

## Bankruptcy Guide

Office of Janice Joyner Panza, Attorney at Law

Thank you for choosing our office to represent you during this time of need. This document contains important information that will help you understand the Bankruptcy Process and help us protect your rights and facilitate making the process as easy as possible. Please note your obligations to the Bankruptcy Court, Debtors, and Trustee, as well as to our office.

We cannot fix problems of which we are not aware.

Things to expect:

### I. Notifications from Federal Court

**Federal Law governs bankruptcy.** You should expect all correspondence to come from federal court and to arrive by first class mail (or e-mail) to the address you list in your bankruptcy petition. Do not expect “certified mail” when receiving important papers from the bankruptcy court, the trustee, or our office. Additionally, the court may ask you to agree to use e-mail and electronic communication for sharing information and documents during the bankruptcy process. If your address or life circumstances change, contact our office immediately so we can notify the bankruptcy court to update your records and thus, prevent you from missing important communication(s). If you move out of state, it is imperative that you contact us immediately in order that we may determine if you are still eligible to file bankruptcy in North Carolina.

### II. Preparing To File A Bankruptcy Petition

You will be required to:

**A: Take a court-approved credit counseling course** and receive a certificate of completion. This course, “**Pre-Filing Credit Counseling**”, is available online. If you have internet access, you can find the management course at [www.abacuscc.org](http://www.abacuscc.org). Use the “Attorney Code” we will provide to you and payment for the class will be made through our office.

Near the end of the process, known as a “Discharge”, you must take a **Post-Filing Debtor Education Course**. This course is also available online. Again, if you have internet access, you can find the course at [www.abacuscc.org](http://www.abacuscc.org). Use the “Attorney Code” and payment for the class will be made through our office.

**B: Demonstrate that all taxes have been filed for previous years.** Generally, copies of the two previous years’ tax returns will satisfy this requirement.

**C: Present at least the last six (6) months of your pay stubs** or show why this is not possible. (If this is not possible, we may be able to substitute an “affidavit of employment”.)

**D: Submit a copy of your bank statements from the previous three months to our office.** You will need to continue to submit a copy of each month's statement(s) as the bankruptcy process continues.

**E: Obtain a Credit Report:** Credit Reports may be found at [www.annualcreditreport.com](http://www.annualcreditreport.com). **Do Not Pay** for a "credit score". Credit Reports provide us with an initial list of creditors. If you are unable to obtain a credit report, our office can obtain one for you. **There is an office fee of \$25.00 per report for the time the staff expends on this task.**

### III. BANKS, CREDIT UNIONS AND YOU

If your income is **deposited by you or directly deposited** into a checking or savings account **and** you also owe any debt to that institution, **STOP DEPOSITING IMMEDIATELY AND WITHDRAW ALL MONEY FROM YOUR ACCOUNT.** Failure to do so may result in the bank or credit union freezing your account in order to collect any past due payments. Credit Unions are especially aggressive at doing this. Do not tell them you filing or planning to file bankruptcy.

**Open a new account with a different bank as soon as possible.** (Be sure it is an institution where you do not owe other debts.) After filing for bankruptcy, your name may be entered into a national check system data base and it may be difficult to open a new account for several years. **Take care of these banking issues immediately.**

### IV. DEBTS YOU MUST CONTINUE TO PAY

We will confer with you to determine which debts you must continue to pay and which debts you should stop paying. **ALWAYS continue making payments on real estate, cars, furniture and any other secured property that you intend to keep.** If you fall behind in these payments, the creditor(s) can file a motion to lift your protection and repossess the collateral despite the bankruptcy filing. To fully assist you, you must inform our office of all loans you have and bring copies of any contracts to which you are a party. **To keep items used for collateral for a secured loan, payments must remain on time and in full.**

### V. FOLLOWING FILING FOR BANKRUPTCY

**A:** You **MUST** remain current with payments on secured debts (as mentioned in Section IV above) even if you do not continue to receive monthly statements from the creditor. Continue making each payment and retain receipts, unless the debt/payment is being paid through the bankruptcy plan. **Mark the payment due date on your calendar and pay the lender even if you do not get a bill.** After receiving notice of a bankruptcy filing, some lenders will stop sending a monthly statement using the excuse that, "It is an attempt to collect a debt and that to send a statement is a violation of federal law." Then, if you do not make payments, they will file a motion to lift the stay protecting you and repossess the property in question.

**B. Credit Cards: Do Not Use Credit Cards.** Any use of a credit card within ninety (90) days immediately following the filing of bankruptcy is considered to be **fraudulent** and you will be

required to pay back any amount charged during that time. **Inform my office of any large cash withdrawals or purchases (over \$6000.00) that were made on your credit cards in the eight months prior to your filing for bankruptcy, especially if few or no payments have been made since the transaction(s).** Simply put: do not use credit cards, take cash advances or transfer credit card balances prior to filing or during the bankruptcy process.

**C. Regular household expenses, such as mortgage, rent, electricity, cable, telephone, etc. must always be paid.** Further payments **should not** be made for amounts owed on credit cards, unsecured loans and other debts since they may be discharged in the bankruptcy process.

**Exceptions to the above:**

**DPP:** (a specialized military charge account) must be paid or military paychecks can be seized.

**STUDENT LOANS:** Unless you are permanently disabled, you must continue to make payments on student loans.

**Court Ordered Child Support or Alimony Payments:** These obligations are not dischargeable in bankruptcy and payments must continue.

**IN GENERAL:** Continue making obligatory payments listed above and do not take out any personal loans 90 days prior to filing bankruptcy. This applies to family members also. If you have already done so, inform us so we may include that lender in our negotiations.

## **DEALING WITH DEBTS AND CREDITORS**

### **I. LOAN COMPANY LIENS AGAINST YOUR BELONGINGS**

Loans obtained through loan companies such as American General Finance, Springleaf, Beneficial, Southern Loans, Citifinancial, One Main, and others, are often secured by household goods and furnishings that you acquired as a condition for obtaining the loan. When signing the contract, you may have listed items such as stereos, televisions, computers, CD's, furniture and so forth as collateral and a "lien" was created. **To get rid of the debt and keep the items, they must be listed on your bankruptcy questionnaire, or you must submit a copy of the contract to us.** If you fail to do so and the debt is not listed in your bankruptcy petition, a motion to deny the lien may be denied by the judge and you will have to repay the loan or surrender the items. We cannot protect you in situations where we lack the information necessary to do so.

### **II. NON-DISCHARGEABLE DEBTS**

**A. STUDENT LOANS:** Student loans are discharged only for permanent hardships. The legal standard for this is extremely high. It must be demonstrated that there is no possibility that at any time in the future you will be able to earn any income to make payments. You will be required to fulfill your student loan obligation(s).

- B. **CHILD SUPPORT & ALIMONY:** These obligations are not dischargeable in bankruptcy. Under Chapter 13 Bankruptcy plans, it may be possible to catch up on arrears but the debt will remain enforceable. Falling behind in payments during your plan repayment period may put your entire bankruptcy case in jeopardy.
- C. **TAXES:** Tax obligations are generally not dischargeable and are considered priority debts, especially if three years old or less. Failure to file income taxes is not a defense. If you have not filed for a particular year, that debt is, for bankruptcy purposes, considered a priority debt. A tax lien attached to real estate owned is generally non-dischargeable. **Caution: File your income taxes and continue to do so throughout the bankruptcy proceedings. Failure to do so will make you ineligible to receive a bankruptcy discharge and your petition will be denied.**
- D. **Entitlements:** **The Trustee may look forward for non-exempt cash or property** to which you may be entitled. For example, if you receive an inheritance, tax refund, court award, or other property, the trustee will be able to seize the non-exempt portion to pay creditors. **You are required to report it to the Trustee if you become entitled to receive property during the bankruptcy period.**
- E. **NON-EXEMPT ASSETS:** Once you file for bankruptcy, you are obligated to NOT dispose of, nor transfer any property that is considered part of the bankruptcy estate (property the Trustee may be able to seize and sell). This includes cars, cash, tax refunds and personal property. **If you need to sell real estate, please inform us. We can file a “motion for private sale” and may get court permission to proceed.**

**(NOTE: Estranged spouses or former business partners may be glad to “tattle” about your personal assets or what they think you may be hiding. Be prepared to defend yourself if such accusations arise.)**

F. **CREDITOR HARRASSMENT**

**You should refer all creditors that contact you to your attorney.** Tell them you have hired an attorney and please contact her as she is filing a bankruptcy petition on your behalf (**JANICE JOYNER PANZA, ATTORNEY AT LAW, 252-672-8500**). Tell creditors to ask for the bankruptcy assistant and we will attempt to get them to stop. If their calls persist, **write down the name of the caller, the company, phone number and the date and time you received the call.** With the information you provide, in most cases, we can get them to stop calling. Remember, the details of your bankruptcy are none of their concern. How much you have paid our office, or to anyone else for that matter, is personal business.

**INFORMATION FOR HOMEOWNERS**

If you are a homeowner or are making payments on a house or mobile home, the Trustee will work diligently to determine its fair value. If the “tax value” has been used as a basis for assessing its value, the Trustee may presume that the tax value is lower than the actual selling or “fair market value” of the property. You may be asked, for example, “If you put your home on the market, what do you think you could get for it?” As tax value is not always an accurate determinate of market value, please be prepared to defend how you have determined its’ value. **To help with this, my office needs a copy of your deed, deed of trust (mortgage) settlement statement and tax card.**

**If you believe your property is worth more than the tax value, please tell us so we can file the correct exemption. Accuracy is important because we do not want to report non-existent equity to the Trustee!**

**Caution:** If you have recently sold your home and have received a profit, this retained money is not protected by the homestead exemption. This could have a crucial bearing on whether to file at this time. Please inform us if this circumstance applies.

### **TYPES OF BANKRUPTCIES**

#### **(CHAPTER 7 & CHAPTER 13)**

**CAUTION: A BANKRUPTCY WILL REMAIN ON YOUR CREDIT REPORT FOR SEVEN TO TEN YEARS AND COULD AFFECT YOUR ABILITY TO GET NEW LOANS.**

### **CHAPTER 7 BANKRUPTCY**

Chapter 7 Bankruptcy is designed to get relief from unsecured debts and to provide a fresh financial start. Unless your assets are more than the exempted amounts, you may be able to keep all of your belongings. Your unsecured debts, such as credit cards, personal unsecured loans, medical and legal bills may be eliminated.

Under Chapter 7, you keep property that is protected by North Carolina exemption laws and surrender or redeem property not covered by exemptions. Most people can keep what they have, unless they have excess property, such as a third car, second home, or expensive recreational toys. If your residence has equity of more than \$35,000 per debtor, the Trustee can seize and sell your home, give you your exemption money, and use the remainder to pay creditors. **If you stop making payments on secured property, a creditor can repossess it after your discharge and the automatic stay is lifted.**

(**Equity** is the amount of money left after paying off a mortgage or lien...the amount you've paid on the principle of a debt. For example, if you own a car which is worth \$4,000 and you still owe \$3,000 then your equity is \$1,000.)

### **NORTH CAROLINA EXEMPTION UNDER CHAPTER 7**

Per debtor:

- a. You may keep \$35,000 in real estate equity (per debtor).
- b. \$5000.00 in one vehicle.
- c. \$5000.00 "Wild Card" (anything of your choosing, unless the homestead exemption is used).
- d. \$1000.00 per dependent (up to four dependents).
- e. \$5000.00 value on household items.

There are other exemptions that may be covered in your individual petition. If you are age sixty-five or over, some exemptions will be treated differently.

### **CREDIT CARDS AFTER FILING**

If you intend to keep a credit card after filing, you may attempt to form a “reaffirmation agreement” with the creditor. There is no guarantee that you will be able to keep any particular credit card. Each company has its own policy and may refuse to keep the account open or they may be willing to keep the card open if you are current in payments.

### **RESPONSIBILITIES BEFORE MEETING WITH CREDITORS**

Before meeting with creditors, all payments on secured properties, such as house or car payments must be current and must continue to be paid on time. **Failure to remain current could result in a creditor filing a motion to reclaim the property. If you intend to keep secured property, you must make payments promptly. You will be required to reaffirm a debt on secured property.** This means the debt will survive bankruptcy.

In Chapter 7, payments are not made through a trustee. **You** must make all regular monthly payments on secured merchandise to the lender yourself, and on time.

### **CHAPTER 13 BANKRUPTCY**

Chapter 13 Bankruptcy provides a process in which a person in debt is able to stop a foreclosure or repossession of property as well as catch up on past-due amounts through a repayment plan administered by a Trustee. You must repay a portion of unsecured debts, as well as pay the Trustee and fees owed to your attorney.

The Chapter 13 Trustee does not seize property, but establishes the value of your assets and determines what is exempt and non-exempt. Unsecured creditors are entitled to a portion of what they are owed. The payment plan developed by the Trustee is approved (“confirmed”) by the court and you then make payments to the Trustee for three to five years. During that time, the Trustee has supervisory powers over your financial transactions. You are restricted from purchasing anything worth more than \$5000.00, taking on new debt, or substituting collateral without court approval.

### **CHAPTER 13, THINGS TO CONSIDER**

**Eligibility:** You must be an individual with regular income and have money left over after meeting your basic living needs as defined by the IRS. The amount paid to the Trustee and distributed to creditors is based on your disposable income and what unsecured creditors would be allowed under Chapter 7 Bankruptcy. There is a formula under the law used to determine the amount to which unsecured creditors are allowed.

## SECOND MORTGAGES

If you have a second mortgage secured by your home and there is no equity left after satisfying the first mortgage, the court may classify the second mortgage as “unsecured” and cancel the deed of trust upon the successful completion of your court approved bankruptcy plan.

**In this case, a “Motion to Value Collateral” must be filed.** The following information must be submitted to my office in order to file this motion:

- a. The fair market value of your home.
- b. The pay-off needed for each mortgage.

You must be prepared to testify why you think your property has a certain value and how you came to that conclusion. You may be required to have an appraisal done on your home.

## CHAPTER 13 PAYMENTS TO THE TRUSTEE

**Your first payment to the Trustee will be due to the Trustee’s office by the first day of the month immediately following the month your Bankruptcy Petition is filed.** This will probably be due before your court appearance. For instance: if your bankruptcy petition is filed with the court on April 30, then your first payment will be due on May 1. Do not wait to pay until you attend the meeting with the Trustee. Payments must be made promptly.

If you are filing Chapter 13 so you can save your house or car because you are behind on payments and/or are facing foreclosure or repossession, **you must pay both the underlying mortgage or car payment to the creditor AND the MONTHLY payment to the Trustee (unless that particular payment is already included in your court approved plan).** If you fall behind on your regular monthly payments **after** your case has been filed, your house or car may be repossessed.

When you sign your petition, the repayment amount proposed to the Trustee is an estimate. The Trustee may require your payment to be larger depending on the individual factors of your situation. Payments should be made directly to the Trustee. If you make your plan payments through our office instead of directly to the Trustee, there is a **\$10.00 processing fee** for each payment.

The Trustee will assume that your income and expense information is accurate. These amounts should not change unless there is a substantial change in circumstances. Please **make sure your expenses and income are reported as accurately as possible. You will be signing your bankruptcy petition under penalty of perjury, attesting that your submissions are true and accurate.**

**If you fail to make timely, complete payments to the Trustee, the Trustee will file a motion to dismiss your case.** If granted, this will result in the loss of all your bankruptcy protection and your debts will be reinstated. If your case is dismissed and you file a new case, the court must be convinced that you have filed the new case in good faith, that your circumstances have changed since your previous filing and that the “automatic stay” should remain in effect throughout the plan. You must convince the court that your new plan has a good chance of being successful.

## **Your Responsibilities to the Court, Trustee, Creditors and Attorney**

- A. Mandatory attendance at **Creditors' Meeting**. This will be scheduled approximately one month after your petition is filed. This is a meeting held with your debtors conducted by the Trustee while you are under oath. Unless you are housebound or have an extenuating circumstance, you will be required to attend. In rare cases, we may get court permission for you to answer in writing instead of attending the creditors' meeting.
- B. Keep all correspondence from the Trustee, court and creditors.
- C. Continue making payments on debts not covered under your approved plan.
- D. Make all payments to the Trustee on or before the due date. Failure to do so may result in loss of protection.
- E. Keep the court, the Trustee and my office updated with any changes of address or telephone number(s).

## **Office Procedures for Handling Bankruptcy**

**Initial Conference:** You will receive a disclosure package, questionnaire, and a privacy statement. Read and sign the privacy statement at this conference.

**Analysis of Needs and Petition:** Before your next appointment, **complete the provided questionnaire**. Return the questionnaire and pay your first deposit at the appointment. At this meeting, we will analyze and begin to draft your petition. Please call our office if you have questions or need assistance. After your questionnaire has been transcribed into a petition draft, the up-front fee of \$200.00 is non-refundable even if you change your decision about filing for bankruptcy through our office.

**Review of Petition:** After the draft of the bankruptcy petition is complete, we will review your petition with you, making sure all information is accurate. We will then prepare the petition to file with the court.

**Signing of Petition:** You will sign the petition so that it may be submitted to the court. Potentially, you may be required to affirm under penalty of perjury that the petition is accurate to the best of your knowledge and ability.

### **Continued support during the bankruptcy process.**

We use our best efforts to provide notice to your creditors of the filing for bankruptcy. You, however, are ultimately responsible for providing us all names, addresses, account numbers and amounts owed to your creditors. Creditors often defend themselves by claiming they were not notified in time to defend themselves. Providing us and the bankruptcy court with accurate information can help prevent a creditor from successfully requiring a debt to be paid. We are here to represent your best interests in keeping with the legal requirements of Bankruptcy Regulations. If issues arise, please contact us so we can determine the next, best steps to take.



**SCHEDULE OF FEES**

**We do not accept credit card or debit card payments. Payments should be made in the form of cash or certified check.**

<b><u>CATEGORY/SERVICE</u></b>	<b><u>AMOUNT</u></b>
<b><u>INITIAL CONSULTATION</u></b>	<b>NO CHARGE</b>
<b><u>CHAPTER 7 BANKRUPTCY</u></b>	<b><u>\$1600.00</u></b>
<p>(Includes Attorney’s fees, Court Costs, Credit Counseling Course, Financial Management Courses and Postage and Handling fees.) An additional \$100.00 is required for cases involving more than thirty creditors or the liquidation of a business. Fees must be paid in full before we can file your petition, however, we can make arrangements for you to make limited installments.</p>	
<b><u>Reaffirmation Agreement(s)</u></b>	<b><u>\$200.00 per Reaffirmation Agreement</u></b>
<b><u>Chapter 13 Bankruptcy</u></b>	<b><u>\$6500.00</u></b>
<p>(Includes Attorney’s fees, Court Costs, Credit Counseling Course, Financial Management Course and Postage and Handling Fees.) Fees are to be paid in the following manner: \$225.00 due at review of questionnaire; \$200.00 due at second draft appointment; \$510.00 due at “signing”. The remaining \$4375.00 is paid through the Chapter 13 payment plan coordinated by the Trustee.</p>	
<b><u>Repeat Chapter 13 (Base Fee)</u></b>	<b><u>\$400.00</u></b>
<b><u>Chapter 13 Filings are organized by our office for a twelve month process. Following the first twelve months, additional costs may be incurred based on the following fee schedule approved by the courts:</u></b>	
<b>(A) Motion to Use Interrogatories</b>	<b>\$150.00</b>
<b>(B) Motion for Turnover</b>	<b>\$500.00</b>
<b>(C) Motion to Avoid Judicial Lien</b>	<b>\$500.00</b>
<p>(Limited to one compensated motion per case.)</p>	
<b>(D) Motion to Modify Post Plan Confirmation</b>	<b>\$450.00</b>
<b>(E) Motion to Substitute Collateral</b>	<b>\$450.00</b>
<b>(F) Motion for Authority to Sell Property</b>	<b>\$500.00</b>
<b>(G) Application to Incur Debt</b>	<b>\$200.00</b>
<b>(H) Defense of Motion for Relief From Stay Or Co-Debtor Stay</b>	<b>\$500.00</b>
<b>(I) Handling of Insurance Inquiry received more than 12 months after case filed</b>	<b>\$100.00</b>
<b>(J) Defense of Motion to Dismiss</b>	<b>\$500.00</b>
<b>(K) Motion for Hardship Discharge</b>	<b>\$500.00</b>
<b>(L) Objection to Claim</b>	<b>\$150.00</b>
<b>(M) Notice to Abandon Property</b>	<b>\$150.00</b>
<b>(N) Motion to Value Collateral &amp; Avoid Mortgage</b>	<b>\$500.00</b>

<b>(O)</b> Filing of Proof of Claim	\$150.00
<b>(P)</b> Motion to Deem Mortgage Current (to be paid directly by creditor)	\$350.00
<b>(Q)</b> Amendment to Schedules or Statement of Financial Affairs	\$100.00
<b>(R)</b> Objection to Confirmation	\$350.00
<b>(S)</b> Motion to Extend or Impose Automatic Stay for Repeat Filers	\$400.00
<b>(T)</b> Motion to Set Aside Dismissal	\$350.00
<b>(U)</b> Motion to Surrender	\$150.00
<b>(V)</b> Payment to Trustee made through our office	\$10.00
<b>(W)</b> Postage and Copying	\$25.00
<b>(X)</b> Obtaining a credit report from our office	\$25.00

**Payment of Attorney's Fees**

We will work with you on payments to our office and filing fees. A general fee list has been included in this document. Once we accept your case and begin the bankruptcy process, we can generally hold off creditor calls for approximately three months prior to receiving a case/file number from the court. If your bankruptcy has not been filed, creditors will resume calling about your debt(s). Proper payment to our office will facilitate filing and allow us to help you deal with creditors. If your payments to creditors are behind and you do not have a file number, creditors CAN and WILL repossess your car or other merchandise used for collateral.

If you have retained our office to represent you, notified creditors will begin to call our office instead of calling you personally. This process will continue if they are ensured that your pending bankruptcy is proceeding at a reasonable pace. It is important that you pay our office the agreed upon retainer and filing fee(s) and to promptly submit required documents and paperwork so that we may represent you to creditors in good faith. As long as you are doing your part we will help you by keeping creditors from contacting you and removing as much of your debt load and burden as possible.

If you choose to ignore your payment obligations to our office, we will have no choice but to drop your case and inform creditors that we no longer represent you, and that they should contact you personally.

Office hours are 8:30am to 4:30pm Monday through Friday. During non-business hours you may leave a message and our office will return your call as promptly as possible. Please respect the fact that we represent other clients. If you need to confer with me in person, make an appointment so we may talk without distractions.

This guide is meant to give you a general understanding of the bankruptcy process. It does not encompass every possibility that could occur. If you have questions, please write them down so we can discuss them at our next meeting. I hope that we can work together to make this process as successful as possible.

Janice Joyner Panza, Attorney at Law

I (We) have read and agree to the terms of this guide.

\_\_\_\_\_ Date \_\_\_\_\_ Date \_\_\_\_\_  
Client Client