

Guide to Living
DEBT-FREE

A hand is shown from the left, dropping a coin into a white piggy bank. The piggy bank is sitting on a grassy hill. The background is a bright blue sky with scattered white clouds.

*Bankruptcy
and Other
Alternatives*

JEENA CHO *and* JEFF CURL

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SAN FRANCISCO BANKRUPTCY ATTORNEYS

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The authors are bankruptcy lawyers who serve as a Debt Relief Agency and help people file for bankruptcy.

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ABOUT THE AUTHORS

This book was written by San Francisco bankruptcy attorneys Jeena Cho and Jeff Curl of JC Law Group PC. We have helped hundreds of Californians live debt free. Our clients come from all walks of life, from single parents struggling to get by and raise their kids, to doctors making six-figure salaries.

ABOUT JEENA CHO

Jeena grew up in a poor neighborhood in Astoria, NY. She watched her parents struggle daily, just to make ends meet. She attended University at Buffalo for both her undergraduate and law school degree and received scholarships throughout her education. Before moving to San Francisco, Jeena practiced law in Florida as an Assistant State Attorney, as well as at a respected private

law firm. In both roles she gained extensive trial experience—experience she uses to help her clients achieve relief from debt.

Jeena has worked with various small business owners to find solutions to their debt problems. She has worked with retailers, hairstylists, laser clinic owners, and other service providers.

Jeena decided to become a lawyer to fight for what's right—and as a consumer bankruptcy lawyer, she derives deep satisfaction from fighting for the rights of her clients.

ABOUT JEFF CURL

Jeff was raised in Ventura, California. Although his parents did not make a lot of money, Jeff felt rich in family. Jeff watched his parents succeed through their hard work. He earned his B.A. from the University of California at Santa Cruz and his J.D. from Santa Clara University, School of Law.

Jeff is dedicated to representing individuals, families and small businesses in bankruptcy proceedings and debt settlement. Prior to bankruptcy, Jeff was involved in civil litigation. He is dedicated to his bankruptcy practice where he gets an opportunity to know his clients and advocate on their behalf. He uses his skills as a litigator to defend and prosecute matters in bankruptcy court.

TABLE OF CONTENTS

Overcoming Debt.....	8
Facing Reality	10
Step #1 – How Much Do You Make?	12
Step #2 – Where Is The Money Going?	13
Step #3 – Open Your Mail	14
Part 1 – Sort	15
Part 2 – Organize	15
Part 3 – List.....	15
Step #4 – Considering Your Options	16
First, The Numbers.	16
Solution #1 – Pay Your Debt Off In Full	17
Solution #2 – Settle Your Debt.....	19
Solution #3 – Bankruptcy: Not As Scary As You Think	23
You Are Not Alone.....	24
What About My Credit?	25
Why Does The Government Allow People To File For Bankruptcy?	26
The Truth About Bankruptcy	27
What’s Involved In Filing?.....	29
10 Steps For Bankruptcy	29

Nuts & Bolts Of Chapter 7 And Chapter 13	32
Chapter 7.....	32
Look Back / Look Forward.....	33
Eligibility – The “Means Test”	33
Valuing And Keeping Your Property.....	34
California Exemptions	35
Listing And Getting Rid Of Your Debts.....	36
Automatic Stay	37
Chapter 13.....	41
Benefits To Chapter 13.....	42
Do You Qualify For Chapter 13?	43
How Much Will You Pay?.....	44
Similarities To The Chapter 7 Process.....	45
This Sounds Great, But What’s The Catch?	46
Final Thoughts	47
Worksheet #1 – Income.....	48
Worksheet #2 – Current Expenses	49
Worksheet #3 – List Of Debt	54



OVERCOMING DEBT

Determination, patience and courage are the only things needed to improve any situation.

Unknown Author

Did you know?

Number of bankruptcies
filed in the past 12
months: 1,306,315;
Past 6 years: 10,908,336

When you are in a crisis situation, it's difficult to think clearly. You feel overwhelmed with the constant collection calls and the letters that flood your mailbox. You may feel every morning like pulling the covers over your head and hiding. We understand that money is an emotional issue and you may feel paralyzed, unable to cope with the stress of your situation.

The first thing to understand is that you are not alone. **Let's face it, the economy has been brutal recently.** People have lost jobs, businesses have gone under, hiring is at a standstill. And if you've had the bad luck to suffer one of life's misfortunes—a divorce, a medical crisis, a family emergency, loss of employment—it's easy for your normal amount of debt to skyrocket into something unthinkable.

You might be avoiding facing up to your situation because of feelings of shame or humiliation. But over 12 million Americans have filed for bankruptcy debt relief in the past decade. We are not here to judge you, we are here to help you!

Life rewards action and punishes inaction. The worst thing you can do is nothing. If you have been avoiding confronting your financial situation because of any of the feelings we've just described, this guide is for you.



TIP: You can go through Steps #1–3 if you are trying to decide if bankruptcy is right for you. If you want information about what is involved in filing for bankruptcy, jump to page 23.



FACING REALITY

When we are faced with a painful reality, our first instinct is to evade the facts, and the fearful thoughts that go with them. Have you been avoiding your financial situation because it's easier to ignore it? If the answer is "yes," the first step is to face reality.

Make a promise to yourself today to no longer ignore your debt. Just as you can't run a marathon without training, you can't tackle your finances in one day either. We are going to take baby steps and show you how to start exercising your financial muscle.



TIP: If at any point, you feel stuck or overwhelmed, ask for help. Ask a family member or friend to help you get through these steps. You can also call us at 415-963-4004 to schedule an appointment. We'll be glad to walk you through the process outlined below.

The first three steps are the basic “reality check,” where we explore your income, expenses and debt. In step #4, we will describe the various solutions that may be available to get you out of debt. You can work through these steps at your own pace. The goal here is to figure out a permanent solution to your debt problem. You shouldn’t put a band-aid on a wound that requires surgery. The same is true for your financial troubles. We need to first diagnose the problem and figure out the appropriate treatment.

Let’s get started...



STEP #1 – HOW MUCH DO YOU MAKE?

First, let's look at your income. Start by figuring out how much you gross (before taxes) on a monthly basis. If your pay varies from paycheck to paycheck, look at the year-to-date (YTD) amount and divide it by the calendar month you're in currently. For example, if it's June 30 and the YTD amount is \$30,000, it would be $\$30,000 / 6 = \$5,000$. If you have additional sources of income, be sure to include those as well. (See Worksheet #1.)

Next, we need to determine how much you bring home. So, let's take the gross amount and deduct taxes, insurance, or any other withholdings.

If you are self-employed, calculating your income may not be as easy. Many self-employed business owners are so busy running their businesses that they do not have time to keep the books. (Plus, it's just not as fun as other parts of your business.) Unfortunately, this is also one of the biggest problems we see with small business owners. Oftentimes, a person isn't even aware that the business is failing because he or she does not keep track of how much the business is making (or losing).

Get into the habit of keeping your books on a regular basis. We suggest keeping a simple ledger of all the money coming in and all the expenses going out. Focus on keeping your books for the rest of this month. You can always work backwards later.



STEP #2 – WHERE IS THE MONEY GOING?

Once you've figured out how much money is coming in, the next step is to figure out where it's going. Make a list of everything you spend money on. (See Worksheet #2.)

We suggest you keep a log of everything you spend money on for the next 2 weeks. You may be surprised at what you learn. (We find that most people severely underestimate the amount of money spent on food, eating out, and entertainment.)

Next, review your expenses and see if there are areas where you can cut back. Ultimately, what we are looking for is your “disposable income”—money you have left over at the end of the month available to repay your debt, if any. It is common for many people to show a negative number because the expenses exceed the income on a monthly basis.



STEP #3 – OPEN YOUR MAIL

Do you know how much you owe on the following?

- Mortgage?
- Car?
- Credit cards?
- Student loans?
- Medical bills?
- Taxes?

If you know, congratulations. You can skip to Step #4.

If you don't know, it's probably because you have not been opening your mail. This will be a difficult exercise because it's so much easier to ignore those threatening looking envelopes than face them. Assuming you have not been opening your mail, this exercise is going to be divided into 3 subparts.

PART 1 – SORT



TIP: If you have piles of unopened envelopes, this may be a good time to enlist the help of family and friends.

First, open all of the envelopes and sort the bills into categories. For example, put all the AMEX card ending in 1234 into a single pile. Do this for each card. Put any collection letters associated with that account into the same pile.

PART 2 – ORGANIZE

Next, from each pile, find the most recent statement or collection letter. Circle the amount owed. Put this statement on top of each pile.

PART 3 – LIST

Grab a piece of paper and make a list of all the piles and the amount owed. (See Worksheet #3.)

What if I don't have some of the bills or I don't receive them anymore?

You can run your credit report. Everyone is entitled to receive 1 free credit report from each of the three credit bureaus. Go to: <https://www.annualcreditreport.com>. Do not go to www.freecreditreport.com or other similarly worded sites; they are there to sell you something, not to give you a free credit report.



TIP: All we need is the amount you owe, not your credit score. Don't pay to see your credit score.

Congratulations! You have completed the most difficult part of this exercise so far. You now have a snapshot of your financial situation. Now you can start on your road to finding permanent solutions.



STEP #4 – CONSIDERING YOUR OPTIONS

Now that you know what you're dealing with, you can start considering your options. There are 3 solutions when it comes to getting out of debt.

- 1) Paying it off in full
- 2) Debt settlement
- 3) Bankruptcy

Remember, doing nothing is *not* an option.

FIRST, THE NUMBERS.

Assuming you have \$20,000 of credit card debt, at 30% interest, making a monthly minimum payment of \$700, it will take you 434 months to pay it off. That's over **36 years**. You will end up paying more than \$49,000.

Too many people fall into the trap of making the monthly minimum payment, without realizing that ultimately, making the minimum payment is not a means to get you out of debt. All you're doing is running in a hamster wheel and not getting anywhere while the banks enjoy a hefty profit. If you have been on the minimum-payment-treadmill, it's time to get off and find a more permanent solution.

SOLUTION #1 – PAY YOUR DEBT OFF IN FULL

The most obvious option is to pay off your debt in full. This is a two-step process. 1) Review your budget to cut expenses and 2) Get your credit cards to lower your interest rates.

First, honestly ask yourself—how much money do I have left over at the end of the month to repay my debt? Go back to Step #2 and see if there are any areas where you can “trim the fat.” What we are looking for is your disposable income—the amount of money you have left over each month after paying all of your necessary expenses.

We find that with most of our clients, they are struggling just to get by and repaying any significant portion of the debt is simply not possible.

Assuming you do not have any money left over at the end of the month to pay off your debt, the next step is to ask your creditors to lower the interest rate. Start by calling the creditor. Be prepared to state the reasons why they should lower your interest rate. Here are a few suggestions.

1. Length you've been with the card.
2. You have been making the monthly minimum payment.
3. Special circumstances—e.g., job loss, reduction in pay, severe financial hardship, etc.

In our experience, this *rarely* works.

CONSUMER CREDIT COUNSELING SERVICES

The other option is to call CCCS (Consumer Credit Counseling Services). The San Francisco's office number is 800-777-7526. CCCS will review your income and expenses to determine if repaying your debt is a possibility. They have special arrangements with credit card companies to reduce the interest rate.



WARNING: Despite faithfully making your monthly payments, unless you complete the plan, the credit card companies can pull the plug and sue you for any remaining balance.



TIP: When considering CCCS, be realistic about your expenses. We have had clients who wasted precious dollars in an attempt to repay their debt with CCCS only to not complete the program and file for bankruptcy anyway. Remember, it's all about dealing with the reality of your situation.

Next, calculate how long it would take for you to repay your debt. Go to: <http://www.bankrate.com/calculators/credit-cards/credit-card-payoff-calculator.aspx>

Enter in your credit card balance, interest rate and your disposable income.

Here's the formula:

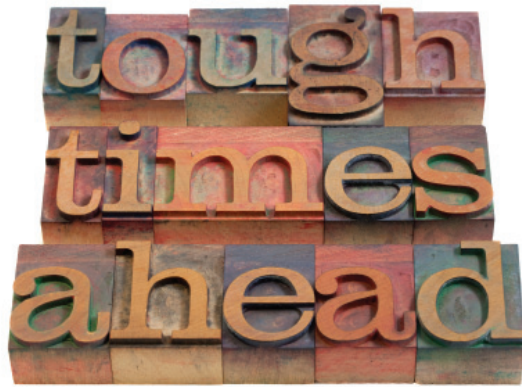
Credit card balance: \$80,000

Interest rate: 5%

Monthly payment: \$500

= 264 months (22 years) to pay off the debt.

If you run your numbers and it shows that it will take you 10, 15 maybe 30 years to pay off your debts, please do yourself a favor and read further to explore all options.



SOLUTION #2 – SETTLE YOUR DEBT

If you determine that there are insufficient funds to pay back your debt at 100%, the next consideration is debt settlement. Debt settlement usually requires 1) missing monthly payments 2) having lump sum cash to settle.

In our experience, debt settlement is a long, difficult and wildly unpredictable road without any guarantees or promises. It may be possible to settle if you have 1 or 2 cards, but in general, if you have a lot of different cards, it's virtually impossible to get all the credit cards to agree.

Remember, the credit card can always exercise its right to sue you instead. If you are sued, you have 30 days to respond to the complaint. If the credit card companies win, either through default (meaning you didn't respond) or through trial, they can garnish your wages up to 25%. They can also levy your bank account and/or put liens on your property.

In general, the more lump sum money you have, the easier it is to settle. However, most people simply do not have lump sum cash to settle. Creditors will not work out payment plans in settlement for the obvious reason. You didn't pay it back according to the payment plan before, so why would you now?



WARNING: No credit card company is required to work with you in settling your debt. There is no special Obama or Federal Plan requiring debt settlement. Such ads are a SCAM and you should avoid them.

You may have seen TV or radio ads by debt settlement companies, promising to get you out of debt for pennies on the dollar. There is nothing that a debt settlement company will be able to do for you that you probably could not do yourself...and save yourself a lot of money in the process.

Here's a run-down on how debt settlement companies work:

- Instead of paying your credit card, you make monthly payments to the debt settlement company. (Generally, a fixed amount.) You will be required to stop paying your credit cards.
- The debt settlement companies almost always receive their fees up-front. In another words, not a single dollar may be going towards actually settling your debts for months.
- After taking their fees, the debt settlement company places your monthly payments in an escrow account. As the account grows, in theory, there will a pool of money available to settle with creditors.
- After you have accrued sufficient funds, the debt settlement companies will offer to settle your debt with your creditor.

Here's what the debt settlement companies won't tell you:

- Credit card companies are under no obligation whatsoever to accept any offers. There is no special government-backed program. They do not have "special" relationships with the credit card companies.
- Frequently, the credit card companies will not wait and will simply choose to sue you.
- If you are sued, the debt settlement companies will not defend you. To litigate a civil case can cost tens of thousands of dollars. The debt settlement company is not going to pay your attorney fees.
- 1099-C. If the debt settlement company is successful in negotiating the debt, the amount forgiven may be taxable to you. (For example, if you had \$100,000 in credit card debt and it's settled for \$50,000, you will owe taxes on the \$50,000 that is forgiven. If you are in the 15% tax bracket, that will mean you will owe Uncle Sam \$7,500.)



DIY GUIDE TO DEBT SETTLEMENT

If you do have lump sum cash to settle your debt, you may be able to do it yourself. Here's how.

1. Negotiate a settlement. Oftentimes, it's common for creditors to send you offers in the mail for settlement. You can also contact your creditor directly. In general, the older the debt, the more favorable the terms will be.
2. Review settlement agreement. Before releasing any money to your creditor, make sure the settlement is in writing.



WARNING: It may be a good idea to have an attorney review the settlement agreement.

3. Execute the settlement agreement.
4. Make your payment.



WARNING: NEVER write a check out of your personal bank account to make a settlement payment. Use a money order or cashier's check instead so that the creditor does not get your bank account information.

If you have multiple creditors to whom you owe money, you want to make sure you negotiate a settlement with all of them. This may be very difficult to do. Remember, settling some of your debt won't do much good if the creditor you don't settle with decides to bring a lawsuit.



SOLUTION #3 – BANKRUPTCY: NOT AS SCARY AS YOU THINK

*Not everything that is faced can be changed,
but nothing can be changed until it is faced.*
— James Baldwin (1924-1987)

For many people that are heavily in debt, bankruptcy is the only viable solution to getting out of debt once and for all. You may have been living in denial thinking *something* will change. Unfortunately, as with most problems, hope and/or denial will not make your problem go away. Think of a toothache. Going to the dentist sooner rather than later will help avoid more costly and painful treatments.

You can use this opportunity to start fresh and to develop better spending and savings habits. Imagine for a moment living debt free. Imagine having an emergency fund so that you can afford those unexpected car repairs or doctor visits. Imagine being able to save money for your retirement, or your children's college education. Imagine paying cash for purchases.

The reality is that you cannot even get to the starting line as long as you live in debt.



YOU ARE NOT ALONE

According to data from the National Bankruptcy Research Center, American consumers filed 913,000 bankruptcy cases in the first seven months of 2010 alone. That's a rise of over 13% from last year's numbers.

And those statistics are not just a symptom of the current economic crisis—this has been going on for years. In the past decade, over 12 million people have filed for bankruptcy. That's the same as if every single man, woman and child who currently lives in New York City filed for bankruptcy—along with every man, woman and child who currently lives in Los Angeles!

You may feel ashamed or embarrassed about your situation. Please know that filing for bankruptcy is not a reflection on you as a person. It's simply a solution to your debt problem. Approximately 1 out of every 25 people living in the Bay Area filed for bankruptcy in the last 10 years *alone*. Many of our clients are college educated, and making above the State median income. We

are in a severe recession, and it has taken a toll on us as individuals and as a country. Make no mistake ... you are most definitely not alone.



WHAT ABOUT MY CREDIT?

The bankruptcy will be reported on your credit report for up to 10 years. However, you will be able to get new credit after bankruptcy—at a premium price. Many of our clients report being able to obtain new unsecured credit cards about a year after filing. But if you pay off your credit card each month, a high interest rate is irrelevant.

Chances are, if you are contemplating bankruptcy, your credit has already taken a substantial hit from the missed payments or you no longer have access to your credit because you are tapped out.

Since credit may be difficult to come by immediately after bankruptcy, this can be the perfect opportunity to reexamine your spending and savings habits. You can make the commitment to not buy things you cannot afford, to pay-as-you-go. Learn to put money into your savings account every week and actually save *for* the future instead of borrowing from it.



WHY DOES THE GOVERNMENT ALLOW PEOPLE TO FILE FOR BANKRUPTCY?

Many clients express feelings of guilt about filing for bankruptcy. Maybe you feel that way too. If you do, consider the following. The American economy is based on consumer spending. For this reason, credit card companies make credit readily available to consumers. They do so knowing full well that a certain percentage of consumers will not repay their debt. However, these companies more than make up for it by charging high interest rates and fees to those who do pay. Credit card companies also charge the merchants a percentage of each transaction and make money there as well.

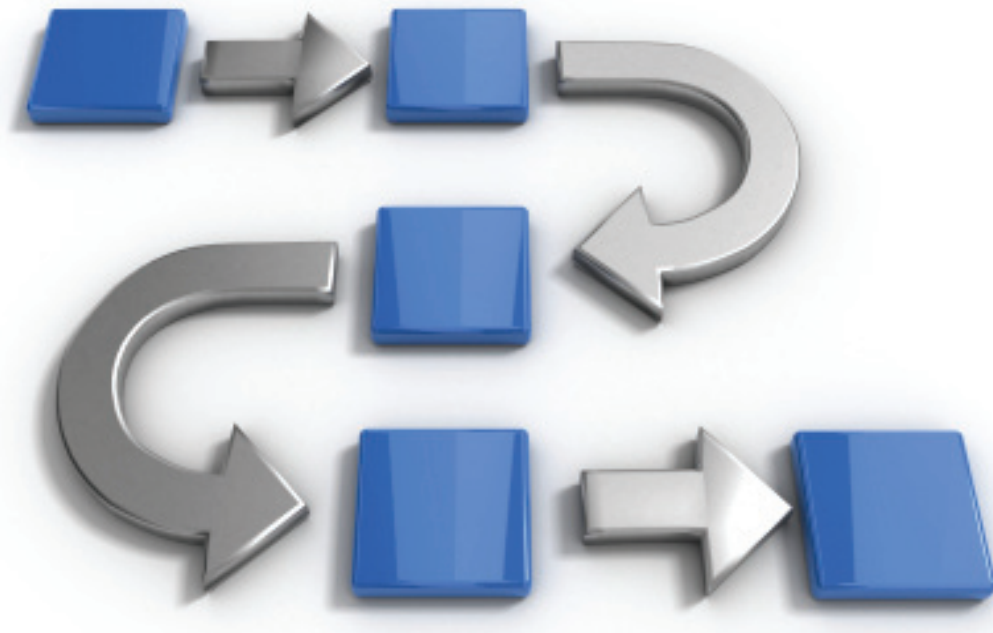
The government recognizes that people don't spend money when they're drowning in debt. If you're buried so far under your debts that you have no money left over to buy things, the economy grinds to a halt. For this reason, the government allows people (and companies) with too much debt to file for bankruptcy so they can once again become part of commerce.



THE TRUTH ABOUT BANKRUPTCY

- 1. I can't afford bankruptcy.** It's true that since the bankruptcy laws changed in 2005 that it has become more costly to file for bankruptcy. The filing fees increased to \$299 for Chapter 7 and \$274 for Chapter 13. Attorney fees also increased. We will work with you on a payment plan. In general, you can afford our services for what most of you would have paid in your monthly credit card payments for 4-6 months.
- 2. My name will be published in the newspaper.** There is no such publication requirement. Although a bankruptcy filing is a public record, in general, the only people who will find out about your bankruptcy are your creditors (people you owe money to), and anyone that has access to your credit report.
- 3. The new law says I have to repay 100% of my debt.** Not true. In Chapter 7, typically most of your debts are discharged and forgiven, hence there is no requirement to repay any of the debt. In Chapter 13, you pay back a percentage of your debt over a fix period of time. It is rare that you'll have to repay 100% of your debt.
- 4. I have to wait 6 months after I complete credit counseling.** Actually, your credit counseling is only good for 6 months, so you have to file your case within 6 months. There is no wait requirement after completing credit counseling. And the credit counseling class can be completed online or over the phone in about an hour.

- 5. If I'm going to file for bankruptcy, I should max out my credit card.** Very simply – don't do it. It is fraud to intentionally rack up debt in anticipation of filing for bankruptcy. Bankruptcy fraud is a very serious offense and at best, you won't get a discharge, and at worst, you are looking at prison.
- 6. I can't file bankruptcy on my medical debt.** Not true. Medical debts are dischargeable in bankruptcy, just like credit card debt.
- 7. If I've been sued, or my wage is already being garnished, it's too late to file.** This is actually a great time to file for bankruptcy because upon filing an "Automatic Stay" is triggered, freezing all collection activities, including wage garnishment the moment you file for bankruptcy. The underlying debt to the lawsuit will be discharged in bankruptcy – so you can in effect get rid of your lawsuit.
- 8. I make too much money to file for bankruptcy.** Just because you make more than the state median income does not mean you are automatically disqualified from filing Chapter 7 bankruptcy. It's not uncommon for people in the Bay Area to make more than the state median and still file Chapter 7. Please do not make the mistake of self-diagnosing your situation.
- 9. I won't get new credit for 10 years.** It's true that the bankruptcy will be reported on your credit report for 10 years. However, this does not mean you won't get new credit for 10 years. It is common for people who filed for bankruptcy to bounce back and get new credit within a few years after bankruptcy.
- 10. Filing for bankruptcy is irresponsible.** We find that almost all of our clients struggle long and hard before deciding to file for bankruptcy. We're not here to make moral judgments but to simply offer solutions. Bankruptcy is not about evading responsibility, but about giving people who have no other means of getting out of debt a fresh start. Corporations file for bankruptcy so that it can have a fighting chance at survival, and the same goes for you. .



WHAT'S INVOLVED IN FILING?

We know that the thought of filing for bankruptcy can be scary. It's natural to be afraid of the unknown. So, let's talk about what is involved in filing.

10 STEPS FOR BANKRUPTCY

These are the typical steps to completing a Chapter 7 bankruptcy.

1. Schedule a consultation. Bankruptcy is more than just filling out the forms. Hiring a good bankruptcy attorney means having an advocate, someone to hold your hand through this difficult process. It also means having someone who will review your situation to make sure

that problems do not arise in your case and take care of any problems that *do* arise.

2. Gather all of the documents and information we request so that we can prepare your petition. Don't leave anything out. The key to bankruptcy is *disclose disclose disclose*. Do not hold something back out of embarrassment! A good rule of thumb is that if you are hesitant about telling us something, you should. You must have *all* of the information so that we can properly advise you and prepare your case for a smooth ride. The good news is that if you've already completed Steps 1—3 above, you've already done most of the heavy lifting.
3. Complete credit counseling. This is nothing more than a class you complete online or on the phone. It will take you less than an hour. It's straight-forward. There is no pass-fail or grade. It will be painless. Many clients even find it useful.
4. Preparing and signing your petition. We take the information and documents you provided us to prepare your petition. Then we meet with you to go over it line by line. It is critical that all the information contained in the petition is accurate.
5. File your petition. We file your case electronically. The moment your case is filed, you are under the protection of the bankruptcy court. This means the end of harassing calls, letters, emails, text messages, etc.
6. Complete post-bankruptcy course. This is similar to the first counseling class. You **MUST** complete this class in order to receive a discharge.
7. Attend your 341 hearing. Every person who files for bankruptcy must attend the Meeting of Creditors (or "341 hearing"). The most important thing to remember for the meeting is to bring a government-issued ID and your social security card.

This meeting is conducted by the trustee, who is responsible for reviewing your bankruptcy petition. The trustee is not a judge. The trustee's job is to screen the case and to question you about your assets, debts and fraud. Your meeting will not be in a courtroom. Despite

the name of the hearing, creditors rarely show up; in fact, it happens less than one percent of the time.

We will attend the meeting with you and will be able to address any issues that may arise. Please note that 99 percent of the time, these meetings last about 3-5 minutes. Some of the most typical questions asked are:

- State your name and current address for the record.
 - Did you sign the petition, schedules, statements, and related documents filed with the court?
 - Did you read the petition, schedules, statements, and related documents before signing them?
 - Are all of your assets identified on the schedules?
 - Have you listed all of your creditors on the schedules?
 - Does anyone owe you money? If so, is the money collectible?
 - Have you made any large payments, over \$600, to anyone in the past year?
 - If you are married and not filing with your spouse—Have you listed all assets and liabilities concerning your non-filing spouse as well?
 - Has anything changed since you filed your case? (new job, winning lottery ticket, etc.)
 - Do you anticipate inheriting any money in the next six months?
 - Do you have any past or present interests in real property?
 - Do you have any past or present interests in a business?
 - Do you owe any outstanding child support or alimony?
8. Wait 60 days. After the 341 hearing, unless there are additional document requests, there is nothing to do but wait. During this time, any creditor or the trustee may object. (This is rare, particularly because part of our job is to help you have a smooth ride.)
 9. Receive Discharge. After the 60 days run, the Judge will sign your Order of Discharge. This happens automatically and we do not need to appear.
 10. Enjoy your debt-free life! You can start enjoying your debt-free life and begin rebuilding your credit again. We suggest you review any new credit offers very carefully and be sure to read the fine print.



NUTS & BOLTS OF CHAPTER 7 AND CHAPTER 13

CHAPTER 7

Chapter 7 is the most commonly filed bankruptcy for consumers. It takes about 3-4 months to complete from the date of filing through the date of discharge.

Let's start with the basics.

LOOK BACK / LOOK FORWARD

When we file your Chapter 7 bankruptcy case, the trustee reviews your behavior prior to filing your bankruptcy. The most common issues are luxury purchases, transferring or selling assets, and insider repayments (paying money back to family members, friends or business associates) prior to filing. They also look forward for things such as whether or not you expect to receive an inheritance or expect to start or stop working. For these reasons, timing is crucial in filing your case. We need to carefully review your finances to make sure there are no red flags, or if there are, to deal with them appropriately.

ELIGIBILITY – THE “MEANS TEST”

Every person who files for Chapter 7 must pass the so-called “means test.” First, we look to see if your income is below or above the State median. If it’s below, you automatically pass the test. If your income is above the State median, you must pass the means test. Most of our clients are above the State median. Currently, the median income for a household of one is \$47,969; \$64,647 for two; \$70,638 for three; \$79,194 for four; add \$7,500 for each additional person.

Let’s assume you are above the median. We go through all of the steps of the means test. We start with your gross income and deduct every expense that we can. The most common expenses are:

- Mortgage
- Taxes
- Vehicle—loan payments and operational expenses
- Public transportation
- Medical expenses
- Term life insurance payments
- Cost of living expenses—food, clothing, utilities, etc.
- Child support
- Child care expenses

Some of these items are deducted as actual expenses, but others are the IRS standard. For example, your actual income taxes are used, but you are given an IRS allowance for food.

This is where an attorney who is familiar with bankruptcy law is crucial. The means test is the subject of much controversy and constant changes in what counts as income, and what can be deducted as an expense. The means test is crucial to qualifying for Chapter 7 bankruptcy, and paying as little as possible in Chapter 13.











TIP: If more than 50 percent of your total debt was “non-consumer” e.g., used for a business, you are not subject to the means test at all.

VALUING AND KEEPING YOUR PROPERTY

The next issue is to value all of your belongings to see if we can protect them through Chapter 7 bankruptcy. The amount of property you can keep in bankruptcy is governed by the exemption laws of each state. Luckily, California has very generous exemptions.

CALIFORNIA EXEMPTIONS

Property Type	System 1 (CCP 703)	System 2 (CCP 704)
Wildcard 	Can apply up to \$23,250 that debtor or dependent use as residence, or in personal property.	
Residence/ Homestead 		(1) \$75,000 if debtor is single. (2) \$100,000 if debtor is family unit. (3) \$175,000 if debtor or spouse is at least 65 years old, disabled, or if annual income is less than \$15,000 or \$20,000 if married. “Declared homestead” “Automatic homestead”
Household furnishings & personal 	\$550 in each item held primarily for personal, family or household use.	Exempt to the extent reasonably necessary for the personal use of debtor or dependent at debtor’s residence.
Automobile 	\$3,525 equity in one vehicle.	(1) \$2,725 in a personal vehicle. (2) \$7,175 in a business vehicle.
Tools of the 	\$2,200 where used in the trade of the debtor or a dependent.	\$7,175 exempt to the extent necessary to and actually used by the debtor in a business or trade. (\$14,350 when debtor and spouse are in same trade.)
Retirement, Pensions etc. 	The right to receive payment to the extent reasonably necessary for support of debtor or dependent, unless it does not qualify under IRS Code.	All amounts held, controlled or distributed from “private retirement plan.”
Earnings 		75% of paid earnings within the last 30 days. 75% of unpaid earnings unless debtor proves that some or all of excess is necessary for support of debtor’s family.
Jewelry, Heirlooms 	\$1,425 in jewelry only.	\$7,175 in jewelry, heirlooms and art.

When preparing your bankruptcy petition, we list all of your property and exempt it. What's important to remember is that the value we list is the current fair market value, not what it cost to buy it when new. (Think Craigslist or yard sale value.) It is common for people who file Chapter 7 to keep all of their belongings because of the generous exemption scheme.

For example, assume you own a car outright worth \$7,000. We need to protect and exempt it so that you can keep your car. One of the vehicle exemptions available protects \$3,525. Since we are \$3,475 short (\$7,000—\$3,525), we can look to the Wildcard. This powerful exemption is worth \$23,250 and can be used on anything. So let's take \$3,475 from the Wildcard, and add it to the \$3,525 vehicle exemption for a total of \$7,000 to completely protect all equity in the car. You thus keep the car. Note that you now are left with almost \$20,000 on the Wildcard to use to protect anything you want—cash, another car, art, anything!

If you cannot protect everything through exemptions, but want to keep everything, you may want to consider Chapter 13 (see page 41).

LISTING AND GETTING RID OF YOUR DEBTS

It is critical that you list all of your debts. Aside from the obvious credit cards, car loan and mortgage, you must list everything: If you owe your parents money, it must be listed. If you owe your neighbor \$20 bucks, list it. There is no picking and choosing.



TIP: You can choose to voluntarily repay any creditors *after* the bankruptcy.

Chapter 7 will discharge most, if not all, of your unsecured debts, such as credit cards, medical bills, personal loans and older income taxes. Some debts are not dischargeable; including child support, alimony, student loans and recent income taxes.

With secured debts such as a car or home which you are still making payments, you have a choice. If you want to get rid of the home or car, you can walk away and discharge your personal liability. If you want to keep a home

or car, you can keep them as long as you are current on your payments, you can afford to make payments and you can exempt it. If you are not current or cannot fully exempt the property, Chapter 13 may provide a viable solution.

SIGNING AND FILING YOUR CASE

When you give us all of the documents and information we need, we prepare your petition. In almost every case we contact you to seek clarifications or make adjustments to help ensure that the process goes smoothly. Once your petition is complete, we have you come in and sign your petition. You sit down with one of us, go through the petition page-by-page, and we discuss what it means and answer any questions. After the petition is initialed and signed, we file the case electronically. This triggers an automatic stay, and the random assignment of a judge and trustee to your case.

AUTOMATIC STAY

The automatic stay is one of the most powerful weapons in bankruptcy. Upon filing, all collection activities must stop. This means no one can garnish wages, sue, continue a lawsuit, call, write or otherwise harass you about debt. The automatic stay is like placing you inside a bubble that is under the protection of the Federal Bankruptcy Court. Violating the automatic stay can be very serious and costly to creditors. A few creditors are excluded from the stay, such as those collecting child support and alimony.

THE TRUSTEE AND YOUR 341 MEETING OF CREDITORS

When your case is filed, a Chapter 7 trustee will be randomly assigned from a small pool of trustees. This assignment usually occurs within 48 hours of filing your case. Once the trustee is assigned to your case, it will trigger a hearing date approximately 30 days away; it can be a little more or a little less.

Who is the Chapter 7 trustee? They are officers appointed by the United States Trustee, a division of the Department of Justice. Most are lawyers, and a few are other professionals such as accountants. Their job is to administer your estate, i.e., your property. Essentially, the trustee is screening for fraud and looking at whether or not you can keep all of your property.

The hearing with the trustee typically lasts less than five minutes. The trustee will ask to see your social security card and photo ID to verify your identity. As mentioned earlier, trustees have a typical list of questions they ask, though they often inquire into matters raised by your petition that are not on the list of usual questions. As with all things in bankruptcy, all you have to do is answer truthfully.

Though it is their right, it is rare that any creditors appear and ask questions. Think of Bank of America getting a thousand notices a day of bankruptcies all over the country. It can't be everywhere at once, and, frankly, there is little or nothing for a creditor to do in most cases anyway.



TWO GOALS: GET A DISCHARGE AND KEEP YOUR PROPERTY

After the 341 hearing concludes in a Chapter 7 case, the goal is for two things to happen: keep your property and get rid of your debt.

Property

First, you want the trustee to return your property. The moment you file a Chapter 7 bankruptcy, a “bankruptcy estate” is created. (This is somewhat hypothetical because the trustee does not take physical possession of the estate. You will have possession of all of your property throughout bankruptcy.) All of your property is placed in the estate and essentially belongs to the Chapter 7 trustee until he or she determines there is nothing to take. This is why properly exempting your property is so important. Most Chapter 7 trustees will release your property within a few days of your 341 hearing if everything is exempt. Until that happens, it is important to not sell, give away or destroy any property because it is technically not yours until the trustee returns it to you.

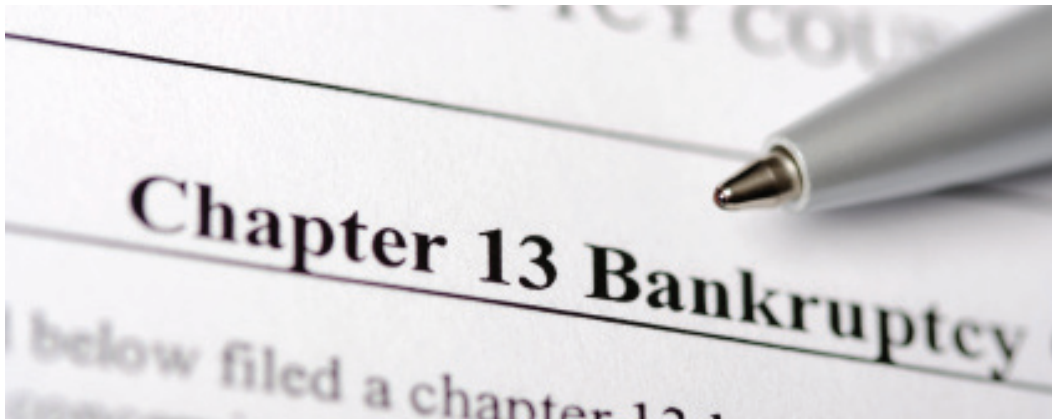
Discharge

Second, you filed bankruptcy to get rid of debt in the first place, right? At the conclusion of your 341 hearing, a 60-day window is triggered. We wait for 60 days because the bankruptcy code provides that the trustee and your creditors should be given a 60-day period of time to object. The most common objections are improper use of exemptions, deductions, and fraud. The most important strategy in bankruptcy is planning *before* we file your case, so that you have a smooth ride. When proper planning is exercised, objections are rare.

At the conclusion of 60 days, the judge signs an order forgiving your debts that are dischargeable. This means that you can be debt free in less than four months.



TIP: “Discharge” is another way of saying *forgiven*.



CHAPTER 13

“Courage is saying, ‘Maybe what I’m doing isn’t working; maybe I should try something else.’”

— Anna Lappe

Before we discuss what Chapter 13 is, let’s talk about what it’s not. Chapter 13 is not a debt consolidation program. Chapter 13 rarely requires that you repay 100 percent of your debt. In fact, in most cases you pay back a very small percentage of your total debt.

An oversimplified way of explaining Chapter 13 is that you take your income, subtract your expenses, and whatever is leftover (“disposable income”) is paid to your unsecured creditors.

In Chapter 13, we bundle all of your income and expenses to calculate your disposable income. You will make monthly payments to the Trustee for 3 or 5 years based on your income. At the conclusion of your Chapter 13 case, whatever portion of the debt you have not paid back will be discharged. For example, if you had \$100,000 in credit card debt, and your disposable income amounted to you paying \$10,000 to the credit card companies over the life of your plan, the remaining \$90,000 would be discharged at conclusion of your bankruptcy.

Even if you can qualify for Chapter 7, there are circumstances where you may choose to file for Chapter 13. Here are some advantages of Chapter 13.

BENEFITS TO CHAPTER 13

1. **Lien strip.** If you have a 1st and a 2nd mortgage on your home, and the fair market value is worth less than your 1st mortgage, we can “strip” the second mortgage. This means, at the conclusion of your Chapter 13, you will have a home with only the first mortgage.

Let’s take an example. Let’s suppose the fair market value of your home is \$500k. You have a first mortgage of \$600k and second mortgage of \$200k. Since the fair market value of your home is less than the first mortgage, we can avoid the second mortgage. Assuming you *complete* your bankruptcy, you will be able to get rid of your second mortgage — for good.

2. **Arrearages.** If you have fallen behind on your mortgages, property taxes, or your car payments, Chapter 13 will give you up to 5 years to make up those payments. Assuming you have \$10,000 in missed mortgage payments and you are facing a foreclosure, filing for Chapter 13 will stop the foreclosure and give you 5 years to make up the missed payments. ($\$10,000 / 60 = \166.67 per month.)
3. **Taxes.** Similar to #2, if you owe taxes to the IRS or Franchise Tax Board, you can have up to 5 years to repay the taxes—penalty and interest free.
4. **“Cram-down” vehicles.** If the value of your car has depreciated substantially, and you owe more than the value of your car, we can reduce the loan to the fair market value of your car provided you’ve had the car loan for more than 2 1/2 years.
5. **Reduce interest rate on vehicles.** If you have a car with a high interest rate, we can reduce the interest on the loan. (Usually to around 5–6 percent.)
6. **Extend repayment period.** If you are having a hard time making your monthly car payment, Chapter 13 will stretch out the loan term for up to five years. Let’s assume you are currently paying \$500 per

month, and you owe \$8,000 on the car. In a Chapter 13, your monthly payment will be reduced to approximately \$134 ($\$8,000/60$).

- 7. Unexempt assets.** Chapter 13 is also useful if you have property that we cannot protect in Chapter 7 bankruptcy.

As you can see, Chapter 13 can be a powerful tool to help your financial situation. Whether you should file for Chapter 7 or Chapter 13 will depend on your individual circumstances and what goal you would like to achieve.

DO YOU QUALIFY FOR CHAPTER 13?

As with Chapter 7, there are restrictions on Chapter 13 bankruptcy. The first limitation is a debt limit. Currently, debt limits are at \$1,081,400 in secured debt and \$360,475 in unsecured debt. The second limitation is the ability to fund your Chapter 13. We must demonstrate that Chapter 13 is “feasible,” meaning that you can afford to pay for your living expenses and make your Chapter 13 payment.



HOW MUCH WILL YOU PAY?

It depends on a couple of things: (1) your expenses and income, and (2) your ability to exempt property.

Your income minus expenses is your *disposable income*. This is also referred to as the “best efforts” test. Whatever number is left over at the end of the month will be paid to your unsecured creditors. So if after every expense is counted against your income and you have \$100 left over each month, you must make your “best efforts” and pay that \$100 to the Chapter 13 trustee each month. This is by far the most common way your payment is determined.

The other thing that can affect your payment is the inability to exempt your property. We use the same exemptions we used in Chapter 7. Let’s say you have an expensive car, some cash and nice jewelry. Assume in Chapter 7 we are able to protect everything through exemptions except for \$20,000 of equity in your car. The rule is that a creditor in Chapter 13 can never receive less than what it would have received in Chapter 7. If liquidating the car in Chapter 7 would have netted the creditors \$20,000, you must pay at least \$20,000 in your Chapter 13. This is the “best interests of the creditors” test.

If you have both disposable income, and property you cannot exempt, your monthly payment would be the *higher* amount of either the best efforts test *or* the best interests of the creditors test.

One other comment about your monthly payment: Our goal is for you to pay as little as possible. Part of Chapter 13 is planning and making adjustments. For example, you may need a newer and more reliable car before committing to a Chapter 13. This may also benefit you to the extent that it is an added expense that will reduce the amount you pay each month to your unsecured creditors.



WARNING: *Adjustments and changes to income and expenses prior to filing bankruptcy can be tricky and complicated. Retain counsel to assist you with this process.*

SIMILARITIES TO THE CHAPTER 7 PROCESS

As with Chapter 7, you still have to:

- Do your “homework” and gather all of your financial documents
- Complete credit counseling
- Review and sign your petition
- Attend the 341 meeting of creditors

Unlike Chapter 7, you will have to make monthly payments for the duration of your Chapter 13 in order to get your discharge. There is only one Chapter 13 trustee in each division, so no random assignment. There is also a second hearing after the 341 meeting of creditors called the “confirmation hearing.” This hearing is usually only attended by attorneys to resolve any outstanding issues with your Chapter 13, if there are any. If resolved, the court will order the plan confirmed.

Important: Within 30 days of filing your Chapter 13, you must start making monthly payments to the trustee. It is critical to never miss a payment.

Upon making your last payment, the judge will sign an order discharging your remaining debts that are dischargeable.

THIS SOUNDS GREAT, BUT WHAT'S THE CATCH?

Bankruptcy is as old as the Bible and is written into our Constitution. There are, however, downsides to bankruptcy.

1. It may have a negative impact on your credit score. We say “may” because we have seen our clients report that their credit score has actually improved about 1 year after bankruptcy, presumably because their debt-to-income ratio improved.
2. It may be more difficult to get new credit.
3. Bankruptcy will be reported on your credit report for up to 10 years. This does not mean you cannot get new credit for 10 years. It's not unusual to get new credit card and car loan offers right after bankruptcy. These new credits will be offered at a premium. Also, you cannot file for another bankruptcy for years so it's important to use credit wisely.
4. Anyone who has access to your credit report can find out you have filed for bankruptcy. The petition itself is also public record (like any court filing). Bankruptcy records are kept at the clerk's office and are also available on a system called PACER. Only those with PACER access can view the petition.



FINAL THOUGHTS

Many people have assumptions and ideas (oftentimes false) about what it means to file for bankruptcy and about those who file. Filing for bankruptcy is not a reflection of you as a person. After bankruptcy, you will be free from debt and you can go on to succeed and achieve all of your goals and dreams!

Lots of prominent people have gone bankrupt. Here are just a few: Abraham Lincoln, Walt Disney, Donald Trump, Willie Nelson, Tammy Wynette, Elton John, Larry King, Mickey Rooney, Ulysses S. Grant, George McGovern, John Conally, Mike Tyson, Dorothy Hamill, Mark Twain, and Henry Ford.

Surprised? The list is much longer than just these few. You *can* make a fresh start, and you should be proud of yourself for taking the first step to bettering your financial situation!

You can schedule a consultation with Jeena or Jeff by calling 415-963-4004.

WORKSHEET #1 – INCOME

Enter all amounts on a monthly basis. If you are married, enter spouse's income as well.

	Your Income	Spouse's Income
1. Employment (Your "take-home" pay)	\$ _____	\$ _____
Additional Income		
2. Operation of business	\$ _____	\$ _____
3. Interest, dividends and royalties	\$ _____	\$ _____
4. Rents and real property income	\$ _____	\$ _____
5. Pension and retirement income	\$ _____	\$ _____
6. Alimony or family support	\$ _____	\$ _____
7. Unemployment compensation	\$ _____	\$ _____
8. Workers' compensation/ disability	\$ _____	\$ _____
9. Annuities	\$ _____	\$ _____
10. Other	\$ _____	\$ _____
11. TOTAL INCOME (Add lines 3 and 13)	\$ _____	\$ _____

WORKSHEET #2 – CURRENT EXPENSES

Expense	Average Monthly Expenses	List Any Increase or Decrease Expected for Item in the next 12 months
HOME		
Mortgage payment Are real estate taxes included? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$ _____	
What is your annual property tax? _____	\$ _____	
Rent	\$ _____	
Condo or homeowners association fees	\$ _____	
Trash pickup	\$ _____	
Electricity	\$ _____	
Heat	\$ _____	
Water	\$ _____	
Telephone Home Cell	\$ _____ \$ _____	
Other utilities Internet Cable T.V. Other	\$ _____ \$ _____ \$ _____	
Home/apartment maintenance (improvements, repairs and upkeep)	\$ _____	
Home/apartment cleaning (cleaning products, paper towels, toilet paper, etc.)	\$ _____	
Home landscaping and lawn care	\$ _____	
Home alarm system	\$ _____	

Home office supplies (paper, printer toner, pens, etc.)	\$	
Personal care (haircuts, toothpaste, hygiene, etc.)	\$	
Groceries purchased from store	\$	
Work lunches (eating out)	\$	
Dining out at restaurants (non-work)	\$	
Amount of food stamps you spend	\$	
Clothing	\$	
Laundry and dry cleaning	\$	
Storage unit	\$	
Other household expenses: _____	\$	
MEDICAL, DENTAL, VISION & HEALTH RELATED		
Health savings account contribution	\$	
Psychologist/psychiatrist/therapist	\$	
Doctor visits	\$	
Prescription medications	\$	
Non-prescription over-the-counter medication	\$	
Vision care doctor and eye exam visits	\$	
Eye glasses (care and replacement)	\$	
Contact lenses and solutions	\$	
Dentist visits (cleanings, x-rays)	\$	
Dental care needed (fillings, root canals, bridges etc.)	\$	
Gym membership	\$	
Vitamins	\$	
Other medical expenses: _____	\$	
VEHICLE & TRANSPORTATION		
Public transportation (Muni, BART, Cal Train, airplanes)	\$	
Motor vehicle lease payment	\$	
Motor vehicle purchase to own payment/finance payment	\$	
Motor vehicle oil changes, tires and scheduled maintenance	\$	
Motor vehicle repairs	\$	
Motor vehicle registration and license fees	\$	

Motor vehicle gasoline	\$	
Car washes	\$	
EZ Pass and bridge tolls	\$	
Parking	\$	
Other motor vehicle expenses: _____	\$	
CARE FOR CHILDREN UNDER 18, ELDERLY AND OTHER DEPENDENTS		
School uniforms	\$	
School lunches and/or allowance	\$	
School supplies	\$	
Daycare, babysitter or other childcare	\$	
Summer camp and summer activities	\$	
After school activities: _____	\$	
Education for a physically or mentally challenged child: _____	\$	
Tutoring	\$	
Care for elderly, chronically ill, or disabled family members	\$	
Protection from family violence	\$	
Education expense for your children under 18 _____	\$	
Other child or dependent care: _____ _____	\$	
INSURANCE		
Homeowner's	\$	
Renter's	\$	
Life <input type="checkbox"/> Term Policy <input type="checkbox"/> Whole Life Policy	\$	
Health	\$	
Automobile	\$	
Disability	\$	

Other Insurance: _____	\$	
COURT ORDERED PAYMENTS AND LEGAL FEES		
Alimony	\$	
Child support and other payments for support of dependents	\$	
Other legal fees: _____	\$	
ANIMAL AND PET CARE		
Pet food	\$	
Veterinary care and visits	\$	
Medications for pets	\$	
Boarding	\$	
Grooming and care	\$	
ADULT EDUCATION & PROFESSIONAL MAINTENANCE		
Tuition	\$	
Books	\$	
Expenses from operating business (Attach full profit & loss statements)	\$	
Club and union dues (not deducted from wages) Mandatory? <input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
Unreimbursed employment expenses (tolls, mileage, parking, etc.)	\$	
Continuing education necessary for profession	\$	
MISCELLANEOUS EXPENSES		
Recreation (Netflix/movies, music, books, clubs, hobbies, etc.)	\$	
Bank charges (monthly checking account, ATM fees, over-draft fees, etc.)	\$	
Newspapers & magazines (stand or subscription)	\$	
Monthly website subscriptions (domains names or subscription to content)	\$	
Charitable contributions	\$	
Taxes (not deducted from wages or included in mortgage payment)	\$	

Tax return preparation fees	\$	
Accounting preparation fees	\$	
Christmas & birthday gifts	\$	
Cigarettes and other tobacco	\$	
Postage	\$	
Other expenses Identify: _____ _____ _____ _____	\$ _____ \$ _____ \$ _____ \$ _____	
Mandatory payroll deductions not already listed: _____	\$	
Non-mandatory contributions to retirement accounts (including loan repayment) _____ _____	\$	



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