

UNITED STATES BANKRUPTCY COURT  
FOR THE  
DISTRICT OF MAINE

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A GUIDE FOR THE  
INDIVIDUAL PRO SE DEBTOR  
IN A BANKRUPTCY CASE

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December 2015

## INTRODUCTION

The term “*pro se*” is a Latin adjective meaning “for self,” that is applied to someone who represents himself or herself without a lawyer in a court proceeding. This guide is for individual *pro se* filers of consumer bankruptcy cases.

The bankruptcy laws are complex and are continuously evolving. Understanding them can prove difficult, and the decisions that must be made are not always as easy as they might appear. For example, there is the decision of what chapter of bankruptcy to file and which exemptions you should claim. There is the understanding of what debts may or may not be discharged.

Many of these questions can best be answered by an attorney who understands these complexities. A bankruptcy attorney can hear all of the facts about your unique situation and can give you advice and counsel you may rely on. Nevertheless, the Court understands that some individuals will choose to “go it alone.”

This manual is prepared for that person: the individual who has made the decision to proceed with a bankruptcy filing without any legal assistance. While neither the Court nor any employee of the Court can provide legal advice,<sup>1</sup> there are a number of procedural steps in filing a bankruptcy petition and managing the case through discharge that can be complicated. The manual is intended to assist the *pro se* debtor in navigating those procedural steps. It should not be cited or relied upon as legal authority. The information in this booklet does not substitute for the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or the Local Rules of this Court.

In addition, the information in this booklet also does not serve as a substitute for the advice of legal counsel. It is necessarily limited and is intended only as a guide to some basic aspects of bankruptcy law. It does not include all of the controlling law (such as the entire Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, this Court’s Local Bankruptcy Rules, and court decisions).

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<sup>1</sup> Employees of the clerk’s office are prohibited from giving legal advice to the public. 28 U.S.C. § 955 (Providing legal advice within the definition of the “practice” of law prohibited by § 955).

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## **LEGAL AUTHORITY, STATUTES AND RULES**

If you are a *pro se* debtor you must become acquainted with the duties and obligations imposed by the Bankruptcy Code and the Bankruptcy Rules.

The letters “U.S.C.” refer to the United States Code. The number that precedes “U.S.C.” refers to the title of the U.S. Code (e.g., 11 U.S.C.). The numbers following “U.S.C.” refer to the section of the title of the U.S. Code (e.g. “11 U.S.C. § 109”).

The U.S. Bankruptcy Code is found in Title 11 of the U.S. Code. Copies of the United States Code are available at public libraries and may also be found online (links to the Code are found at the U.S. Bankruptcy Court’s website: [www.meb.uscourts.gov](http://www.meb.uscourts.gov)).

In this manual, references only to a section number refer to the section of the Bankruptcy Code (i.e., title 11).

In addition to the U.S. Code, there are Federal and Local Rules that apply to every case. Links to the Federal Rules of Bankruptcy Procedure (“Fed. R. Bankr. P.”) as well as the Local Rules for the U.S. Bankruptcy Court for the District of Maine (“Local Rules”), as well as a link to Official, Procedural and Local forms are found at the U.S. Bankruptcy Court’s website: [www.meb.uscourts.gov](http://www.meb.uscourts.gov). In this manual, they are collectively referred to as the “Rules.”

## **OVERVIEW OF THE BANKRUPTCY PROCESS**

This section will give you a quick glimpse into the bankruptcy process, the steps involved in most cases, and what a debtor must do to effectively navigate a case through this Court.

1. All debtors must use official forms and they must be completed accurately and filed with the Court. Forms are available at the Bankruptcy Court’s website: [www.meb.uscourts.gov](http://www.meb.uscourts.gov).
2. All debtors must take a credit counseling course from an approved nonprofit credit counseling agency that outlines the opportunities for available credit counseling and assists in performing a related budget analysis.” § 109(h). The briefing must be obtained within 180 days **before** the petition is filed. The Court may excuse this requirement if exigent circumstances exist, or in the case of disability. See § 109(h)(3), (4).

The certificate of credit counseling must be filed with the official forms. The certificates must be obtained from a provider approved by the U.S. Trustee. For a

list of providers approved for the District of Maine, visit the Bankruptcy Court's website: [www.meb.uscourts.gov](http://www.meb.uscourts.gov), under "Filing Without an Attorney."

3. All debtors must pay the filing fee in full or:
  - a. File an Application to Waive the Filing Fee, which must be approved by the Court.
  - b. File an application to Pay the Filing Fee in Installments, which must be approved by the Court. See Local Rule 1006-1.
4. At least 7 days before the scheduled meeting of creditors (also referred to as a "Section 341 meeting"), all debtors must send the trustee a copy of their prior year's federal income tax return. See Fed. R. Bankr. P. 4002.

In addition to the tax return, at least 7 days before the scheduled meeting of creditors, all debtors must send the trustee copies of all pay stubs and other evidence of income received within the 60 day period prior to the filing of the case. See Fed. R. Bankr. P. 4002.

5. At the meeting of creditors, debtors must provide two forms of identification: a photo identification, such as a driver's license or passport, and a proof of social security number (social security card, correspondence from the Social Security Administration, IRS form W-2 or 1099). Photocopies of these documents are not acceptable. The tax return, which references the social security number, will not satisfy this requirement. See Fed. R. Bankr. P. 4002.
6. All debtors must attend the meeting of creditors and be examined under oath by the trustee. Creditors are invited to attend this meeting. See § 341.
7. All debtors must cooperate with the trustee and respond to all reasonable requests for information and documents.
8. Within 60 days after the first scheduled date of the meeting of creditors, all debtors must complete a Financial Management Course approved by the Office of the United States Trustee and file a certificate of completion with the Court. See § 111, §§ 727 (a)(11) and 1328(g).

## **THE CONSEQUENCES OF REPEAT FILINGS**

A bankruptcy case can be dismissed for many reasons. Missing a deadline, failing to file documents and failing to obtain or file the credit counseling certificate are just some of the many reasons why a case can be dismissed. When a case is dismissed, the debtor does not receive a discharge. In other words, the debtor does not receive the debt relief that they were seeking. Perhaps more simply stated: the debtor is back where they started. While a debtor may file another case in an effort to obtain that debt relief, there are consequences of repeat filings.

### **AUTOMATIC STAY**

The filing of the bankruptcy case operates as a stay. Most debt collection activities must stop. See § 362. However, if you had a bankruptcy case pending in the past 12 months, the automatic stay will be operative upon the filing of the second case, but only for 30 days. If you have had two cases pending in the past 12 months, no stay will take effect upon the filing of the new case. Read the code section, and the Local Rules to determine whether this may apply to you.

### **DISCHARGE**

If you have filed a bankruptcy case previously and received a discharge, the law limits how soon before you may receive another discharge of your debts. You may file a Chapter 7 case and receive a discharge of debts only once every 8 years. The time is calculated from the date of filing of each of the cases. You may file a Chapter 13 and receive a discharge of debt two years after a prior Chapter 13, but four years after any other chapter. See § 1328. If you file a case within these time frames, the law states that you will not receive a discharge of your debts.

## **BEFORE FILING FOR BANKRUPTCY PROTECTION**

The initial goal of a bankruptcy filing is to relieve an individual of unmanageable debt and, through the use of the allowed exemptions, to leave the individual with the means to support himself or herself and their dependents.

The Bankruptcy Code requires that a debtor seek credit counseling prior to filing a bankruptcy petition. In other words, explore other avenues of debt relief before deciding whether bankruptcy is the best or only option. The Office of the United States Trustee has an approved list of credit counseling agencies for each state. The Bankruptcy Court's website has a link to the U.S. Trustee's list. This list is updated regularly.

The credit counseling briefing may be provided in person, over the telephone or via the internet. If after the counseling session, you determine that you need to seek bankruptcy protection, you must obtain a certificate from the counseling agency attesting to the fact that you attended the briefing and you must file it with your petition. If a

repayment plan was developed, then you must file it along with the credit counseling certificate.

If you must file a petition quickly and you have not obtained the credit counseling briefing, the petition may be filed without it. However, you must file a statement of “exigent circumstances” and must attend the counseling within 30 days of the filing of the petition. See § 109(h)(3)(A). The certification must be satisfactory to the Court. See § 109(h)(3)(A)(iii). Failure to obtain the certificate prior to the filing of the case, or the failure to file the certification of exigent circumstances which is satisfactory to the Court and obtain the counseling within 30 days of the bankruptcy filing will result in the case being dismissed.

## **WORKING WITH PROFESSIONALS**

### **PETITION PREPARERS**

You may work with a bankruptcy petition preparer who will assist you with the necessary paperwork. However, a preparer is not an attorney and he/she is prohibited from giving legal advice. By definition, a petition preparer is a “a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a [bankruptcy] document for filing.” See § 110(a).

Petition preparers must comply with the Bankruptcy Code which requires them to provide their tax identification number and to disclose any and all compensation you paid for the services (or were paid by someone else on your behalf). The responsibilities of petition preparers can be found in § 110.

While a preparer may help you with forms, they are prohibited from advising you on which chapter you may file, what exemptions you may claim, and how secured debt may be affected in bankruptcy. In general, a preparer cannot provide you any advice on how your case may be resolved. Also, you should be aware that neither Maine nor the Bankruptcy Court has any certification process for bankruptcy petition preparers, or for paralegals and other non-attorney professionals who may provide bankruptcy petition preparation services.

Even if you use the services of a petition preparer, you are still representing yourself and will need to know about your duties and obligations in your bankruptcy case.

### **ATTORNEYS**

You may work with a licensed attorney who can give you specific legal advice and guidance, tailored to your situation.

Remember, Court personnel cannot give you legal advice. Only a licensed attorney can:

- Explain the meaning of a statutory provision or rule;
- Provide an interpretation of case law;
- Explain the result of taking or not taking action in a case;
- Help you complete forms and advise you regarding what is legally required when a form requires you to provide information;
- Advise whether jurisdiction is proper in a case;
- Advise whether a complaint properly presents a claim;
- Advise on the best procedure to accomplish a particular goal;
- Advise who should receive proper notice or service of papers.

To legally practice law in the U.S. Bankruptcy Court for the District of Maine, the attorney must be a member in good standing of the bar of the U.S. District Court for the District of Maine. In order to be a member of the bar of the U.S. District Court for the District of Maine, the attorney must be a member of the bar of the State of Maine.

To determine whether a person is an attorney licensed to practice law in the State of Maine, visit the Board of Overseers of the Bar webpage: [www.mebaroverseers.org](http://www.mebaroverseers.org).

### **PRO SE**

If you plan to file a bankruptcy petition without the assistance of a professional, the first step in the process is to obtain the proper forms. The official forms, authorized by the Judicial Conference of the United States, are available online at [www.meb.uscourts.gov](http://www.meb.uscourts.gov). They are available for free.

The first decision you must make is to determine which type of bankruptcy is the best for you: Chapter 7, Chapter 11, Chapter 12 or Chapter 13. Basic information about these chapters is included in this guide.

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases. Under chapter 7, a trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property exempt. In exchange for this, the debtor gets a discharge, which means that the debtor does not have to pay certain types of debts.

Chapter 13 is the debt repayment chapter for individuals with regular income whose debts do not exceed \$1,441,875 (\$360,475 in unsecured debts and \$1,081,400 in secured debts), including individuals who operate businesses as sole proprietorships. Chapter 13 generally permits individuals to keep their property by repaying creditors out

of their future income. Each chapter 13 debtor proposes a repayment plan which must be approved by the Court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a small fee. Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.

In Chapter 11, individuals who have debts higher than the amounts allowable in Chapter 13 propose a plan to pay creditors over a period of time. See § 109(e). Chapter 11 also has additional reporting and accounting requirements, and there is potential for the creation of a creditors committee, all of which can be burdensome and expensive.

Chapter 12 offers bankruptcy relief to those who qualify as family farmers or family fishermen. There are debt limitations for chapter 12, and a certain portion of the debtor's income must come from the operation of a farming or fishing business. Family farmers or fishermen must propose a plan to repay their creditors over a period of time from future income and it must be approved by the Court. Plan payments are made through a chapter 12 trustee who also monitors the debtor's farming or fishing operations while the case is pending.

Because this guide can offer only basic information, you are encouraged to obtain legal advice from a qualified and experienced bankruptcy attorney.

## **GETTING STARTED**

Bankruptcy is a complex legal world that has a vocabulary all its own. Many commonly used definitions are found in § 101. There are some other terms that you will come across. Knowing these terms will help you understand the process. For example:

- Estate: the estate is defined by § 541. Refer to this section to learn what constitutes “property of the estate.”
- Prepetition and post-petition: The term “prepetition” means before the bankruptcy petition was filed. The term “post-petition” means after the case was filed.
- Trustee: A trustee is the individual appointed to administer the assets of the estate. A trustee may liquidate or sell assets, or in cases where there is a plan, a trustee may collect payments and disburse the proceeds to creditors.

In addition to understanding terms, it is very important that you protect yourself and your family. Almost every document filed in a bankruptcy case is a public record. While you must provide truthful and complete information in your bankruptcy schedules and related documents, you should take care not to disclose highly personal and private information, such as account numbers, minor children’s names, and Social Security numbers.

There is only one document that requires you to provide your full social security number, Official Form 121, Statement About Your Social Security Numbers. This document

is not made available to the public. In all other filings you should provide only the last four digits of your social security number. The same applies for all account numbers disclosed (including creditor account numbers, bank account numbers, brokerage and retirement accounts, etc.) on Schedules A/B through E/F, and your Statement of Financial Affairs for Individuals Filing for Bankruptcy.

**You should also never identify minor children and/or dependents by their name. List them only as “minor son” or “minor step daughter” or the like, and provide their ages.**

In some cases, you may be required to file evidence of insurance. This evidence may include personal information, such as a social security number, or drivers’ license number. In those instances, you should redact that personal information, leaving on the last four digits of the social or license number. If the name of children or other household members appear on the document, such as may be the case with automobile policies, you should redact their names and personal identifying information.

### **PREPARING YOUR PAPERWORK**

Once you have obtained the necessary forms and determined which chapter you will be filing, you must complete the official forms. Before doing that, gather your paperwork: past and present bills, collection notices, pay stubs, tax returns. Obtain a copy of your credit report at [www.annualcreditreport.com](http://www.annualcreditreport.com). Open your mail. Get as much information as you can about how much you owe and to whom you owe it. As for your assets, gather as much information as you can: appraisals, insurance information, and the like.

Every question on the petition and the other documents discussed below must be answered with complete accuracy and honesty. By your signature you are swearing under the pains and penalties of perjury that each statement you make is truthful. Title 18 of the U.S. Code provides penalties, including fines and incarceration, for falsifying bankruptcy schedules, concealing assets, and other bankruptcy related crimes.

#### **OFFICIAL FORM 101 – VOLUNTARY PETITION FOR INDIVIDUALS FILING FOR BANKRUPTCY**

The petition itself is eight pages. You must answer all questions that apply to you. On page 6 and page 8, you must sign the petition. If it is a joint petition, both spouses must sign.

If you own an unincorporated business, you may include that business name and the debts it owes in your petition. For example, John Doe runs a deli called JD’s Deli & Subs. It is not a corporation. His petition could identify him as John Doe d/b/a (doing business as) JD’s Deli & Subs, and include any debtors that the business owes since he is personally responsible for those debtors. If the business was incorporated, it would have to file its own bankruptcy petition.

## **MATRIX OF CREDITORS**

The Court will send a notice of the meeting of creditors to all of the creditors you list on your schedules, provided that you also list those creditors on the matrix of creditors. Unlike most of the forms discussed in this guide, there is no form that you can download, complete and file. Rather this is a document that you create. It is a typed list of all creditors and other parties that should receive notice of the bankruptcy case.

Providing notice of your bankruptcy is important, both for you and for your creditors. A creditor will not know that it must stop collection activities if it does not know about your bankruptcy filing. Perhaps more importantly, a debt might not be discharged if it was not scheduled and noticed properly. In addition, if you forget a creditor, you may need to amend your creditor matrix, which will require an additional fee. If your case closes and you need to reopen your case to list another creditor claim, there will be even more fees, and there is no guarantee that the Court will allow you to reopen the case or amend your schedules. And to compound all of that, if you forget to list a creditor claim in the case, your case will experience delay.

If you have more than one address for a creditor, use all addresses. If you are not sure if you owe a creditor, list them on the creditor matrix anyway. There can be no such thing as “too much notice,” especially when there may be costly consequences for insufficient notice.

## **SCHEDULE A/B: PROPERTY (OFFICIAL FORM 106A/B)**

Schedule A/B is where you list all ownership interests you have in real estate. The size of your ownership interest is not relevant; any interest in real estate must be disclosed. This includes land, a home, investment property, a vacation home or a condominium (even if that condominium is a parking space). If you own no real estate, do not leave the form blank. Check “none” (if there is a box) or write the word “none” on the schedule.

Schedule A/B is also where you list all personal property. This schedule is never blank. Everyone owns personal property. Everything from the cash in your pocket, to your clothing, to your retirement savings, and all other items in between gets listed. Carefully read each question on the left side of the form and answer it honestly and completely. If you have no property that fits into that particular category, be sure to check the box that says “No.”

## **SCHEDULE C: THE PROPERTY YOU CLAIM AS EXEMPT (OFFICIAL FORM 106C)**

Section 541 describes the property that constitutes the estate. However, debtors are permitted to claim certain property exempt (or excluded) from the estate. This form – and its proper completion - is very important.

In Maine, you have a choice of which exemptions you may elect to use: those available under federal bankruptcy law or those available under Maine law. You must choose either the federal or the state exemptions; you cannot pick and choose or mix and match.

In addition, the decision of which exemptions to elect and what property to claim as exempt is a legal decision that only you can make. Neither Court personnel nor a petition preparer is permitted, qualified or trained to give you this critical legal advice.

The list of federal bankruptcy exemptions may be found under § 522(d). For the state exemptions applicable to you, refer to the section on exemptions under the state law of the state that applies to you – which may or may not be Maine. See e.g. § 522 (b)(3)(A).

## **SCHEDULE D: CREDITORS WHO HAVE CLAIMS SECURED BY PROPERTY (OFFICIAL FORM 106D)**

Some creditors may hold a secured claim. In other words, the creditor holds a security interest in property, or what is also often referred to as collateral. The security interest gives the creditor the right to seize the property when you fail to make agreed upon loan payments. An example might include a car or real estate. It might also include (but not be limited to) household items you purchase, such as electronics, appliances, jewelry, and power tools. Schedule D requires you to list any secured interest that a creditor holds in your property.

Certain creditors also would be listed on this schedule if they have a lien against your property, such as a creditor who obtained a Court judgment against you and then placed a lien or attachment on your property to “secure” payment of that judgment. Please remember, that security interests will survive a bankruptcy. If you have questions about the rights of secured creditors as it relates to your unique situation, you should consult with an attorney.

Be sure that every creditor listed on Schedule D is also listed on the creditor matrix. Please refer to Matrix Format and Notice Requirements for the U.S. Bankruptcy Court for the District of Maine.

### **SCHEDULE E/F: CREDITORS WHO HAVE UNSECURED CLAIMS (OFFICIAL FORM 106E/F)**

Information on priority and those creditors who are entitled to priority, can be found in § 507. Creditors holding priority claims include, but are not limited to, tax authorities, domestic support claimants, and the like. These claims are listed here on Schedule E.

Listing priority creditors does not mean that they will be discharged. Remember, you are required to list all assets and all liabilities.

In most individual cases, this schedule has the largest number of creditors. If a creditor is not secured, then it is an unsecured creditor and should be listed here. Common examples include but are not limited to credit card companies, utility companies, unsecured personal loans (such as from a lender, bank, relative or friend), debts owed as a co-signor on a loan, student loans and tort claims (people or property injured or damaged due to your alleged fault or wrongdoing).

Be sure that every creditor listed on Schedule E/F is also listed on the creditor matrix. Please refer to Matrix Format and Notice Requirements for the U.S. Bankruptcy Court for the District of Maine.

### **SCHEDULE G: EXECUTORY CONTRACTS AND UNEXPIRED LEASES (OFFICIAL FORM 106G)**

This schedule identifies all unexpired leases and executory contracts that you are a party to, either as the lessor or lessee or a party. For an individual the most common type of lease would involve the leasing of an automobile, but a person might also be involved in a lease for residential or commercial property. An individual involved in an unincorporated business might have many leases involving such things as copiers, computers, equipment and the like. If a business is not a corporation, then the debtor signed the leases as an individual, and debtors should list those leases on this schedule.

When in doubt as to whether to add a lessor, a lessee or any creditor to any of the schedules of debt, err on the side of caution and include their name on the appropriate schedule.

### **SCHEDULE H: YOUR CODEBTORS (OFFICIAL FORM 106H)**

On this schedule, identify any person or entity (such as an incorporated business) that is a co-signor or a joint obligor on any debt. You must list anyone who is responsible along with you for repaying a debt. Please note the directions regarding your spouse (if any) at the beginning of the form.

### **SCHEDULE I: YOUR INCOME (OFFICIAL FORM 106I)**

This form requires you to indicate the amount of income that you, and your spouse, receive on a monthly basis from all sources. Read each question and answer it accurately and truthfully. The income of the spouse must be included by joint debtors, and by every unseparated married debtor, regardless of whether a joint petition is filed. If you are separated and your spouse is not filing with you, do not include information about your spouse. Remember: do not include the names of dependents, only their relationship to you.

### **SCHEDULE J: YOUR EXPENSES (OFFICIAL FORM 106J)**

This form requires you to identify the various monthly expenses you incur. Do not include payments for credit card debts or any other dischargeable debt (since no further payments will be due). If you are filing jointly and Debtor 1 and Debtor 2 keep separate households, Debtor 2 must complete and include *Schedule J-2: Expenses for Separate Household of Debtor 2* (Official Form 106J-2).

### **OFFICIAL FORM 106DEC: DECLARATION ABOUT AN INDIVIDUAL DEBTOR'S SCHEDULES**

You sign this form attesting under the pains of perjury that the schedules you are filing with the Court are "true and correct to the best of [your] knowledge, information and belief."

### **OFFICIAL FORM 107: STATEMENT OF FINANCIAL AFFAIRS FOR INDIVIDUALS FILING FOR BANKRUPTCY**

All debtors must answer questions 1 through 26. If the debtor has been in business, questions 27 through 28 must also be answered. Read each question and answer it accurately and truthfully. If a question does not apply to you, be sure you check the box that says "Not Applicable" or "None." Do not leave any question blank.

### **OFFICIAL FORM 108: STATEMENT OF INTENTION FOR INDIVIDUALS FILING UNDER CHAPTER 7**

This form asks you to state what you plan to do with any property that is secured (i.e., the property you properly identified on Schedule D) or any property subject to a lease (Schedule G). Please note, that there are deadlines by which you must fulfill your stated intentions. Failure to do so will terminate the automatic stay as to the property involved. See, § 362(h).

**OFFICIAL FORM 119: BANKRUPTCY PETITION PREPARER'S NOTICE, DECLARATION AND SIGNATURE**

This notice only applies if you have received the assistance of a bankruptcy petition preparer. The notice clearly states what a preparer is prohibited from doing. The debtor(s) must sign the notice and file it with the Bankruptcy Court along with the rest of the bankruptcy petition documents, statements and schedules.

**FORM 122A-1: CHAPTER 7 STATEMENT OF CURRENT MONTHLY INCOME**

**FORM 122B: CHAPTER 11 STATEMENT OF CURRENT MONTHLY INCOME**

**FORM 122C-1: STATEMENT OF CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD AND DISPOSABLE INCOME (CHAPTER 13)**

These forms are complex and they will require much effort to complete accurately. To complete the form, you will need to know the median family income in your location as well as the IRS Guidelines for expenses and allowances. This information can be found on the Court's web site ([www.meb.uscourts.gov](http://www.meb.uscourts.gov)) or from the Office of the U.S. Trustee ([www.justice.gov/ust](http://www.justice.gov/ust)).

Debtors who file Chapter 11 must complete and file Form 122B; Debtors who file Chapter 7 must complete Form 122A; and Debtors who file Chapter 13 must complete Form 122C. Along with proper completion of the forms, Chapter 7 and 13 debtors have additional considerations and issues.

***Chapter 7***

In Chapter 7, disabled veterans (as defined by 38 U.S.C. § 3741(1)) whose indebtedness occurred primarily during a period of active duty (as defined by 10 U.S.C. 101 (d)(1)) or while performing a homeland defense activity (as defined by 32 U.S.C. 901(1)) are not required to complete this form in its entirety. However, the appropriate box on the front must be checked, and the form signed and dated. The same applies to Reservists and National Guard Members who are called to active duty. Please complete and file *Statement of Exemption from Presumption of Abuse Under §707(b)(2)* (Official Form 122A-1Supp) with this form.

In addition, if the debts are not primarily consumer debts, the Form need not be completed. See *Statement of Exemption from Presumption of Abuse Under §707(b)(2)* (Official Form 122A-1Supp). However, your schedules should also describe the nature of the debts in order to support your position that the debts are not "consumer debts."

All debtors must first determine what their "Currently Monthly Income" or CMI is. The definition of "Currently Monthly Income" is found in § 101(10A). If the CMI falls below the State's median income figures, only Parts 1 and 2 of the form need be completed. On the front page of page 1 of Form 122A, Chapter 7 debtors should check the box that says "The Presumption Does Not Arise," then sign, date and file it.

If the CMI is over the median income, the remainder of the form must be completed. You will not know which box to check on page 1 of the form until you complete the rest of the form.

### ***Chapter 13***

Form 122C-1 determines two important factors: the length of your chapter 13 plan; and the amount of money you must commit to paying unsecured creditors.

If the CMI falls below the State's median income figures, your applicable commitment period as defined by § 1325(b)(4) will be no less than three years. If the CMI is over the median, your applicable commitment period is no more than 5 years. Read the form and the instructions carefully. If the form is not accurate, you may be required to amend. The Court strongly urges all Chapter 13 debtors to retain counsel.

### **INCOMPLETE FILINGS**

If you file your bankruptcy petition and do not have all of the required forms, schedules, the entire filing fee, or the creditor matrix, the Court will issue an Order to Comply. This order will set forth specific deadlines to file missing documents.

For most items, you will have 14 days to file your documents, but the creditor matrix must be filed in no more than 7 days. If you do not file any document by the deadline reflected in the Order to Comply, your case may be dismissed. The Order to Comply is just that: an Order from the Bankruptcy Court. Failing to comply with the order also means that you have failed to adhere to the requirements of the Bankruptcy Code. Remember, if your case is dismissed, this may impact your rights in any future case you need to file.

### **DEADLINES**

When an Order to Comply is issued, deadlines are established. There may be other times when the Court issues an order that requires you, the debtor, to file a document or take some action by a certain date. These deadlines must be adhered to. If circumstances prevent you from timely compliance with a deadline, you may seek additional time, but you must do so by written motion. Additionally, you must do so before the original deadline expires.

Requests for additional time are not automatically allowed. Therefore you should not assume that a request for more time will be allowed, or will not be modified simply because it was timely filed.

Remember, just like every other party in a bankruptcy case, when you choose to represent yourself in a bankruptcy case it is your responsibility to comply with all requirements and adhere to all deadlines.

## **FILING THE PETITION**

Once all the forms are completed, you should deliver them in hand or mail them to the U.S. Bankruptcy Court. Filings are accepted between 8:30 a.m. and 4:30 p.m. on business days. The addresses for the Court are:

*Portland:*

United States Bankruptcy Court  
537 Congress Street, 2<sup>nd</sup> Floor  
Portland, ME 04101

*Bangor:*

United States Bankruptcy Court  
202 Harlow Street, 3<sup>rd</sup> Floor  
Bangor, ME 04401

### **FILING FEE**

Every bankruptcy petition requires a filing fee. The fee amounts are available on the Court's website. If you are unable to pay the fee, there are two possible options. You may file an Application for Individual to Pay Filing Fee in Installments. In a Chapter 7 case, you may file a request to proceed *In Forma Pauperis*, which means that you are asking that the filing fee be waived. Both applications are available on the Court's website or from the Clerk's office.

To qualify for *in forma pauperis* status you must earn less than 150% of the U.S. Department of Health and Human Services poverty guidelines. Those figures are available at the Court's website as well as at our intake counters. If you believe you qualify, you must complete and file the Application for Waiver of Chapter 7 Filing Fee and that must be approved by the judge. If your application is denied, you must pay the fee in full or you may request to pay the fee in four installments by filing an Application to Pay Filing Fee in Installments, discussed above. If you miss one of the installment payments, or if the fee is not paid in full, your case will be dismissed and no part of the filing fee can be returned. If your case is dismissed for any reason, you will be responsible for any unpaid filing fees. Pursuant to Local Rule 1006-1, installments must be paid in four equal installments.

All filing fees must be paid in the form of cash, a money order or a cashier's check. Personal checks, credit cards, and debit cards are not accepted.

### **CASE NUMBER**

All cases filed with the Court are assigned a docket number. The docket number is broken down into sections. For example, docket number 11-22665: the "11" is the year that the case was filed. In this case, it was filed in 2011. The "22665" is the number assigned to the case.

All pleadings and documents filed with the Court must have the case docket number on the case. When speaking to any Court Clerk personnel, be sure you have this information handy.

## **ELECTRONIC FILING**

All *pro se* debtors must file their documents manually by either mailing them or by bringing them to the Court. Pleadings and other documents may not be filed via email and the Court will not accept any pleadings sent by email.

You may view all Court filings in your case on the public computer terminals located in the Clerk's office in each location. You may also obtain a PACER login and password, which would enable you to view documents from any computer. To obtain a PACER login and password, you must visit [www.pacer.gov](http://www.pacer.gov) and click the link for Case Search Only Registration, and complete the on-line registration form. This service is not free; there is a charge of \$.10 for every page that you view.

## **THE BANKRUPTCY PROCESS**

### **MEETING OF CREDITORS PURSUANT TO § 341(a)**

Shortly after your bankruptcy case is filed, the Court will send you and all creditors listed on your creditor matrix a "Notice of Chapter \_\_\_ Case, Meeting of Creditors, and Deadlines." In the space after chapter, the notice will indicate which chapter you filed: 7, 11, 12 or 13. This notice alerts creditors that you have filed a bankruptcy petition and they may be prohibited from taking certain actions against you or your property to collect a debt. It also informs them of key deadlines, such as:

- The time within which they have to file a Proof of Claim, if it appears that there would be assets that can be liquidated to pay creditors;
- The time within which to file a complaint objecting to the discharge of their particular debt under § 522(a) or objecting to the discharge of all debtors under § 727(a); and
- The time within which to object to the exemption claims you made on Schedule C.

### **The reverse side of this notice has important information that you should read.**

The notice of the meeting of creditors informs you and the creditors of a specific date, time and location for the meeting, which creditors are invited to attend. The notice also informs everyone that a trustee has been assigned to the case, and the name, address and other contact information for the trustee. It is the trustee's role to examine you at the meeting of creditors regarding your financial situation, and to determine if there are any assets that you have that may not be exempt and that he or she could liquidate (i.e., sell) to generate cash to pay creditors.

When the notice is mailed to your creditors, it is your name and address that appears on the envelope in the return address section. If you receive a notice via return mail, indicating that the postal service was unable to deliver the notice, it is your responsibility to obtain a correct address for that creditor. If a creditor does not receive

adequate notice of your bankruptcy filing, that may affect your rights and it may negatively impact the discharge of that debt.

### **PREPARING FOR THE MEETING OF CREDITORS**

The Bankruptcy Code and the Local Rules require that you provide the trustee no less than 7 days prior to the scheduled Meeting of Creditors with a copy of your most recently filed federal income tax return. Also, if a creditor requests a copy of your tax return at least 15 days before the Meeting of Creditors, then you must also provide a copy of your return to that creditor. In both instances, you must delete or black out certain private information, such as the names of your children, account numbers (except the last 4 digits), dates of birth (except the year), and you must only give the last four digits of your social security number. Failure to provide the tax return as required by law may result in dismissal of your bankruptcy case. And remember, dismissal may impact the imposition or length of the automatic stay in any subsequent case filed within 12 months.

The meeting of creditors generally lasts less than 10 minutes. You must bring two forms of identification with you to the meeting. The first is photo identification: driver's license, passport, etc. The second is something with your social security number on it: a social security card, a W-2, an IRS Form 1099. Your income tax return will not suffice because it is a document prepared by you. These documents will be reviewed by the trustee to confirm that you are who you say you are in the petition.

All § 341 Meetings are recorded on audio tape or by digital recorder. After you are administered an oath, the trustee will then ask you to verify that you completed the petition and schedules and that they are truthful and accurate. Remember, any question that you fail to answer truthfully may subject you to federal prosecution for perjury. You can expect questions to be asked. You are responsible for answering them truthfully and accurately.

Assuming you have made complete, truthful and accurate disclosures, and that the trustee is satisfied with the responses to the questions posed at the Meeting of Creditors and there are no assets that he or she may sell, then he or she will file a "no asset report" with the Court. This report tells the Court and everyone else that the trustee has examined you and has found no nonexempt assets that can be sold for the benefit of creditors.

### **AFTER THE MEETING OF CREDITORS**

Creditors and the trustee have a deadline of 60 days following the date of the first scheduled creditor's meeting to file a complaint objecting to your discharge. Extensions of that deadline may be allowed if requested by filing a timely motion with the Court. The deadline is stated on the creditor's meeting notice sent to you shortly after filing. If that deadline passes, and there is no complaint objecting to your discharge, and no extension of time has been allowed, the Court will enter a discharge. Simply stated, the discharge

relieves you of any personal liability for all dischargeable debts listed in your bankruptcy schedules.

### **FINANCIAL MANAGEMENT COURSE**

You will not receive a discharge unless you have taken a course in personal financial management. You must file a certificate of completion with the Court within the 45 day period following the date of the first scheduled creditor's meeting. If you do not complete this course, and if you do not file the certificate before the deadline to object to your discharge expires, your case may close without the discharge being entered. You will then need to file a Motion to Reopen your case and pay the fee so you may file your certificate and receive your discharge. This cost can be avoided if you adhere to the deadlines.

### **BANKRUPTCY CRIME**

If you hide assets or property from the trustee, or fail to disclose information accurately and completely on your schedules, you may be prosecuted by the United States Attorney for a bankruptcy crime under Title 18 of the U.S. Code.

The trustee represents the interests of the creditors. You are required by law to cooperate with the trustee and to disclose all assets, wherever located and by whomever held, that you may have any interest in whatsoever. Failure to cooperate with the trustee may cause the trustee to file a complaint objecting to your discharge under § 727(a). If a complaint is filed against you by any party challenging your discharge, that complaint would be heard by the bankruptcy judge assigned to your case.

### **MOTIONS, HEARINGS AND COURT APPEARANCES**

During a bankruptcy case, circumstances may call for you to obtain an order from the Court. For example, if you have received an Order to Comply that requires you to file a document by a certain date, and you need more time to file it, you must request an extension of time. This is accomplished by a motion.

A motion is a request to the judge for relief, or for a decision on a particular matter. The party filing the motion is generally referred to as the "moving party" or the "movant." Some motions or requests may be made orally in open court, but in bankruptcy, most motions must be made in writing.

In the written motion, the moving party makes the request and then explains to the Court why the relief is requested. The Court may act on the motion without a hearing under appropriate circumstances.

The Federal Rules of Bankruptcy Procedure as well as the Local Rules of the U.S. Bankruptcy Court for the District of Maine have a variety of provisions dealing with motions, as well as provisions on how to respond to motions. If you need to file a motion, or if you need to respond to a motion, it is very important that you become acquainted with those rules.

## **HEARINGS**

From time to time, the Court will schedule a hearing on a motion. When that occurs, the Court will notify you. If you are the moving party, you will receive a notice of hearing. In most circumstances, the notice of hearing will direct you to serve a copy of the notice on all parties and to file a certificate of service demonstrating that you complied.

Times and dates of hearings are scheduled days and sometimes weeks in advance. If you have a conflict, you should immediately request a new date by filing a Motion to Continue Hearing and serving all parties. If you have not heard back from the Court prior to the scheduled hearing date, you are then encouraged to call the Case Administrator to see if your Motion to Continue Hearing was allowed or denied. If the motion was denied, you will need to appear at the hearing. To learn who your Case Administrator is, go to "Court Info" > "Case Administration" on the Court's website: [www.meb.uscourts.gov](http://www.meb.uscourts.gov).

## **CERTIFICATES OF SERVICE**

A certificate of service is a written statement filed with the Court indicating that you mailed copies of a particular pleading, notice or motion to all appropriate parties. To determine who are the appropriate parties, you should determine (1) who has filed an appearance in your case; (2) who is the trustee assigned to your case; (3) who has requested notice in your case; and (4) what the Federal Rules of Bankruptcy Procedure and the Local Rules for the U.S. Bankruptcy Court for the District of Maine state are the necessary and appropriate parties to serve.

Certificates of service are important. They provide the Court with clear proof that service has been accomplished, and parties have been notified of their right and their opportunity to be heard. Motions can be denied, and hearings may be delayed if a certificate of service is deficient or was never filed.

The certificate of service needs to be included with the pleading you are filing and it must be signed by you. The certificate must state the following:

- The date of service
- The method of service (mail, overnight courier, fax, email, by hand, etc.)
- The names and addresses of the parties served

For additional reading on Certificates of Service, please see Fed. R. Bankr. P. 2002.

## **COURT APPEARANCES**

Arrive to Court on time. Be sure you dress appropriately: your hearing will be in a U.S. Bankruptcy Court, and the decision made by a U.S. Bankruptcy Judge. Consider wearing what you might wear if you were to attend a religious service on a holiday, or if you were to attend an important job interview.

Please plan accordingly for traffic, public transportation and parking. Consider making alternative child care arrangements so your attention can be focused exclusively on the legal and factual issues that are scheduled to be heard. All Court buildings have security, and in Bangor, you will need to go through two security screenings: one for the Federal Building, and one for the Court. *Pro se* debtors are not permitted to carry cell phones into Court and you will be required to leave them with security.

Be prepared to answer the Court's questions and to respond to any arguments or statements made by other parties. Be courteous and respectful at all times. While you may be *pro se*, you are expected to comport to the level of dignity and decorum expected of anyone appearing before the Court. You are also expected to have an understanding of the law and facts that concern the issue that is before the Court.

## **ADVERSARY PROCEEDINGS**

### **ADVERSARY PROCEEDINGS**

If you are contemplating bringing an adversary proceeding, or if you find yourself as a party in an adversary proceeding, you are strongly encouraged to confer with legal counsel.

Adversary proceedings are a separate process in a bankruptcy. In an adversary proceeding, there is a plaintiff and a defendant, rather than a creditor and a debtor. The plaintiff initiates the adversary proceeding, and the defendant is the responding or defending party.

The rules that govern adversary proceedings are found in Part VII of the Federal Rules of Bankruptcy Procedure. Fed. R. Bankr. P. 7001 identifies the types of actions that would be considered adversary proceedings. A creditor may find itself as a defendant in an adversary proceeding if they received a preferential payment, or if the debtor seeks to determine whether a particular debt is discharged. A creditor may also be a plaintiff in an adversary proceeding if the creditor seeks a determination of nondischargeability of their particular debt.

A plaintiff commences an adversary proceeding by the filing of a complaint. With the limited exception of the cover sheet, there is no official form for a complaint in an adversary proceeding.

Whether you are bringing an adversary proceeding, or find yourself defending an adversary proceeding, it is important to know that adversary proceedings can be

exceptionally complicated. The procedural rules are identical in most respects to the Federal Rules of Civil Procedure. Discovery mechanisms such as depositions and requests for production might be utilized. The Court's final decisions will be based on evidence. Those final decisions may be based on motions (see e.g. Fed. R. Bankr. P. 7056) or following a trial, where witnesses are examined and cross examined and documents are admitted into evidence. The rules relating to evidence admissibility are found in the Federal Rules of Evidence.