



Bankruptcy Community Education Class

Legal Aid Center of Southern Nevada
William S. Boyd School of Law

Summer 2023



Attendee Manual

The Attendee Manual is your guide to Bankruptcy.

During this time you may download the manual from this website-

<https://www.lacsn.org/what-we-do/free-classes/bankruptcy>

In addition to most of the information covered in class, the manual includes sample forms.



Welcome and Introduction

- Class Purpose
 - General understanding – bankruptcy is complicated
 - Not a substitute for attorney
 - Topics covered include:
 - Purpose of bankruptcy
 - Alternatives to bankruptcy
 - Attorney vs. pro se
 - Chapter 7 and 13
 - Bankruptcy forms
 - Legal information vs. legal advice

Please hold questions until the end of presentation

Please mute yourself and turn off your camera



Definition and Purpose of Bankruptcy

- What is bankruptcy?

A federal court proceeding in which debtors can get rid of debt or work out a plan to repay all or part of their debt.

- Purpose of bankruptcy

- Relieve financial pressures with a “Fresh Start”
- Adjust or discharge debts if acting in good faith
- Fair to creditors
- Most debts permanently erased

Bankruptcy Alternatives



Getting calls from debt collectors?

Fair Debt Collection Practices Act ("FDCPA")

Applies to 3rd party collectors

- Allows debtors to tell collectors to stop communications
- Debtors may submit written request to verify debt or dispute debt

Collector CANNOT:

- Call 9:00 p.m. - 8:00 a.m.
- Make false statements
- Mislead
- Talk to others about debt
- Threaten violence
- Threaten arrest
- Call employer if asked to stop
- Harass you or family



Bankruptcy Alternatives

To Consider Before You File

○ **Creditor filed a lawsuit?**

- Summons & Complaint
- File Answer in 20 days (Civil Law Self Help Center can assist)
 - Opportunity to verify that debt is correct and have day in court
 - If don't answer, creditor can get default judgment

○ **Student Loans?**

- Check if eligible for permanent relief through Dept. of Ed. Program, e.g. Total and Permanent Disability Discharge

○ **Mortgage problems?** Consider loan modification or refinance

- BEWARE of scams
 - Non-attorneys cannot collect upfront fee
- **Free** help: Legal Aid Center and other community organizations
- State Foreclosure Mediation program – must file petition w/in 30 days of Notice of Default (first official notice of foreclosure)

○ **Collection (or Judgment) Proof?** Assets/income exempt (Legal Aid class)

○ **Live with bad credit?** Items remain on credit report for 7 to 10 years



Attorney or Pro Se Filing



- **Attorney**

- Bankruptcy is complex with effects for years that follow
- Licensed (education, bar exam, CLE) and regulated by State Bar
- Engagement letter re fees/services to be performed
- Legal Aid Center pro bono lawyer if qualified

- **Self (Pro Se)**

- Forms are **FREE** and available at BK Court website: www.nvb.uscourts.gov
- You are responsible for understanding law and court rules

- **Document Preparation/Paralegal Services/Bankruptcy Petition Preparers (BPPs)**

- **Beware!** Not licensed or regulated by State Bar. **Cannot give legal advice.**
- Preparer will not and cannot appear in Court – will be *pro se*
- U.S. Trustee \$200 guideline re maximum fees non-attorney preparers can charge
 - Non-attorney preparer **cannot** collect debtor's court filing fee
- Doc preparation services must register with NV Sec of State, post bond, make disclosures to consumers; provides complaint process for violations. Can check at www.nvsos.gov. Not allowed to use "paralegal" in ads due to confusion. **No education requirement.**
- You sign the Bankruptcy forms – **READ BEFORE YOU SIGN!!!**
 - "Under penalty of perjury" so requires total truth and accuracy



Bankruptcy Myths



- I don't have to file bankruptcy against all creditors!
 - False: Debtor is required to list **all** creditors
- I don't have to list all of my property!
 - False: Criminal to intentionally leave out assets
- They can't take my home!
 - False: Not protected against mortgage company, IRS or HOA if not making payments
 - Homestead exemption – some protection against other creditors
- They can't take my car!
 - False: Not protected against auto finance company, title loans, or the IRS if not making payments
 - Limited protections (exemption) for cars



BENEFITS OF FILING BANKRUPTCY

- **Automatic Stay (upon filing of bankruptcy petition)**
 - Stop wage garnishments
 - Stop collectors calls
 - Temporarily “stay” foreclosure
 - Some exceptions to automatic stay, including criminal proceedings and divorce, custody, paternity, domestic violence actions.
 - Lasts until discharge of debts (or creditor obtains stay relief)
- **Opportunity to repay arrears in Chapter 13**
- **Discharge of Debts**

BUT, Some Debts Are **Not** Dischargeable:

- Domestic Support Obligation (Alimony and Child Support)
- Most IRS taxes
- Student Loans (unless can prove undue hardship through suit in bankruptcy court - difficult)
- Court ordered restitution
- Debts not listed by debtor
- Debts incurred through fraud
- Credit Card Binges – 90 days before filing
- Credit Card Cash Advances – 70 days before filing

Trustee's Role and Requirements

- Trustee – Officer appointed by U.S. Trustee's Office
 - One trustee assigned by court to every chapter 7 and 13 case
 - Reviews documents and assesses financial affairs – watches for BK fraud
 - Liquidates or monitors repayment plan for benefit of creditors
 - Looks for transfers that disadvantage the BK estate/can have reversed by BK Court:
 - **Preferences** - paying any one creditor > \$600 in 3 months before filing or 1 year if insider, *i.e.* friend, relative, associate; and
 - **Fraudulent Transfers** - transfers for less than FMV, whether actual (intent to defraud creditors) or constructive, within 2 years of BK filing

- Mandatory Meeting of Creditors (“341 Meeting”)
 - 30-40 days from date of filing petition
 - Trustee asks the debtor questions ***under oath*** – important to answer truthfully (creditors can also attend and ask questions)
 - Scope of meeting - What debtor owns, owes, and claims as exempt property; whether debtor has provided all documents to Trustee

- Trustee Requirements before 341 Meeting (may vary by trustee)
 - Completed Questionnaire – example in manual
 - Previous 2 (Ch. 7) to 4 (Ch. 13) Tax returns
 - Failure to submit = dismissal of case
 - Bank statements for the 6 months before filing
 - Proof of income for the 6 months before filing

Chapter 7 – Liquidation of Assets

- Court Filing Fee: \$338
- Trustee may seize and sell non-exempt assets to pay creditors
- Most debts are discharged and debtor can walk away
- Won't eliminate domestic support obligations, student loans, most taxes

Pros to Ch. 7	Cons to Ch. 7
Usually takes 4-6 months for discharge	May lose property that is not exempt
Typically only one trip to Court – for 341 meeting	Can't pay arrears to save house, car etc.
Easier pro se filing than Ch. 13, esp. if below Nevada median income (so don't have to complete full means test)	Can't file Chapter 7 again for 8 years from date of filing petition



Chapter 13 – Debt Reorganization

- Court Filing Fee \$313
- Repayment Plan – partially or fully repay debts
 - 3 – 5 years
 - Plan must be approved by Bankruptcy Court
- Trustee monitors and distributes disposable income
 - You pay the trustee your disposable income every month
- Pay arrears, domestic support obligations, attorney fees, and trustee fees through plan; “conduit” payments if behind on secured debt.

Pros to Ch. 13	Cons to Ch. 13
Get to keep most or all of property	Complex - need attorney assistance
Avoid Foreclosure: Pay home arrearages in plan while maintaining current payment; Mortgage Modification Mediation (MMM) Program - rules of MMM on Court website	Need to have enough income to pay arrears in full by the end of 3-5 years
Pay off back taxes, reduce or negotiate interest rates	Strict budget based on IRS standard of living. Nearly 2/3 fail (no discharge)
Pay off debts with fresh start: 3-5 yrs	If fail to pay Trustee, case dismissed



Compare Effects:

Situation	Chapter 7 Effect	Chapter 13 Effect
Behind on house or car payment?	Bring loan current before filing or plan to surrender property.	Pay arrearages in repayment plan - keep property. Can elect Mortgage Mod Mediation Program.
Co-debtor?	Creditor can go after co-debtor for payment immediately.	Creditor cannot seek payment from co-debtor without Court permission.
Nonexempt Assets?	Trustee may liquidate.	Debtor keeps.
Disposable income sufficient to fund a Chapter 13 plan?	Court may determine that filing is “presumptively abusive” and dismiss case.	File Chapter 13 no matter your disposable income.

NOTE: You can voluntarily dismiss your Chapter 13 case (or convert to Chapter 7 if you qualify for a Chapter 7) at any time, but you need court approval to dismiss your Chapter 7 case.



Chapter 7 or Chapter 13?

○ Debtors can choose to file chapter 7 or 13 if:

- Income is below median income for his/her state. For Nevada:

Family of 1	Family of 2	Family of 3	Family of 4
\$63,473	\$75,983	\$86,618	\$95,950

*add \$9000 for each additional dependent

**for cases filed on or after 5/15/2023

- If above median, can you satisfy the Means Test?
 - Means Test: Gross income - deduct expenses = disposable income
 - Determine by completing form to be filed with bankruptcy petition

○ You must file chapter 13 if you cannot satisfy Means Test BUT

You cannot file chapter 13 if your debts exceed \$2,750,000



Preparing to File Bankruptcy



Gather your Financial Documents!

- Tax returns for past 2-4 years
- Instructions for requesting tax return transcript at www.irs.gov/Individuals/Get-Transcript
- Proof of income for past 6 months
- Bank statements & credit card statements for past 6 months
- Credit reports
 - Experian, Equifax, Transunion
 - **Free** credit reports (1 of each/week) via
 - www.annualcreditreport.com
 - online, or
 - by phone: 1(877)322-8228, or
 - by mail
 - The others say free, but they're not
- Copies of any legal judgments against you (including divorce decrees)



Identify Your Property

Property Description	Fair Market Value	Secured Claim	Equity Amounts	Exemption?
Real Estate				
Cash				
Checking/Savings Accounts				
Household Goods				
Vehicles				
Jewelry				
Etc. (See chart p. 16-17 in manual)				

Married, but filing individually?

- All Community Property assets **must** be included and listed
- Separate Property assets do not need to be listed, but beware if **commingled**

EVERYTHING means EVERYTHING – including the following if received 6 months after filing

Inheritance

Life insurance

Divorce decree settlement



Exempt Property (what you can keep)

Must live in Nevada 2 yrs to claim Nevada exemptions

- Primary Residence: \$605,000 (Homestead Exemption)
 - Lived in Nevada 2 years
 - Owned home 1215 days (3 yrs 4 months)
 - If owned less time, only \$189,050 can be exempt
- Cars: One car up to \$15,000
- Household furnishings, wearing apparel etc: \$12,000
- Art/jewelry/instruments/keepsakes: \$5,000
- Pensions / IRA / 401(k): \$1 million
- Life Insurance
- Tools of Trade: \$10,000
- Public Benefits (food stamps, welfare)
- Unspent Social Security Income
- 75% of paid wages (82% if weekly wage is \$770 or less)
- Personal Injury settlements up to \$16,150
 - Pain and suffering & lost wages not capped
- Restitution received as a victim of a crime
- “Wild Card” exemption of \$10,000
 - *If Joint filing: double and stacking (except homestead)

Exemption Examples

Home Example:

FMV: \$650,000
Loan 1: \$300,000
Loan 2: \$100,000
Equity: \$250,000

Auto Example:

FMV: \$16,500
Loan: \$ 3,000
Equity: \$13,500



Nonexempt Property

- Non-residential real estate, commercial property, vacation or rental homes.
 - RVs, ATVs, boats, etc., additional vehicles.
 - Valuable collections above \$5k exemption amount.
 - Federal tax refunds (except Earned Income Credit).
 - Savings, excess cash, bonds or investments (not covered under another exemption, e.g. pension exemption).
- But, can apply wildcard (except to real estate)!



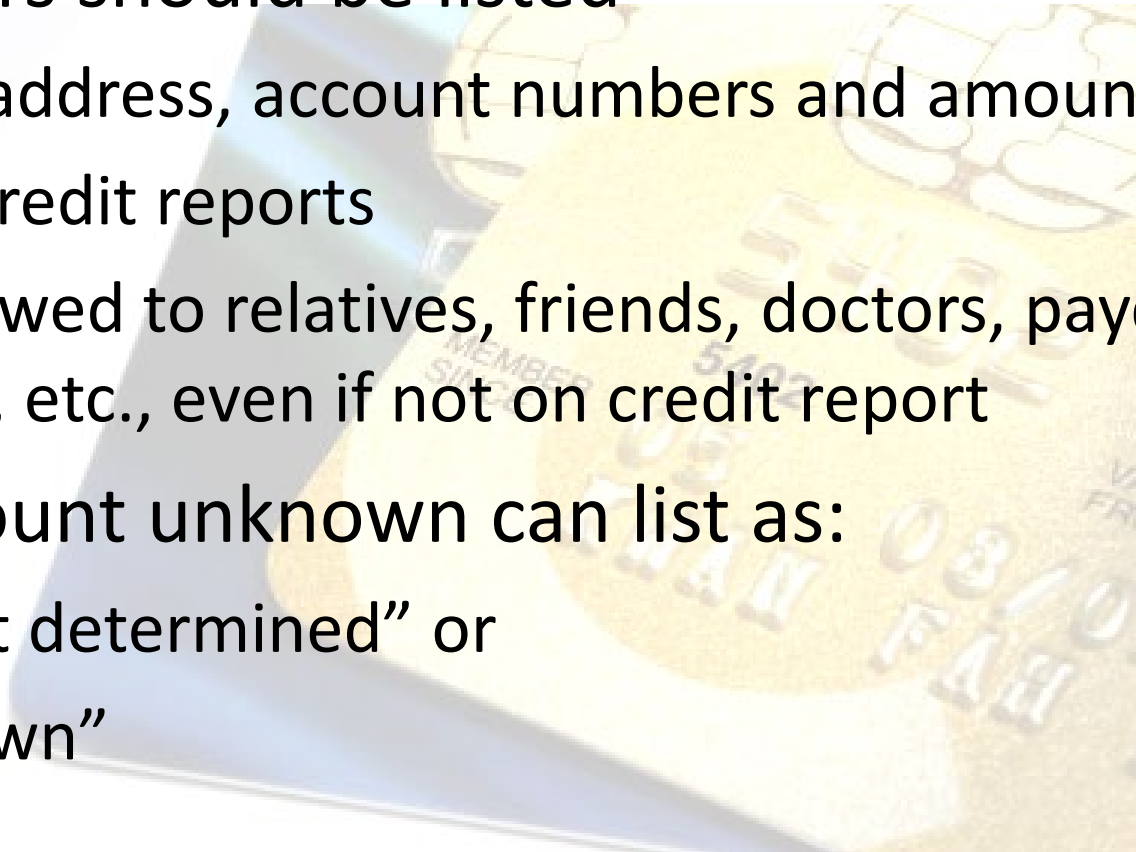
Identify Creditors and Debts

ALL creditors should be listed

- Name, address, account numbers and amount
- Check credit reports
- Debts owed to relatives, friends, doctors, payday lenders, etc., even if not on credit report

If debt amount unknown can list as:

- “not yet determined” or
- “unknown”



Classify Debts

Understand how your debts will be treated in bankruptcy

▪ Secured

- Attached to identifiable asset (collateral)
 - House
 - Vehicle
 - Some furniture/appliance/jewelry stores

▪ Unsecured Priority

- Paid ahead of other unsecured debts; generally non-dischargeable
- Examples: child support, alimony, taxes

▪ Unsecured

- Not attached to identifiable asset
- Examples: credit card charges for dinner/groceries/gas, etc., medical bills, payday loans

(See chart on p. 18 -19 of manual)



Choices for Secured Debts:

- 1) **Surrender** (return item/discharge debt)
- 2) **Retain and**
 - a) **Redeem** (debtor pays the fair market value of the item and keeps the item)
 - b) **Reaffirm** the debt
 - c) **Other** (e.g. continue paying mortgage)



Reaffirmation Agreements

- A voluntary contract between debtor and creditor regarding a *secured* debt
 - Debtor agrees to remain personally liable and pay on debt they could discharge in bankruptcy and keeps property (usually a vehicle) in exchange.
 - No bankruptcy discharge of reaffirmed debt means that **creditor can sue you later for a deficiency balance if default and repo after you reaffirm!**
- Judge must approve if reaffirmation not signed by debtor's attorney
 - Judge must determine that reaffirmation:
 1. Does not present an undue hardship on Debtor (is there enough income?); and
 2. Is in Debtor's best interest



Reaffirmation Agreements

- Is reaffirmation necessary?
 - May not be necessary to keep car: Purchasers of vehicles using **Nevada Retail Installment Sale Contract** (10/1/2011 or after) are protected by state law – lender can't repo just because filed BK. Court opinion says *not* in debtor's best interest to reaffirm in such cases – **can keep vehicle as long as not otherwise in default (payments/insurance).**
 - Other contracts - does contract contain Automatic Default Provision? If yes, creditor may be able to repo based on contract terms if no Reaffirmation Agreement signed, even if current.
 - **Not necessary to reaffirm mortgage to keep house** - just make your payments.
- Debtor may cancel reaffirmation agreement for no reason (must give notice)
 - Before Discharge Order, or
 - 60 days after Reaffirmation Agreement filed, whichever is later.



Leases



- List lease(s) if renting a home or leasing a car.
- Check rules/time frames for assuming or rejecting unexpired leases for real or personal property.

No automatic stay if landlord obtained judgment for residential eviction **before** tenant's bankruptcy filed, but

- Debtor can continue automatic stay 30 days by filing form and tendering month's rent to Bankruptcy Court clerk.
- If debtor wants to continue to stay in residence and keep automatic stay protection, must pay delinquent rent within 30 days of filing.

Financial Counseling Requirements

Pre-Bankruptcy Filing

Certificate of Compliance

- Must take class and obtain from approved credit counseling agency ***within 180 days before*** filing Bankruptcy Petition
- File with Bankruptcy Petition

Post-Bankruptcy Filing

Certificate of Completion

- Must complete second class (debtor education)
- Must file certificate within 60 days after 341 Meeting
- Won't get your discharge without it



Filing Documents

See **Filing Requirements under Debtor tab on BK Court's website**

- **Prepare Court documents**

- Voluntary Petition for Individuals
- Schedules (Summary, A/B – J-2)
- Statement of Financial Affairs
- Creditor Matrix
- Statement of Monthly Income/Mean Test (Ch 7) or Disposable Income (Ch 13)
- Statement of Social Security Number
- Statement of Intention (Ch 7) or Repayment Plan (Ch 13)
- If applicable: Initial Statement About an Eviction Judgment Against You

- **File documents at Bankruptcy Court** (original plus 1 copy):

- Foley Federal Building, 300 Las Vegas Blvd. South, 4th Floor Clerk's Office
- If represented by attorney, they file electronically.
- Pro se debtors can sign up to get notices by e-mail, but must file docs on paper

- **Pay filing fee or file Request for Waiver or Installments**

- Chapter 7: \$338 Chapter 13: \$313
- Waiver (Ch 7) if income <150% of poverty line (\$21,870 for one) or installments



Emergency Bankruptcy

○ Situations:

- Stall or stop foreclosure
- Eviction may be stalled for a few days
- Stop wage garnishment
- Prevent utility disconnection for 20 days

○ Minimum Requirements (“Bare bones petition”)

- Voluntary Petition
- Statement of Social Security Number
- Certificate of Compliance
- Mailing Matrix (all of creditor’s addresses)
- If used BPP: Bankruptcy Petition Preparer Disclosure and Notice
- **File remainder of forms w/in 14 days**

○ Caution! File fast, file wrong?

- If you file incorrectly, case may be dismissed; case will be dismissed if all docs not filed in 45 days. Consequences include shorter (30 days) or no automatic stay if file again within one year.



Community Resources

- Bankruptcy, financial, foreclosure, and other community and legal resources are listed on pages 31-32 of manual.



FORMS

1. Numbers to Check Before Filing

- NRS 21.090 - Property exempt from execution
- Department of Justice Webpage re Means Testing
- 150% of HHS Poverty Guidelines (for fee waiver application)

2. Official Bankruptcy Forms

Includes Voluntary Petition, Petitions for Fee Waiver and to Pay Fees in Installments, Schedules, Statement of Financial Affairs, Bankruptcy Petition Preparer Notice, Means Test, Creditor Matrix example.

3. Trustee Questionnaire Example

Similar for both Chapters 7 and 13; may vary by trustee.

Note Re Official Bankruptcy Forms

The Voluntary Petition, Schedules, and Statement of Financial Affairs are used for both Chapter 7 and Chapter 13.

Chapter 13-specific forms (for monthly income and commitment period, calculation of disposable income and Chapter 13 plan) are not included in the manual, but are available through the Bankruptcy Court's website.

The Takeaway

- Bankruptcy is complicated with consequences for years to come – understand what it can and can't do for you *before* you file.
- Information and forms are available for free on the Bankruptcy Court's website.
- Get legal advice. Petition preparers cannot give legal advice.
- If you want the Court's protection, follow its rules.
 - All of your assets and debts must be listed.
 - Comply with deadlines.
- ***Read before you sign*** your bankruptcy filing or any legal documents!!!

QUESTIONS?



Applying for a Pro Bono Attorney for Chapter 7 Bankruptcy

Client Income Eligibility Standards

People in Household; Max. Yearly Income; Max. Month Income:

- 1 \$28,915; \$2,410
- 2 \$33,045; \$2,754
- 3 \$37,175; \$3,098
- 4 \$41,305; \$3,442
- 5 \$44,610; \$3,717
- 6 \$47,915; \$3,993
- 7 \$51,220; \$4,268
- 8 (& above) \$54,525; \$4,544
- Prospective clients should also not have more than \$5,000 in net assets, excluding house or one vehicle.



Application Packet/Procedure for Applying

Feedback

Thank you for attending this class. Please complete an on-line feedback form at

<https://law.unlv.edu/content/attendee-feedback-form>

If you want to apply for legal help, call (702-386-1070) or email to info@lacs.org

For additional resources watch this video from HELP of Southern Nevada https://www.youtube.com/watch?v=r_sJS2tZcSA&feature=youtu.be

Contact information for all LACSN services

Legal Aid Center of Southern Nevada

(702) 386-1070

info@lacsnsn.org

www.lacsnsn.org

Vegas Strong Resiliency Center

(702) 455-2433

vegasstrongresiliencycenter@clarkcountynv.gov

www.vegasstrongrc.org

Family Law Self Help Center

(702) 455-1500

flshcinfo@lacsnsn.org

www.familylawselfhelpcenter.org

TPO Office

(702) 455-1500

tpoinfo@lacsnsn.org

www.familylawselfhelpcenter.org

Civil Law Self Help Center

(702) 671-3976

clshcinfo@lacsnsn.org

www.civillawselfhelpcenter.org