. The debtor doesn't turn over non-exempt property to the Trustee and walk away with a discharge, but enters into a payment plan approved by the court. The end result is the same: When a plan is successfully completed, debts are discharged.

Some CVLS clients require a Chapter 13 because they have equity in a home that might be lost under a Chapter 7. However, clients have to be told, in no uncertain terms, that they absolutely must continue to make their monthly mortgage and Trustee payments. If they don't, the secured creditor can ask the court for leave to foreclose or execute on the lien. Home mortgage arrearages can be included in the plan. Current mortgage payments are usually paid directly by the Debtor. It is not uncommon to hear from clients who, after making their Chapter 13 payments for a year or so, discover that their lender is asking the Court for leave to foreclose on their home because they stopped making their current mortgage payments. At that point, there may be little an attorney can do.

A Chapter 13 allows a client to discharge certain debts that are not dischargeable under a Chapter 7, such as those incurred as a result of fraud, willful or malicious injury, etc.

There is no time limit on filing Chapter 13's. Unlike a Chapter 7, which can only be filed once every 6 years, a client can begin a new Chapter 13 as soon as one is completed or dismissed. (This would not necessarily be a good thing, but . . .)

In order to determine whether or not a client is eligible for a Chapter 13, prepare a budget to determine the client's disposable income. Disposable income is the money left over for the month after all regular living expenses are paid. If the client has no disposable income, s/he can't file a Chapter 13. If there is disposable income, you will have to determine how much the client can pay back over what period of time.

Most plans are 36 months. The court can extend that up to 60 months for cause.

The debtor must pay 100% of any secured debts (mortgages, car loans, etc.) to the extent of the value of the collateral. An unsecured creditor must recover at least as much as s/he would have received under a Chapter 7.

Other debts that must be paid in full (100%) include:

- Family support not dischargeable under §523(a)(5).
- Taxes not dischargeable under a Chapter 7.
- Although student loans not dischargeable under §523(a)(8) do not have to be paid 100%, when the plan is completed, the remaining balance is still due and owing.

In addition, the debtor can choose to pay 100% of co-signed debts even while paying a smaller percentage of other, unsecured debt. A client with sufficient disposable income may have to pay off 100% of unsecured debt too. A client with less disposable income can generally pay as little as 10% of the debt. (Actually, the percentage can go even lower, but that is rare and only in extreme cases.)

The paperwork for a Chapter 13 starts off the same as for a Chapter 7. The debtor prepares a similar petition, along with the same schedules. However, in addition, the debtor's attorney must prepare a plan. The Model Chapter 13 Plan for the Northern District of Illinois is available at the Bankruptcy Court's website: www.ilnb.uscourts.gov. This model plan must now be used, pursuant to court order.

The debtor must begin making the plan payments to the trustee within 30 days of the filing of the plan. After the plan is confirmed (approved by the Judge) the trustee then distributes the money pursuant to the terms of the plan, with, usually, a pro-rata distribution to the unsecured creditors. The Trustee gets a fee for this. The amount fluctuates, so, to be safe, add 10% of the total debt as the Trustee's fee. This amount must be included in determining the plan payment. The debtor's attorney's fee can also be included in the plan.

The filing fee for a Chapter 13 is \$281.00. Again, as with a Chapter 7, the court will most likely not waive it, but may approve it being paid in installments.

If a client stops making payments on the plan, the Trustee will move to dismiss the case.

Dismissal releases the automatic stay and allows creditors to immediately resume collection proceedings.

A debtor always has the option of converting the Chapter 13 into a Chapter 7. However, if a Chapter 7 has been filed within 8 years prior to the Chapter 13 filing date, the Debtor will not get a discharge.