

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



August 26, 2005

TC LETTER: 05-14

CHILD SUPPORT TRAINING COORDINATORS

SUBJECT: **BANKRUPTCY RESOURCE GUIDE**

"Bankruptcy, A Resource Guide for Child Support Professionals" is being released by the Department of Child Support Services (DCSS) for you to disseminate within your agency. The Bankruptcy Resource Guide was created to provide guidance to child support professionals when a non-custodial parent files a bankruptcy prior to October 17, 2005. This Guide includes a glossary of terms, relevant forms, and a user self-test, as well as instructive text. Additionally, a supporting PowerPoint presentation is included for instruction assistance.

These materials are provided as attachments to this letter and are also available on the DCSS website.

Resource Guide - <http://www.childsup.ca.gov/pub/training/resources/bankruptcy05-08.pdf>

PowerPoint - <http://www.childsup.ca.gov/pub/training/resources/bankruptcy05-08-slides.ppt>

The PowerPoint file must be downloaded to present as a slide show.

Should you have any questions, please contact Joyce Dowell, Manager of the Planning, Analysis, & Program Administration Unit, at (916) 464-2789 or by email at joyce.dowell@dcss.ca.gov.

Sincerely,

Original signed by

Debra Sanchez
Branch Chief
Policy Branch

Attachments

cc: IV-D Directors
Training Advisory Committee



State of California

Department of Child Support Services



Bankruptcy

A Resource Guide

for Child Support Professionals

ADDENDUM
to the Bankruptcy Resource Guide, March 2005

Bankruptcy Abuse Prevention and Consumer Protection Act of 2005

Public Law No. 109-8

Signed into Law: April 20, 2005

Effective Date: **October 17, 2005**

Pursuant to the passage of Public Law No. 109-8, Title II, Subtitle B “Priority Child Support” contains a variety of provisions that will be helpful to States and families seeking to establish paternity and support orders and to enforce child support obligations.

A brief summary of changes for bankruptcy cases filed after October 17, 2005 with respect to child support provisions:

1. No permission or relief from stay is necessary to commence a NTW for current child support in Chapter 11 or Chapter 13 cases. Arrears may be paid under the Bankruptcy Plan.
2. Child support moves from 5th priority to 1st priority (ahead of administrative expenses and attorneys fees and taxes, duties and customs).
3. The homestead in most cases is limited to \$125,000.00

New guidelines will be issued prior to October 17, 2005, for those bankruptcy cases filed after the October effective date.

For bankruptcy cases filed prior to the October 17, 2005, effective date, the guidance in this Resources Guide remains accurate.





State of California
Department of Child Support Services

Greta Wallace

Director

Carlos Ramos

Acting Chief Deputy Director

Bankruptcy

A Resource Guide for Child Support Professionals

March 2005

Written, edited, and produced by the
State of California Department of Child Support Services
in association with the
Child Support Directors Association's Training and Education Committee



Department of Child Support Services

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES

P.O. Box 419064, Rancho Cordova, CA 95741-9064



Director's Message

On behalf of the State Department of Child Support Services and the Child Support Directors Association, I am pleased to present *Bankruptcy, A Resource Guide for Child Support Professionals*.

It is our belief that a state-directed, uniform, and carefully planned and executed training program is essential in ensuring the success of California's child support program.

This resource guide represents another step toward achieving our goal of statewide uniformity and consistency in application of policies, procedures, and practices.

Greta Wallace

Director

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Special Thanks to Tex Ritter, Marin County DCSS, principal author of this Bankruptcy Resource Guide.



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Chapter 1

Bankruptcy Basics



What is bankruptcy?

Bankruptcy is a legal action or remedy that can be taken by individuals and businesses burdened by excessive debt. By filing for bankruptcy they can modify or eliminate certain types of debt and get a fresh start.



The debtor is the obligor.

Certain types of bankruptcy cases allow for the development of a plan that allows debtors, who are unable to pay their creditors, to modify or discharge their debts through the division of their assets among their creditors. This court-supervised division allows the interests of all creditors to be treated with some measure of equality. Additionally, bankruptcy law allows certain debtors to free themselves (to be discharged) of the financial obligations they have accumulated, after their assets are distributed, even if their debts have not been paid in full.



It is important to note that child, family, and spousal support obligations are not dischargeable or modifiable in Bankruptcy.

What is the legal basis for bankruptcy?

Federal statute, Title 11 of the United States Code is known as the Bankruptcy Code.



What are the types of bankruptcy?

Of the several different types of bankruptcy filings, the child support officer may encounter:

- Chapter 7 Liquidation
- Chapter 9 Municipality
- Chapter 11 Business Reorganization
- Chapter 12 Family Farmer
- Chapter 13 Individual Reorganization

Each of these Chapters have specific qualifications and consequences.

What are the steps in the bankruptcy process?

- An individual completes a bankruptcy petition (Voluntary Petition) with or without the help of an attorney.
- The petition is filed in a federal bankruptcy court.
- A trustee is appointed by the court to oversee.
- Timeframes are established.
- Certain debts are discharged (relieved).
- The individual gets a fresh start.

What is a Voluntary Petition in Bankruptcy?

A Voluntary Petition is the debtor's formal written request presented to a bankruptcy court.





Stay:
Stop, defer,
postpone, delay,
or suppress
certain action(s).

What is an Automatic Stay?

When a Voluntary Petition is filed under the bankruptcy laws, a stay automatically takes effect under any of the chapter filings. This means that certain actions by creditors are immediately stopped, deferred, postponed, delayed, or suppressed. Section 362 of the Bankruptcy Code is called the “Automatic Stay” and contains the authority to prevent creditors from harassing the debtor for payment.

Specifically, creditors are prohibited from:

- Commencing or continuing any action or proceeding against the debtor to recover a claim or debt against the debtor, including the issuance or employment of process. A creditor may not commence a new law suit, or complete an existing law suit against a debtor in bankruptcy. Certain exceptions apply and child support agencies may still establish or modify orders for support in court proceedings or administrative processes.
- Enforcing a debt or judgment against a debtor in bankruptcy. This means that a creditor must stop enforcement actions.
- Acting to obtain possession of property of the estate in bankruptcy. Repossessions are not allowed, or in the case of Chapter 11 or Chapter 13, no Notices to Withhold for arrears would be allowed.
- Pursuing any act to create or perfect a lien against property of the estate in bankruptcy. Once a petition is filed, you cannot do a Notice to Withhold until the discharge in bankruptcy is entered without first obtaining permission from the debtor’s attorney or the debtor, if self-represented.
- Pursuing any act to create or perfect a lien against property of the debtor in bankruptcy. You cannot file an Abstract of Support Judgment or record a judgment while the debtor is in bankruptcy.
- Pursuing any act to collect, assess, or recover a debt against the debtor that arose prior to the filing of a petition in bankruptcy. You cannot contact the debtor to find out about when the next payment will be made. You cannot negotiate a State Licensing Match System (SLMS) Stipulation, or inquire about payment on arrears. You can, however, ask the debtor’s attorney how those



actions may proceed and whether they object to the issuance of a Notice to Withhold for on-going support. Be sure to get any agreement in writing.

How does a stay impact a child support case?

Exceptions to the stay exist for child support debt. The filing of a petition does not operate as a stay against:

- The commencement or continuation of a criminal action against the debtor. That means that an action under Penal Code Sections 166(a)(4) or 270 would be allowed. However, some courts have ruled that a Civil Contempt proceeding to enforce the payment of a debt is a violation of the Automatic Stay and recent decisions have indicated that commencing a criminal action may be a violation of the Automatic Stay. Consult your unit attorney for clarification; and
- The commencement or continuation of an action to establish paternity, to establish or modify an order for child or spousal support, or the collection of spousal, child, and family support that is not property of the estate. That means in a Chapter 7 bankruptcy, you can continue to collect child and spousal support and arrears. In a Chapter 13 bankruptcy, current support may be collected by a Notice to Withhold, not arrears.

What is meant by Property of the Estate?

The filing of a Petition for Protection in bankruptcy creates what is called the Property of the Estate (11 USC §541, see Appendix). Upon the filing of a petition, all of the debtor's assets and debts become property of the estate, as well as potentially all earnings, lottery proceeds, tax refunds, and other sources of income the debtor may receive during the pendency of the bankruptcy. Property of the estate does not include property that the debtor has exempted out of the estate pursuant to exemption law (California Code of Civil Procedure (CCP) §703.140 or §704.010 et seq.) and filed in the bankruptcy schedules as exempt property.



Only property of the estate is subject to the Automatic Stay.



Are there exemptions to the Property of the Estate?

California law exempts certain property from execution and these exemptions may be used by the debtor in bankruptcy to exclude the property from consideration in the estate available for distribution to creditors. Upon filing a petition with the court, essentially all of the debtor's property becomes property of the estate, then the debtor exempts out certain property which can be kept free from attachment and out of the hands of the bankruptcy trustee. The debtor has two choices of exemption types under California law (Title 9 Code of Civil Procedure §703.140 et seq. and 9 CCP §704.101 et seq.). The debtor must choose one or the other and may not mix and match. See Appendix for a detailed list of the exemptions.

When is a Proof of Claim used?

In bankruptcy, child support obligations are priority, non-secured claims. A proof of claim must be filled out and a support calculation attached with a copy of the judgment(s) supporting the claim. The original and two copies must be sent to the U.S. Bankruptcy Court and a copy to the Trustee in bankruptcy and either the debtor or debtor's attorney. The addresses will be on the bankruptcy notice. Only fill out a Proof of Claim in Chapter 11 or Chapter 13 cases unless the trustee mails a notice to fill out a Proof of Claim in a Chapter 7 case. Chapter 7 cases are usually "no asset" cases without distribution of property or payment to creditors.

Are criminal actions affected by filing for bankruptcy?

- Criminal actions, such as filing of a California Penal Code Section 166(a)(4) or 270, or a violation of probation, are not affected by the filing of a bankruptcy. Consult with your attorney.
- A Civil Contempt, however, can be viewed as a violation of the Automatic Stay as it seeks payment instead of punishment. If a debtor stops paying child support ordered in the terms and conditions of the debtor's probation, a violation of probation will not be stayed by the bankruptcy. The debtor must arrange to make the payments or is subject to incarceration.

What impact does filing for bankruptcy have on Tax Intercept/Lottery Proceeds?

Generally, these are either not property of the estate, or your certification of arrears pre-dated the filing of the bankruptcy, so you are a secured creditor with respect to this property and need not release your lien. The general rule is, do not release Tax Intercept to the debtor. An exception may occur in a Chapter 13 (see below), after the first intercept as arrears are certified in November for the following tax year. As a subsequent certification may be viewed as an action in violation of the stay, the case would have to be reviewed by the unit attorney for a determination. In essence, any certification which precedes the filing will be authorized, but subsequent certification (post filing of bankruptcy) is a potential problem. Upon the request of the trustee in bankruptcy, release tax intercepts for years subsequent to the initial filing. However, often the debtor exempts the tax return under the appropriate exemption statute. In those cases, the tax intercept is not property of the estate and you can collect the tax intercept.



Where does the Establishment of Modification of Support or Paternity fit in with bankruptcy?

Under no circumstances is the establishment of paternity, support, or health insurance orders stayed by bankruptcy. An action to modify support is not affected by the filing of a bankruptcy either.

What does it mean to have a bankruptcy discharged?

In bankruptcy cases, the debtor (or obligor) is entitled to “discharge” (release) certain kinds of debt. Most debts will be discharged. There are exceptions, of course, and child support is one of the exceptions. So long as the debt is for child support or spousal support, even if it is assigned to the LCSA, the debt is non-dischargeable. That means that child support is a debt that survives bankruptcy. The interest on the support order also survives the bankruptcy.

Once the discharge is entered, the LCSA will be able to resume normal enforcement of the case including sending out the Notice to Withhold.

What happens when a bankruptcy is dismissed?

In certain cases the bankruptcy will be dismissed. The reason is usually that the debtor (non-custodial parent) will have failed to comply with bankruptcy regulations (either did not present the required paperwork or did not make the bankruptcy payments). If the petition in bankruptcy is dismissed, it is as if the case never happened and all enforcement activities may resume.

Chapter 2

Chapter 7 Bankruptcy: Liquidation



What is Chapter 7 bankruptcy?

The type of bankruptcy filing most frequently encountered by child support officers is the Chapter 7 or liquidation bankruptcy. In this type of bankruptcy filing, the debtor (obligor in child support) files a Voluntary Petition with the federal bankruptcy court. Through the petition, the court is asked to liquidate the debtor's assets and debts. Ordinarily, the court exempts the debtor's assets from liquidation and discharges the debts. In other words, assets are retained by the debtor while debts are eliminated.

As a child support officer, you will encounter two types of Chapter 7 filings:

The "No Asset Chapter 7"

- This is the most common.
- The debtor has no assets to be distributed to creditors.
- There is no need to file a "Proof of Claim."
- The debtor will receive the discharge approximately four months after the initial filing.

The "Asset Chapter 7"

- There are additional assets available to the creditors for disbursement.
- These assets are beyond those exempted by the debtor.
- You will need to file a "Proof of Claim" that will be attached to the Chapter 7 filing notice or mailed out by the Trustee at a later date.

What is the impact on child support?

- You CAN continue to collect child and spousal support and arrears.
- You CANNOT:
 - file an Abstract of Support Judgment or record a judgment while the debtor is in bankruptcy.
 - contact the debtor to find out about when the next payment will be made.
 - inquire about payment on arrears.
- Do not release property liens or recorded Abstracts of Support Judgment that were filed or recorded prior to the debtor's filing for bankruptcy. (Exception: When the lien or Abstract was filed or recorded after the bankruptcy was filed.)
- If you receive a request from a debtor to release a lien, refer the debtor to the bankruptcy court where the judge can be petitioned to remove the lien if it impairs the homestead exemption on the primary residence.
- You cannot negotiate a SLMS. You may, however, suspend a professional or driver's license.

Under no circumstances would you release a license just because a bankruptcy has been filed. A license is not property or property of the estate. A license is a privilege under California law. Further, the revocation of a license is an operation of the State licensing board or DMV, and the State may assert sovereign immunity to revoke the license without violating the Automatic Stay.

The situation is analogous to where an individual has to take a test to be granted a license. If the debtor does not pass the test, the debtor cannot then file for bankruptcy and request that the license be issued because it would deprive the debtor of income.

Even if a license was considered "property" for which the debtor has an interest, your submission to SLMS prior to the filing of the bankruptcy makes you a "secured creditor" with respect to the license and the debtor would have no equity in the "property." It would then be the debtor's burden to petition the bankruptcy court to have your 'lien' removed (something that



the debtor would most likely be unable to do), or file a judicial request for license review in the family law court.

If, however, other criteria for releasing a license were present (you are receiving payments by a Notice to Withhold or the debtor has provided a significant lump sum payment), you may release the license. You may not, however, issue SLMS because the debtor filed bankruptcy or retaliate with an SLMS issuance due to the bankruptcy.

- **SLMS Requests by Debtor pending Bankruptcy**

If the debtor (non-custodial parent) requests SLMS review while a bankruptcy is pending or after having been filed, do not negotiate with the debtor for a lump sum or payment plan. Refer the debtor to family law or bankruptcy court. If, however, you are receiving Notice to Withhold payments or other SLMS release criteria are present, you may release the license, although you are under no obligation to do so and should not release a license solely because a bankruptcy has been filed.

How is a Notice to Withhold affected?

- Once the Voluntary Petition in Bankruptcy is filed, you cannot do a Notice to Withhold.
- There is no need to modify the Notice to Withhold.



Some employers will not honor the Notice to Withhold once notified of a Chapter 7. In those instances, wait until the bankruptcy is discharged and consider resending the Notice to Withhold with the notice that child support is not dischargeable in bankruptcy.

Is credit reporting allowed?

Credit reporting is allowable in this type of bankruptcy. These debts are non-dischargeable and the accurate reporting of the balances due is not a violation of bankruptcy laws. You do not report to enforce the amount due, so there is no violation of the stay.



Chapter 3

Chapter 9 Bankruptcy: Municipality



What is a Chapter 9 bankruptcy?

Prior to the County of Orange filing for Chapter 9 bankruptcy in the early 1990s, child support officers almost never saw a Chapter 9 filing. That is because municipalities, governmental entities, and utilities file for protection under Chapter 9. The Petition in Bankruptcy can either be to request a liquidation (mostly used by railroads) or reorganization (as in the case of Orange County).

What is the impact on child support?

- You will usually only become aware of a municipality's Chapter 9 bankruptcy filing when, in response to a wage assignment or Notice to Withhold, you are unable to cash the municipality's check. (In this case the municipality is the debtor.) Since you did not actually receive any money, the obligor (non-custodial parent) cannot be given credit for the check you received. In this instance, you are not the creditor of the municipality; the obligor is. As a result, the Proof of Claim should be directed to the obligor to file with the court. It was the obligor's income which was garnished and the obligor's money which was not received. (*County of Shasta v. Twig Smith* (1995) 38 Cal. App.4th 329)
- You CANNOT contact the debtor (a municipality) to find out about when the next payment will be made or when a check will clear.

How is a Notice to Withhold affected?

Once the Petition for a Chapter 9 is filed, you cannot do a Notice to Withhold.



Chapter 4

Chapter 11 Bankruptcy: Business Reorganization



What is Chapter 11 bankruptcy?

This type of bankruptcy is used by businesses to reorganize their debts and by individuals who are ineligible to file under Chapter 13 because their debts exceed \$1 million.

Under Chapter 11 bankruptcy, the debtor files with the court a Voluntary Petition in which the debtor's assets and liabilities are listed in schedules. Within 120 days, the debtor returns to court to file a Plan of Reorganization in which the plan to pay creditors is presented. Creditors will be paid either in full or at a pro-rata share over a specified time, usually 3 – 5 years. If the debtor is self-employed or is a business that will remain as an on-going business, the debtor is generally referred to as the “debtor-in-possession” because the debtor retains control of the assets while trying to work out a plan to pay off the debts.



Property of the estate includes earnings and income received by the debtor during a Chapter 11 bankruptcy as these are necessary for performance under a plan

What is the impact on child support?

You will generally run into this type of bankruptcy when you send a business a Notice to Withhold and the returned check does not clear the bank. (In this case, the business is the debtor.) You did not actually receive any money, therefore, the obligor (non-custodial parent) cannot be given credit for the check you received. In this instance, you are not the creditor of the business; the child support obligor is. As a result, the Proof of Claim should be directed to the obligor to file with the bankruptcy court. It was the obligor's income which was garnished and the obligor's money which was not received. (*County of Shasta v. Twig Smith* (1995) 38 Cal.App.4th 329)



You may also encounter this type of a Chapter 11 Bankruptcy filing because the debtor owes more than \$871,550 (including mortgages on primary residence). If the debtor (even your child support debtor) owes all creditors more than \$871,550 in total, the debtor must file a Chapter 11 Petition and is not eligible for a Chapter 13. You can treat this type of Bankruptcy as a Chapter 13 for most purposes.

- You CANNOT:
 - file an Abstract of Support Judgment or record a judgment while the debtor is in bankruptcy.
 - contact the debtor to find out about when the next payment will be made.
 - inquire about payment on arrears.
- Do not release property liens or recorded Abstracts of Support Judgment that were filed or recorded prior to the debtor's filing for bankruptcy. Do release those that were filed or recorded after the bankruptcy was filed.
- If you receive a request from a debtor to release a lien, refer the debtor to the bankruptcy court where the judge can be petitioned to remove the lien if it impairs the homestead exemption on the primary residence.
- You cannot negotiate a SLMS Stipulation.

Under no circumstances would you release a license just because a bankruptcy has been filed. A license is not property or property of the estate. A license is a privilege under California law. Further, the revocation of a license is an operation of the State licensing board or DMV, and the State may assert sovereign immunity to revoke the license without violating the Automatic Stay.

The situation is analogous to where an individual has to take a test to be granted a license. If the debtor does not pass the test, the debtor cannot then file for bankruptcy and request that the license be issued because it would deprive the debtor of income.

Even if a license was considered "property" for which the debtor has an interest, your submission to SLMS prior to the filing of the bankruptcy makes you a "secured creditor" with respect to the license and the debtor would have no equity in the "property." It would then be the debtor's burden to petition the bankruptcy court to have your 'lien' removed (something that



the debtor would most likely be unable to do), or file a judicial request for license review in the family law court.

If, however, other criteria for releasing a license were present (you are receiving payments by a Notice to Withhold or the debtor has provided a significant lump sum payment), you may release the license. You may not, however, issue SLMS because the debtor filed bankruptcy or retaliate with an SLMS issuance due to the bankruptcy.

- **SLMS Requests by Debtor pending Bankruptcy**

If the debtor (non-custodial parent) requests SLMS review while a bankruptcy is pending or after having been filed, do not negotiate with the debtor for a lump sum or payment plan. Refer the debtor to family law or bankruptcy court. If, however, you are receiving Notice to Withhold payments or other SLMS release criteria are present, you may release the license, although you are under no obligation to do so and should not release a license solely because a bankruptcy has been filed.

How is a Notice to Withhold affected?

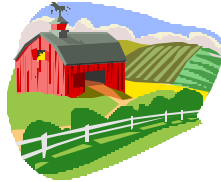
- No Notice to Withhold for arrears is allowed.
- Once the Voluntary Petition is filed, you cannot send a Notice to Withhold.

Is credit reporting allowed?

Credit reporting is allowable in this type of bankruptcy. These debts are non-dischargeable and the accurate reporting of the balances due is not a violation of bankruptcy laws. You do not report to enforce the amount due, so there is no violation of the stay.



Chapter 5
**Chapter 12 Bankruptcy:
Family Farmer**



What is a Chapter 12 bankruptcy?

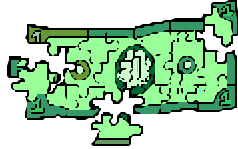
A family farmer with regular income would use this type of bankruptcy.

What is the impact on child support?

For child support purposes, you should treat this type of bankruptcy in the same manner as a Chapter 13 bankruptcy, which is discussed in the next chapter.

Chapter 6

Chapter 13 Bankruptcy: Individual Reorganization



What is a Chapter 13 bankruptcy?

This type of bankruptcy filing is available only to individual debtors or married individuals with regular income and unsecured debts of less than \$250,000 and secured debts of less than \$871,550. In this type of bankruptcy, the debtor files with the court a Voluntary Petition in which the debtor's assets and liabilities are listed in schedules. Within 45 days, the debtor files with the court a Plan to pay creditors. The repayment plan usually lasts 3-5 years and provides for periodic payments to the bankruptcy trustee, who then distributes the payment to the creditors based upon the formula presented in the Plan.



Property of the estate includes earnings and income received by the debtor during a Chapter 13 bankruptcy as these are necessary to conduct the wage earner plans

What is the impact on child support?

Chapter 13 bankruptcy filing is commonly seen in child support cases and demands the most attention for child support enforcement agencies. You will need to complete a Proof of Claim, which is generally attached to the Notice of Bankruptcy, attach a copy of the child support judgment or order, pay records or audit, and file with the court and trustee. The debtor (non-custodial parent) may object to the amount of the claim or may propose not to pay the child support debt. Immediately refer all filings of this nature to the attorney who handles bankruptcies in your office.



In Chapter 13 bankruptcy cases in which the obligor has unpaid arrears with no ongoing child support, the obligor will assume that all debts have been paid in full once the amount of the proof of claim has been paid and the Chapter 13 discharged. However, if the Proof of Claim includes only monies owed up to the filing date of the Chapter 13 bankruptcy, interest will continue to accrue on the unpaid debt throughout the pendency of the bankruptcy. Therefore, the obligor may have an unpaid balance at the end of the bankruptcy.

To avoid this situation, provide the Bankruptcy Trustee with information and documentation that child support debt accrues at 10% interest. The Trustee can input the accruing interest amount into the Plan and adjust the payments to provide for the continuation of the 10% simple interest. As a result, the total amount of child support arrears and interest will be paid in full when the Chapter 13 is discharged. The Trustee may request the code sections. Refer the Trustee to the Code of Civil Procedure, Sections 695.221 and 685.010.

In very rare cases, the Chapter 13 Plan will order that interest cease to accrue during the pendency of the bankruptcy. The LCSA attorney is responsible for objecting to this at the time the Plan is proposed.

- You CANNOT:
 - file an Abstract of Support Judgment or record a judgment while the debtor is in bankruptcy.
 - contact the debtor to find out about when the next payment will be made.
 - inquire about payment on arrears.
- Current support may be collected by a Notice to Withhold, generally not arrears. You must receive the authorization from the debtor or debtor's attorney before continuing the Notice to Withhold.
- Do not release property liens or recorded Abstracts of Support Judgment that were filed or recorded prior to the debtor's filing for bankruptcy. Do release those that were filed or recorded after the bankruptcy was filed.
- If a debtor requests a lien be lifted, refer the debtor to the bankruptcy court where the judge can be petitioned to remove the lien when it impairs an exemption. If you receive a request



to remove a lien, bring it to the attorney's attention immediately because normally your office will oppose this type of request.

- You cannot negotiate a SLMS Stipulation.

Under no circumstances would you release a license just because a bankruptcy has been filed. A license is not property or property of the estate. A license is a privilege under California law. Further, the revocation of a license is an operation of the State licensing board or DMV, and the State may assert sovereign immunity to revoke the license without violating the Automatic Stay.

The situation is analogous to where an individual has to take a test to be granted a license. If the debtor does not pass the test, the debtor cannot then file for bankruptcy and request that the license be issued because it would deprive the debtor of income.

Even if a license was considered "property" for which the debtor has an interest, your submission to SLMS prior to the filing of the bankruptcy makes you a "secured creditor" with respect to the license and the debtor would have no equity in the "property." It would then be the debtor's burden to petition the bankruptcy court to have your 'lien' removed (something that the debtor would most likely be unable to do), or file a judicial request for license review in the family law court.

However, if other criteria for releasing a license were present (you are receiving payments by a Notice to Withhold or the debtor has provided a significant lump sum payment), you may release the license. You may not, however, issue SLMS because the debtor filed bankruptcy or retaliate with an SLMS issuance due to the bankruptcy.

- SLMS Requests by Debtor pending Bankruptcy

If the debtor (the non-custodial parent) requests SLMS review while a bankruptcy is pending or after having been filed, do not negotiate with the debtor for a lump sum or payment plan.

Refer the debtor to family law or bankruptcy court. However, if you are receiving Notice to Withhold payments or other SLMS release criteria are present, you may release the license, although you are under no obligation to do so and should not release a license solely because a bankruptcy has been filed.



How is a Notice to Withhold affected?

- No Notices to Withhold for arrears is allowed.
- Once the Petition for Relief is filed, you cannot do a Notice to Withhold.
- The debtor's wages may be part of the estate. In any event the Notice to Withhold must be modified to collect only current child support, as the arrears will be paid by the trustee pursuant to a properly filed Proof of Claim. The debtor will generally consent to a Notice to Withhold for current child support. In the event that you are contacted regarding a Notice to Withhold, review the case and the applicable, but ever-changing, law in this area to make a determination. If the debtor contests the Notice to Withhold and refuses to pay current child support, criminal action may be the only resort.

Is credit reporting allowed?

Credit reporting is allowable in this type of bankruptcy. These debts are non-dischargeable and the accurate reporting of the balances due is not a violation of bankruptcy laws. You do not report to enforce the amount due, so there is no violation of the stay.



Appendix

Property of the Estate

US CODE: Title 11, Section 541: Property of the Estate in Bankruptcy

11 USC §541 defines Property of the Estate in Bankruptcy as:

1. All legal and equitable interests of the debtor in property, wherever located and by whomever held, as of the commencement of a case in bankruptcy;
2. All interests of the debtor and the debtor's spouse in community property as of the commencement of the filing of a petition so long as the property is under the sole, equal, or joint management and control of the debtor; and
3. Any property that the trustee recovers on behalf of the estate under set-off avoidance or preferential transfers or from partnership assets;
4. Property acquired under subordination of claims or avoiding transfers;
5. Any property that the debtor acquires within 180 days of filing that is from an inheritance, gift, or bequeath, as a result of a property settlement or divorce, or proceeds from a life insurance policy or death benefit plan;
6. Proceeds, rents, or profits from property of the estate; and
7. Any interest in property that the estate acquires after the filing of a petition.

Property of the Estate Exemptions

The type of exemption that the debtor chooses is usually determined by the amount of equity in the debtor's homestead. If there is no equity in a homestead, the debtor usually choose the Section 703.140 exemptions due to the generous spill-over provision which lets the debtor exempt up to \$15,000 in unused homestead exemption. In California, the debtor must chose the California exemptions and may not chose the federal exemptions because California is an "opt-out" state.



California Code of Civil Procedure §703.140 allows the exemption of the following property:

1. \$15,000 in real or personal property used as a homestead;
2. \$2,400 equity in a motor vehicle;
3. Equity in household furnishings, not to exceed \$400 per item (no maximum limit);
4. \$1,000 equity in jewelry;
5. \$800 plus any unused amount of the \$15,000 of homestead, in any other property (real or personal);
6. \$1,500 in tools of trade (including books, implements, vehicles, tools, etc.);
7. Any unmaturred life insurance policy;
8. \$8,000 in any dividend or interest under a life insurance contract;
9. Health aids;
10. The debtor's right to receive the following:
 - Social Security, Unemployment Insurance Benefits (UIB), or public assistance;
 - Veterans' benefits;
 - Disability or UIB;
 - Alimony, child support or maintenance;
 - Payments under disability or death benefits from pension, profit-sharing, or stock bonus plans;
11. Income or property from:
 - A crime victim reparation award;
 - A payment under a wrongful death award where the debtor/beneficiary was a dependent of the decedent;
 - A payment under a life insurance award where the debtor/beneficiary was a dependent of the decedent;
 - \$15,000 personal bodily injury award;
 - A payment for loss of future earnings of the debtor or an individual of whom the debtor was a dependent.

Code of Civil Procedure §704.010 allows for exemption of the following property:

1. \$1,900 equity in motor vehicles, or sales proceeds or insurance proceeds from a motor vehicle;
2. Household furnishing, in any amount;
3. \$2,000 in materials to repair or improve a dwelling;
4. \$5,000 equity in jewelry or heirlooms;
5. Health aids;
6. \$5,000 each (up to \$10,000 for husband and spouse) property used in business or trade;



7. Earnings paid within the last 30 days;
8. Up to \$3,000 (or \$2,000 for an individual) in a “deposit account” from Social Security direct deposit payments;
9. \$1,000 in an inmate trust account;
10. \$8,000 aggregate interest in a life insurance policy;
11. Public retirement benefits (except for child support orders);
12. Public employee vacation credits;
13. Private retirement benefits;
14. UIB, strike benefits;
15. Disability benefits;
16. Workers’ Compensation benefits;
17. Public Benefits (TANF, AFDC);
18. Relocation benefits;
19. Student financial aid;
20. Cemetery plots.

Forms

Exhibit 1

Notice of Chapter 7 Bankruptcy Case (Asset), B9C

Exhibit 2

Notice of Chapter 7 Bankruptcy Case (No Asset), B9A

Exhibit 3

Notice of Chapter 13 Bankruptcy Case, B9I

Exhibit 4

Proof of Claim, B10

Exhibit 5

Voluntary Petition, B1

Exhibit 1

**Notice of Chapter 7 Bankruptcy Case
(Asset), B9C**



EXPLANATIONS

FORM B9C (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Liquidation of the Debtor's Property and Payment of Creditors' Claims	The bankruptcy trustee listed on the front of this notice will collect and sell the debtor's property that is not exempt. If the trustee can collect enough money, creditors may be paid some or all of the debts owed to them, in the order specified by the Bankruptcy Code. To make sure you receive any share of that money, you must file a Proof of Claim, as described above.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

Exhibit 2

**Notice of Chapter 7 Bankruptcy Case
(No Asset), B9A**



EXPLANATIONS

FORM B9A (9/97)

Filing of Chapter 7 Bankruptcy Case	A bankruptcy case under chapter 7 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by or against the debtor(s) listed on the front side, and an order for relief has been entered.
Creditors May Not Take Certain Actions	Prohibited collection actions are listed in Bankruptcy Code § 362. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Do Not File a Proof of Claim at This Time	There does not appear to be any property available to the trustee to pay creditors. <i>You therefore should not file a proof of claim at this time.</i> If it later appears that assets are available to pay creditors, you will be sent another notice telling you that you may file a proof of claim, and telling you the deadline for filing your proof of claim.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor. If you believe that the debtor is not entitled to receive a discharge under Bankruptcy Code § 727(a) or that a debt owed to you is not dischargeable under Bankruptcy Code § 523(a)(2), (4), (6), or (15), you must start a lawsuit by filing a complaint in the bankruptcy clerk's office by the "Deadline to File a Complaint Objecting to Discharge of the Debtor or to Determine Dischargeability of Certain Debts" listed on the front side. The bankruptcy clerk's office must receive the complaint and the required filing fee by that Deadline.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of the property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

Exhibit 3

**Notice of Chapter 13 Bankruptcy Case,
B9I**



EXPLANATIONS

FORM B9I (9/97)

Filing of Chapter 13 Bankruptcy Case	A bankruptcy case under chapter 13 of the Bankruptcy Code (title 11, United States Code) has been filed in this court by the debtor(s) listed on the front side, and an order for relief has been entered. Chapter 13 allows an individual with regular income and debts below a specified amount to adjust debts pursuant to a plan. A plan is not effective unless confirmed by the bankruptcy court. You may object to confirmation of the plan and appear at the confirmation hearing. A copy or summary of the plan [is included with this notice] <i>or</i> [will be sent to you later], and [the confirmation hearing will be held on the date indicated on the front of this notice] <i>or</i> [you will be sent notice of the confirmation hearing]. The debtor will remain in possession of the debtor's property and may continue to operate the debtor's business, if any, unless the court orders otherwise.
Creditors May Not Take Certain Actions	Prohibited collection actions against the debtor and certain codebtors are listed in Bankruptcy Code § 362 and § 1301. Common examples of prohibited actions include contacting the debtor by telephone, mail or otherwise to demand repayment; taking actions to collect money or obtain property from the debtor; repossessing the debtor's property; starting or continuing lawsuits or foreclosures; and garnishing or deducting from the debtor's wages.
Meeting of Creditors	A meeting of creditors is scheduled for the date, time and location listed on the front side. <i>The debtor (both spouses in a joint case) must be present at the meeting to be questioned under oath by the trustee and by creditors.</i> Creditors are welcome to attend, but are not required to do so. The meeting may be continued and concluded at a later date without further notice.
Claims	A Proof of Claim is a signed statement describing a creditor's claim. If a Proof of Claim form is not included with this notice, you can obtain one at any bankruptcy clerk's office. If you do not file a Proof of Claim by the "Deadline to File a Proof of Claim" listed on the front side, you might not be paid any money on your claim against the debtor in the bankruptcy case. To be paid you must file a Proof of Claim even if your claim is listed in the schedules filed by the debtor.
Discharge of Debts	The debtor is seeking a discharge of most debts, which may include your debt. A discharge means that you may never try to collect the debt from the debtor.
Exempt Property	The debtor is permitted by law to keep certain property as exempt. Exempt property will not be sold and distributed to creditors, even if the debtor's case is converted to chapter 7. The debtor must file a list of all property claimed as exempt. You may inspect that list at the bankruptcy clerk's office. If you believe that an exemption claimed by the debtor is not authorized by law, you may file an objection to that exemption. The bankruptcy clerk's office must receive the objection by the "Deadline to Object to Exemptions" listed on the front side.
Bankruptcy Clerk's Office	Any paper that you file in this bankruptcy case should be filed at the bankruptcy clerk's office at the address listed on the front side. You may inspect all papers filed, including the list of the debtor's property and debts and the list of property claimed as exempt, at the bankruptcy clerk's office.
Legal Advice	The staff of the bankruptcy clerk's office cannot give legal advice. You may want to consult an attorney to protect your rights.

—Refer To Other Side For Important Deadlines and Notices—

Exhibit 4

Proof of Claim, B10



UNITED STATES BANKRUPTCY COURT _____ DISTRICT OF _____		PROOF OF CLAIM
Name of Debtor _____		Case Number _____
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (The person or other entity to whom the debtor owes money or property): _____		<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case. <input type="checkbox"/> Check box if the address differs from the address on the envelope sent to you by the court.
Name and address where notices should be sent: _____		
Telephone number: _____		
Account or other number by which creditor identifies debtor: _____		THIS SPACE IS FOR COURT USE ONLY
		Check here <input type="checkbox"/> replaces a previously filed claim, dated: _____ <input type="checkbox"/> amends
1. Basis for Claim <input type="checkbox"/> Goods sold <input type="checkbox"/> Services performed <input type="checkbox"/> Money loaned <input type="checkbox"/> Personal injury/wrongful death <input type="checkbox"/> Taxes <input type="checkbox"/> Other _____		
<input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. § 1114(a) <input type="checkbox"/> Wages, salaries, and compensation (fill out below) Your SS #: _____ Unpaid compensation for services performed from _____ (date) to _____ (date)		
2. Date debt was incurred: _____		3. If court judgment, date obtained: _____
4. Total Amount of Claim at Time Case Filed: \$ _____ If all or part of your claim is secured or entitled to priority, also complete Item 5 or 6 below. <input type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.		
5. Secured Claim. <input type="checkbox"/> Check this box if your claim is secured by collateral (including a right of setoff). Brief Description of Collateral: <input type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input type="checkbox"/> Other _____ Value of Collateral: \$ _____ Amount of arrearage and other charges <u>at time case filed</u> included in secured claim, if any: \$ _____		6. Unsecured Priority Claim. <input type="checkbox"/> Check this box if you have an unsecured priority claim Amount entitled to priority \$ _____ Specify the priority of the claim: <input type="checkbox"/> Wages, salaries, or commissions (up to \$4,650)* earned within 90 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. § 507(a)(3). <input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. § 507(a)(4). <input type="checkbox"/> Up to \$2,100* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. § 507(a)(6). <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse, or child - 11 U.S.C. § 507(a)(7). <input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. § 507(a)(8). <input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. § 507(a)(____). <small>*Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>
7. Credits: The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. 8. Supporting Documents: Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. DO NOT SEND ORIGINAL DOCUMENTS. If the documents are not available, explain. If the documents are voluminous, attach a summary. 9. Date-Stamped Copy: To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY
Date _____	Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any): _____	
Penalty for presenting fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.		

INSTRUCTIONS FOR PROOF OF CLAIM FORM

The instructions and definitions below are general explanations of the law. In particular types of cases or circumstances, such as bankruptcy cases that are not filed voluntarily by a debtor, there may be exceptions to these general rules.

— DEFINITIONS —

Debtor

The person, corporation, or other entity that has filed a bankruptcy case is called the debtor.

Creditor

A creditor is any person, corporation, or other entity to whom the debtor owed a debt on the date that the bankruptcy case was filed.

Proof of Claim

A form telling the bankruptcy court how much the debtor owed a creditor at the time the bankruptcy case was filed (the amount of the creditor's claim). This form must be filed with the clerk of the bankruptcy court where the bankruptcy case was filed.

Secured Claim

A claim is a secured claim to the extent that the creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have liens on the property.

Examples of liens are a mortgage on real estate and a security interest in a car, truck, boat, television set, or other item of property. A lien may have been obtained through a court proceeding before the bankruptcy case began; in some states a court judgment is a lien. In addition, to the extent a creditor also owes money to the debtor (has a right of setoff), the creditor's claim may be a secured claim. (See also *Unsecured Claim*.)

Unsecured Claim

If a claim is not a secured claim it is an unsecured claim. A claim may be partly secured and partly unsecured if the property on which a creditor has a lien is not worth enough to pay the creditor in full.

Unsecured Priority Claim

Certain types of unsecured claims are given priority, so they are to be paid in bankruptcy cases before most other unsecured claims (if there is sufficient money or property available to pay these claims). The most common types of priority claims are listed on the proof of claim form. Unsecured claims that are not specifically given priority status by the bankruptcy laws are classified as *Unsecured Nonpriority Claims*.

Items to be completed in Proof of Claim form (if not already filled in)

Court, Name of Debtor, and Case Number:

Fill in the name of the federal judicial district where the bankruptcy case was filed (for example, Central District of California), the name of the debtor in the bankruptcy case, and the bankruptcy case number. If you received a notice of the case from the court, all of this information is near the top of the notice.

Information about Creditor:

Complete the section giving the name, address, and telephone number of the creditor to whom the debtor owes money or property, and the debtor's account number, if any. If anyone else has already filed a proof of claim relating to this debt, if you never received notices from the bankruptcy court about this case, if your address differs from that to which the court sent notice, or if this proof of claim replaces or changes a proof of claim that was already filed, check the appropriate box on the form.

1. Basis for Claim:

Check the type of debt for which the proof of claim is being filed. If the type of debt is not listed, check "Other" and briefly describe the type of debt. If you were an employee of the debtor, fill in your social security number and the dates of work for which you were not paid.

2. Date Debt Incurred:

Fill in the date when the debt first was owed by the debtor.

3. Court Judgments:

If you have a court judgment for this debt, state the date the court entered the judgment.

4. Total Amount of Claim at Time Case Filed:

Fill in the total amount of the entire claim. If interest or other charges in addition to the principal amount of the claim are included, check the appropriate place on the form and attach an itemization of the interest and charges.

5. Secured Claim:

Check the appropriate place if the claim is a secured claim. You must state the type and value of property that is collateral for the claim, attach copies of the documentation of your lien, and state the amount past due on the claim as of the date the bankruptcy case was filed. A claim may be partly secured and partly unsecured. (See DEFINITIONS, above).

6. Unsecured Priority Claim:

Check the appropriate place if you have an unsecured priority claim, and state the amount entitled to priority. (See DEFINITIONS, above). A claim may be partly priority and partly nonpriority if, for example, the claim is for more than the amount given priority by the law. Check the appropriate place to specify the type of priority claim.

7. Credits:

By signing this proof of claim, you are stating under oath that in calculating the amount of your claim you have given the debtor credit for all payments received from the debtor.

8. Supporting Documents:

You must attach to this proof of claim form copies of documents that show the debtor owes the debt claimed or, if the documents are too lengthy, a summary of those documents. If documents are not available, you must attach an explanation of why they are not available.

Exhibit 5

Voluntary Petition, B1



Voluntary Petition
(This page must be completed and filed in every case)

Name of Debtor(s):

Prior Bankruptcy Case Filed Within Last 6 Years (If more than one, attach additional sheet)

Location Where Filed:

Case Number:

Date Filed:

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor (If more than one, attach additional sheet)

Name of Debtor:

Case Number:

Date Filed:

District:

Relationship:

Judge:

Signatures

Signature(s) of Debtor(s) (Individual/Joint)

I declare under penalty of perjury that the information provided in this petition is true and correct.

[If petitioner is an individual whose debts are primarily consumer debts and has chosen to file under chapter 7] I am aware that I may proceed under chapter 7, 11, 12 or 13 of title 11, United States Code, understand the relief available under each such chapter, and choose to proceed under chapter 7.

I request relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Debtor

Signature of Joint Debtor

Telephone Number (If not represented by attorney)

Date

Signature of Attorney

Signature of Attorney for Debtor(s)

Printed Name of Attorney for Debtor(s)

Firm Name

Address

Telephone Number

Date

Signature of Debtor (Corporation/Partnership)

I declare under penalty of perjury that the information provided in this petition is true and correct, and that I have been authorized to file this petition on behalf of the debtor.

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

Signature of Authorized Individual

Printed Name of Authorized Individual

Title of Authorized Individual

Date

Exhibit A

(To be completed if debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11)

Exhibit A is attached and made a part of this petition.

Exhibit B

(To be completed if debtor is an individual whose debts are primarily consumer debts)

I, the attorney for the petitioner named in the foregoing petition, declare that I have informed the petitioner that [he or she] may proceed under chapter 7, 11, 12, or 13 of title 11, United States Code, and have explained the relief available under each such chapter.

Signature of Attorney for Debtor(s) Date

Exhibit C

Does the debtor own or have possession of any property that poses a threat of imminent and identifiable harm to public health or safety?

Yes, and Exhibit C is attached and made a part of this petition.
 No

Signature of Non-Attorney Petition Preparer

I certify that I am a bankruptcy petition preparer as defined in 11U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed Name of Bankruptcy Petition Preparer

Social Security Number

Address

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional sheets conforming to the appropriate official form for each person.

Signature of Bankruptcy Petition Preparer

Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both 11 U.S.C. § 110; 18 U.S.C. § 156.

Glossary

A

Abstract of Support Judgment, FL-480

A certified copy of any judgment or order of the superior court of this state for spousal, family or child support, when recorded with the recorder of any county, shall from the recording become a lien upon all real property of the judgment debtor, not exempt from execution, in the county, owned by him or her at the time, or which he or she may afterwards acquire for the respective amounts and installments as they mature. Also see Notice of Support Judgment.

AFDC

The former Aid to Families with Dependent Children public assistance program which was a federal program under Title IV-A of the Social Security Act, funded with federal, state, and county funds, and non-federal public assistance program funded with state and county funds.

Arrears

The unpaid child support payments for past periods owed by a parent who is obligated to pay by court order. The arrears or arrearage or arrearages include interest and are adjusted for the amount of any partial satisfactions of the judgment.

Automatic Stay

Immediately upon the filing of a voluntary petition under the Bankruptcy Code, generally, creditors (including child support agencies) are prohibited from taking legal action against the debtor or the property of the estate to enforce the debt while the debtor is in bankruptcy.

Note: There are exceptions and it is possible to request “relief from stay” from the court to proceed with certain actions. Establishments and modifications of child support are not subject to the Automatic Stay.



B

Bankruptcy

The formal condition of an insolvent person being declared bankrupt under law. The legal effect is to divert most of the debtor's assets and debts to the administration of a third person, sometimes called a "trustee in bankruptcy", from which outstanding debts are paid pro rata.

Chapter 7- A section of the bankruptcy code under which a debtor's property is liquidated to pay his or her creditors and a debtor can obtain a discharge of personal debts through the bankruptcy court. Spousal and child support obligations cannot be discharged in Chapter 7 proceedings.

Chapter 11- A section of the bankruptcy code under which the "reorganization" of companies and businesses can be made in order to allow the business to work out a plan to repay all or some of its debts.

Chapter 13- A section of the bankruptcy code under which a debtor works out a plan to repay debts through the bankruptcy court.

Bankruptcy Code

The Bankruptcy Reform Act of 1978 (as amended and codified in Title 11 of the United States Code) which governs bankruptcy cases filed on or after October 1, 1979.

Bankruptcy Schedules

Official forms used for listing the debtor's assets, liabilities, and all unsecured creditors.

Note: This information is public record and may contain valuable information to assist in child support enforcement after the bankruptcy is completed.

C

Child Support

Amounts required to be paid under a judgment, decree, or order, whether temporary, final, or subject to modification, for the support and maintenance of a child or children, which provides for any or all of the following: monetary support, health insurance coverage, arrearages, and may include interest on delinquent child support obligations.

Civil Contempt

A type of contempt of court which arises from a willful failure to comply with a court order. A civil contempt proceeding is coercive or remedial in nature. Punishment may be imposed in the form of a fine or imprisonment to compel the contemtor to comply with the court's order.

Note: While this civil remedy is sometimes used to enforce a child support debt, this tool may be prohibited by the filing of a Bankruptcy. Relief from the Automatic Stay is needed.

G

Garnish

To withhold part of a person's wages and/or assets for payment of a debt.

J

Judgment

The final decision of the court resolving the dispute and determining the rights and obligations of the parties.

L

Lien

A claim upon property to prevent sale or transfer of that property until a debt is satisfied.



Liquidate

To pay and settle a debt. To garner the assets of a debtor, convert them into cash, and distribute them according to the legal rights of the parties. To ascertain the amount a bankrupt owes and to apportion the assets toward a discharge of the debts.

N

Notice of Withhold

Also known as Order to Withhold or Wage Assignment, the form to be used by all states to request income withholding for child support. Form #FL 195 or OMB 0970-0154

P

Penal Code 270

A criminal proceeding resulting from obligor's willful failure to provide for the needs of the obligor's minor child(ren).

Note: The filing of a criminal case against a non-custodial parent is not prohibited in Bankruptcy.

Plan of Reorganization

This term is used in Chapter 11 cases and is otherwise known as a "bankruptcy plan." It is a detailed plan of action formulated by a debtor or its creditor to govern the debtor's rehabilitation, continued operation or liquidation, and payment of debts. It sets forth a list of debts and timetables to repay the debts. The bankruptcy court and creditors must approve the plan before it is implemented.

Proof of Claim

A statement under oath filed in a bankruptcy proceeding by a creditor in which the creditor sets forth the amount owed and sufficient detail to identify the basis for the claim.

Note: Evidence of the debt (generally in a child support judgment or order, or administrative order) must be attached. The Proof of Claim must be filed with the court in order for payment under the bankruptcy to be received.



Property of the Estate

The debtor's tangible and intangible property interests (including legal and equitable interests) as of the commencement of the bankruptcy.

Note: The assets which the debtor cannot exempt and the trustee distributes to the creditors. Property of the estate may include income, rental properties (primary residence is generally exempted), income tax refunds, and other assets. Check the Bankruptcy Code and Chapter for more information.

Pro-rata

According to a certain rate, percentage, or proportion. According to measure, interest, or liability.

Note: A distribution based upon a percentage formula proposed by the debtor. In certain bankruptcies the creditors will receive a pro-rata distribution based upon their debt and the balance will be discharged.

R

Real Property

Real estate or property, such as land or buildings that are permanent, fixed, and immovable.

Real Property Lien

A charge against real property, as defined in Title 22 California Code of Regulations, Section 116062, to secure payment of a support obligation at the time of sale or transfer of the property.

Record

- A precise written history of a court action from commencement to termination designed to remain as permanent evidence of the matters to which it relates.
- To officially enter in a book or record for the purpose of giving notice.
- To "record" a document is to file it with the County Recorder's Office.

S

Secured Debt

Debt for which property was pledged as security for the satisfaction of the debt.

Note: Debt that is secured has a higher priority in bankruptcy. These types of debts include mortgages, liens on property (such as lien holders for vehicles or judgment lien creditors with recorded abstracts of support judgments). To be effective, the lien must be recorded with the appropriate agency (county recorder, DMV, secretary of state, or other agency) prior to the filing of the bankruptcy.

SLMS

The State Licensing Match System matches delinquent child support obligors with state-issued licenses when applying for or renewing a state license.

T

TANF

“Temporary Assistance to Needy Families,” also known in California as CalWORKS, means the program funded under Title IV-A of the Social Security Act that provides temporary public assistance to a needy family, that was formerly known as the Aid to Families with Dependent Children program that terminated October 1, 1996.

Trustee

A third party appointed by the bankruptcy court, who administers and supervises the assets and debts of the debtor’s estate during a bankruptcy proceeding.

U

Unsecured Debt

Debt for which property or other security was not pledged for the satisfaction of the debt.



W

Wage Assignment

Also known as Order/Notice to Withhold, the form to be used by all states to request income withholding for child support. Form #FL 195 or OMB 0970-0154.



Bankruptcy A Resource Guide for Child Support Professionals Exercise

Directions :

For each of the situations listed below, place a Yes in the columns to indicate which actions apply to Bankruptcy filed under the specific chapter. If the action applies to a type of bankruptcy and requires that you consult with your agency's attorney, put an A. Refer to the Bankruptcy Resource Guide when necessary.

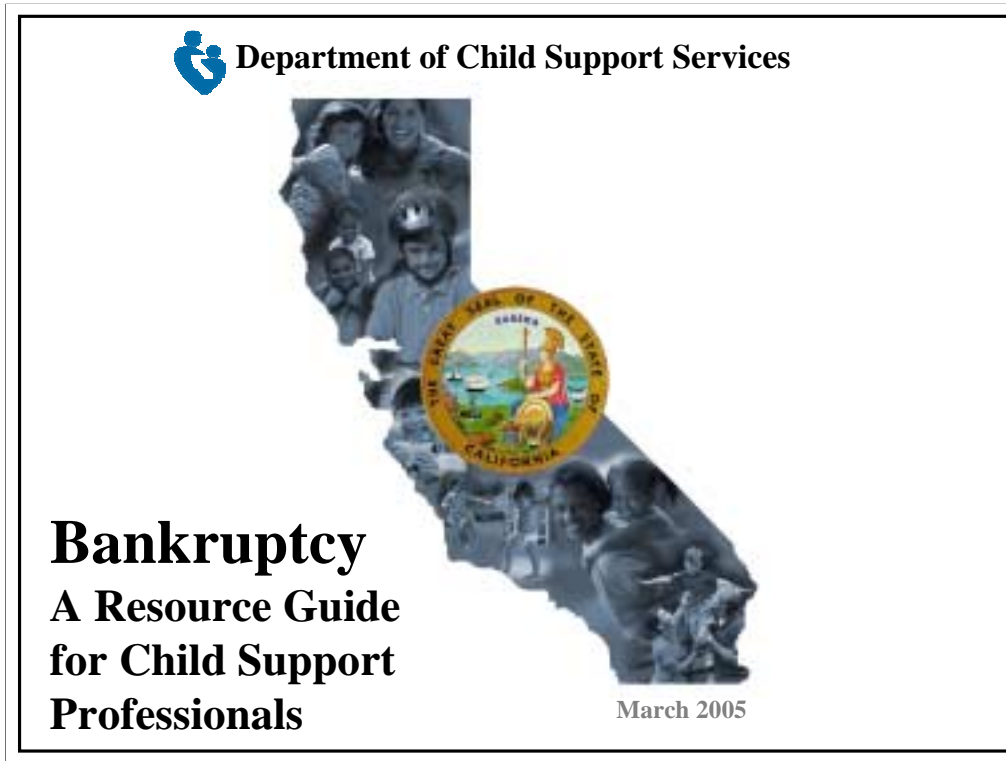
Situation	Chapter			
	7	9	11	13
You can continue to collect child support.				
You can continue to collect arrears.				
Release a license				
Once the Petition in Bankruptcy is filed, you cannot do a wage assignment.				
You must release a property lien that was filed prior to the debtor's filing for bankruptcy.				
Credit reporting is allowable.				
You cannot file or record an Abstract of Judgment.				
You cannot negotiate an SLMS stipulation or inquire about payment on arrears.				
You cannot contact the debtor to find out when the next payment will be made.				
If the debtor requests a lien be lifted, refer the debtor to the bankruptcy court.				
Repossessions are allowed.				
You can continue action to establish paternity.				
You can use a Civil Contempt proceeding to enforce the payment of debt.				
An action to modify support is not affected by filing of a bankruptcy.				

**Bankruptcy
A Resource Guide
for Child Support Professionals
Exercise
Answer Key**

Directions :


For each of the situations listed below, place a Yes in the columns to indicate which actions apply to Bankruptcy filed under the specific chapter. If the action applies to a type of bankruptcy and requires that you consult with your agency's attorney, put an A. Refer to the Bankruptcy Resource Guide when necessary.

Situation	Chapter			
	7	9	11	13
You can continue to collect child support.	Yes			Yes
You can continue to collect arrears.	Yes			
Required to release a license				
Once the Petition in Bankruptcy is filed, you cannot do a wage assignment.		Yes	Yes	Yes
You must release a property lien that was filed prior to the debtor's filing for bankruptcy.				
Credit reporting is allowable.	Yes	Yes	Yes	Yes
You cannot file or record an Abstract of Judgment.	Yes	Yes	Yes	Yes
You cannot negotiate an SLMS stipulation or inquire about payment on arrears.	Yes	Yes	Yes	Yes
You cannot contact the debtor to find out when the next payment will be made.	Yes	Yes	Yes	Yes
If the debtor requests a lien be lifted, refer the debtor to the bankruptcy court.	Yes	Yes	Yes	Yes
Repossessions are allowed.				
You can continue action to establish paternity.	Yes	Yes	Yes	Yes
You can use a Civil Contempt proceeding to enforce the payment of debt.	A	A	A	A
An action to modify support is not affected by filing of a bankruptcy.	Yes	Yes	Yes	Yes



Sample Script:

Insert sample script text here.




Bankruptcy

Bankruptcy Resource Guide

OBJECTIVES

- ✓ Become familiar with Bankruptcy and how it affects Child Support
- ✓ Demonstrate understanding of the Bankruptcy Resource Guide by completing the Exercise

March 2005




Bankruptcy

Bankruptcy Resource Guide

Bankruptcy Basics

Bankruptcy is the legal action to:

- Eliminate debt
- Get a fresh start



Child Support obligations cannot be discharged or modified in Bankruptcy.

March 2005


Notes: Debtor is the obligor in child support.

For certain debtors

All debts may be discharged (eliminated)

All creditors may not be paid in full

The legal basis for bankruptcy is Title 11 of the United States Code, called the Bankruptcy Code



Bankruptcy

Bankruptcy Resource Guide


Bankruptcy Basics

Types of bankruptcy most often seen in child support cases

- Chapter 7 Liquidation
- Chapter 9 Municipality
- Chapter 11 Business Reorganization
- Chapter 12 Family Farmer
- Chapter 13 Individual Reorganization

March 2005

Each chapter has specific qualifications and consequences.




Bankruptcy

Bankruptcy Resource Guide

Bankruptcy Basics


Steps in the bankruptcy process

- Debtor completes voluntary bankruptcy petition
- Voluntary Petition filed in federal bankruptcy court
- Court trustee appointed
- Timeframes established
- Debts discharged
- Individual gets a fresh start



March 2005

Definition: Voluntary Petition – A formal written request presented to the bankruptcy court. A debtor may or may not have an attorney. Bankruptcy can relieve only certain debts.



Bankruptcy

Bankruptcy Resource Guide

Bankruptcy Basics

Voluntary Petition triggers Automatic Stay

Creditors cannot:

- Take any action to recover a debt
- Enforce a debt or judgment against the debtor
- Repossess property or issue a Notice to Withhold
- Create a property lien
- File an Abstract of Support Judgment or record a judgment
- Contact the debtor concerning any payments


March 2005

Definition: Stay – Stop, defer, postpone, delay, or suppress certain action(s)

Prohibited actions to recover a debt include: issuance or employment of process; Starting a new law suit; Completing an existing law suit

Automatic Stay takes effect under any of the bankruptcy chapter filings

Section 362 of the Bankruptcy Code is called the Automatic Stay


Bankruptcy Resource Guide


Bankruptcy

Bankruptcy Basics

Child Support Obligations are not subject to an Automatic Stay

LCSA can:


- Establish or modify orders for support in court proceeding or administrative processes
- Ask debtor's attorney for a Notice to Withhold for on-going support



March 2005

Exception – LCSA may still establish or modify orders for support in court proceeding or administrative processes

Exception – LCSA can ask debtor's attorney how actions may proceed and whether there is an objection to issuing a Notice to Withhold. for on-going support. Get any agreement in writing.



Bankruptcy Resource Guide

Bankruptcy

Bankruptcy Basics

Child support debt also allows actions to:

- Establish paternity
- Establish a child support order
- Collect support that is not property of the estate
- Take criminal action against the debtor




March 2005

In Chapter 7 you can continue to collect child and spousal support and arrears.

In Chapter 13 current support can be collected by a Notice to Withhold, not arrears.

Civil Contempt proceeding to enforce the payment of debt may be a violation of the Automatic Stay and recent court decisions have indicated that beginning a criminal action may also be a violation. Consult with your LCSA attorney for clarification



Bankruptcy


Bankruptcy Resource Guide

Bankruptcy Basics

What is Property of the Estate?

Upon filing a Voluntary Petition, Property of the Estate includes:

- All debtor's assets and debts
- All potential earnings
- Lottery proceeds
- Tax refunds
- All other sources of income during the bankruptcy



Only limited exemptions to the Property of the Estate allowed

March 2005


Only property of the estate is subject to the Automatic Stay

Two types of exemptions available to the debtor. Debtor chooses one.

Turn to the Appendix to review the two types:

California Code of Civil Procedure §703.140 allows the exemption of the following property:

1. \$15,000 in real or personal property used as a homestead;
2. \$2,400 equity in a motor vehicle;
3. Equity in household furnishings, not to exceed \$400 per item (no maximum limit);
4. \$1,000 equity in jewelry;
5. \$800 plus any unused amount of the \$15,000 of homestead, in any other property (real or personal)
6. \$1,500 in tools of trade (including books, implements, vehicles, tools, etc.);
7. Any unmaturred life insurance policy;
8. \$8,000 in any dividend or interest under a life insurance contract;
9. Health aids;
10. The debtor's right to receive the following:
 - Social Security, Unemployment Insurance Benefits (UIB), or public assistance;
 - Veterans' benefits;
 - Disability or UIB;
 - Alimony, child support or maintenance;
 - Payments under disability or death benefits from pension, profit-sharing, or



Bankruptcy


Bankruptcy Resource Guide

Bankruptcy Basics

- **Use a Proof of Claim for:**
 - Chapter 11 case
 - Chapter 13 case
 - Chapter 7 case, if requested by the trustee
- **Submit:** Proof of Claim,
Support calculation, and
Copy of the judgment supporting the claim
- **Child support obligations are priority claims**

March 2005

A Proof of Claim is a document filed with the Bankruptcy Court and the Bankruptcy Trustee evidencing an obligation or debt. It must be signed under penalty of perjury, and evidence of the debt (generally a child support judgment or order, or administrative order) must be attached. The Proof of Claim must be filed with the court in order for payment under the bankruptcy to be received.



Bankruptcy

Bankruptcy Resource Guide

Bankruptcy Basics

Not usually affected by bankruptcy

- Pending or active criminal actions
- Civil Contempt – Payment vs. Punishment
- Tax intercept / Lottery proceeds


March 2005

Criminal action such as filing a California Penal Code Section 166 (a)(4) or Section 270. misdemeanor filing for failure to provide for a child.

If a debtor stops paying child support ordered in the terms and conditions of the debtor's probation, a violation of probation will not be stayed by the bankruptcy. The debtor must arrange to make the payments or is subject to incarceration.

Certain actions or proceeds are not generally property of the estate, or the certification of arrears pre-dated the filing. LCSCA is a secured creditor. Do not release Tax Intercept to debtor

An exception may occur in a Chapter 13, after the first intercept as arrears are certified in November for the following tax year. As a subsequent certification may be viewed as an action in violation of the stay, the case would have to be reviewed by the unit attorney for a determination. In essence, any certification which precedes the filing will be authorized, but subsequent certification (post filing of bankruptcy) is a potential problem. Upon the request of the trustee in bankruptcy, release tax intercepts for years subsequent to the initial filing. However, often the debtor exempts the tax return under the appropriate exemption statute. In those cases, the tax intercept is not property of the estate and you can collect the tax intercept.



Bankruptcy


Bankruptcy Resource Guide

Bankruptcy Basics

Establishment of Modification of Support or Paternity

- Establishment of paternity, support, or health insurance orders are never stayed
- An action to modify support is not affected by filing for bankruptcy

March 2005



Bankruptcy

Bankruptcy Resource Guide


Bankruptcy Basics

What does it mean to have bankruptcy discharged?

- The debtor (obligor) is entitled to discharge (release/eliminate) certain kinds of debts
- Child or spousal support is non-dischargeable. Child support debt survives bankruptcy.

March 2005

Definition: Discharge – The release of a debtor from all of the debts which are provable in bankruptcy, except such as are excepted by the Bankruptcy Code.



Bankruptcy


Bankruptcy Resource Guide

Bankruptcy Basics

What happens when bankruptcy is dismissed?

- It is as if the case never happened
- All enforcement activities may resume


March 2005



Bankruptcy

Bankruptcy Resource Guide

Chapter 7 Bankruptcy: Liquidation




Chapter 7 Bankruptcy: Liquidation

Debtor (obligor) petitions court to liquidate debtor's assets and debts

Court exempts debtor's assets from liquidation and discharges debts

March 2005




Bankruptcy

Bankruptcy Resource Guide

Chapter 7 Bankruptcy: Liquidation

No Asset Chapter 7

- Most common
- Debtor has no assets to be distributed to debtors
- No "Proof of Claim" needed
- Discharge completed in about 4 months




Asset Chapter 7

- Additional assets available for disbursement to creditors
- Assets are beyond those exempted by debtor
- LCSA files a Proof of Claim

March 2005

Assets are retained by the debtor while debts are eliminated.



Bankruptcy

Bankruptcy Resource Guide

Chapter 7 Bankruptcy: Liquidation

Chapter 7 Impact on Child Support

Do:

- Continue to collect child and spousal support and arrears

Do Not:


- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment
- If debtor requests a release of lien, refer debtor to bankruptcy court
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

March 2005

A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered “property,” submitting to SLMS before the bankruptcy filing makes the LCSA a “secured creditor” and the debtor would have no equity in the “property.” The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under no obligation to, release the license.



Bankruptcy

Bankruptcy Resource Guide

Chapter 7 Bankruptcy: Liquidation

Chapter 7 Bankruptcy: Liquidation

Notice to Withhold


- Cannot Notice to Withhold after Voluntary Petition
- No need to modify the Notice to Withhold

Credit reporting is allowed

- Debts are non-dischargeable
- Reporting is not a violation of the stay

March 2005

Draw attention to the suggestion box in the Guide. Some employers won't honor the Notice to Withhold in a Chapter 7. Wait until the bankruptcy is discharged and consider resending the Notice to Withhold with information that child support is not dischargeable in bankruptcy.



Bankruptcy


Bankruptcy Resource Guide

Chapter 9 Bankruptcy: Municipality

Chapter 9 Bankruptcy: Municipality


Municipalities, governmental entities, and utilities

- liquidation (railroads)
- reorganization (Orange County)



March 2005

to the County of Orange, LCSAs never saw a Chapter 9



Bankruptcy Resource Guide

Bankruptcy Resource Guide


Chapter 9 Bankruptcy: Municipality

Chapter 9 Impact on Child Support

- LCSA unable to cash municipality's check – first sign of a Chapter 9
- Direct obligor to file Proof of Claim with the court
- Do not contact the municipality (debtor) concerning the next payment
- Do not Notice to Withhold once petition is filed

March 2005


Since the LCSA did not actually receive any money, the NCP (obligor) cannot be credited for the check the LCSA received. The LCSA is not the creditor of the municipality, the NCP is.



Bankruptcy

Bankruptcy Resource Guide


Chapter 11 Bankruptcy: Business Reorganization



Chapter 11 Bankruptcy: Business Reorganization

- Businesses and individuals reorganize debts over \$1 million
- Voluntary Petition lists assets and liabilities
- Plan of Reorganization required
- Creditors paid in full or pro-rata share over time (3-5 years)

March 2005



Bankruptcy

Bankruptcy Resource Guide


Chapter 11 Bankruptcy: Business Reorganization

Chapter 11 Impact on Child Support

- LCSA unable to cash municipality's check – sign of a Chapter 11
- Direct obligor to file Proof of Claim with the court
- Do not contact the business (debtor) concerning the next payment
- Same as a Chapter 13 filing

March 2005

Circumstances similar to Chapter 9 bankruptcy: LCSA did not actually receive any money. NCP (obligor) cannot be credited for the check the LCSA received. The LCSA is not the creditor of the business, the NCP is.



Bankruptcy

Bankruptcy Resource Guide

Chapter 11 Bankruptcy: Business Reorganization

Chapter 11 Impact on Child Support

Do Not:


- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment. If debtor requests a release of lien, refer debtor to bankruptcy court
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

March 2005

A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered “property,” submitting to SLMS before the bankruptcy filing makes the LCSA a “secured creditor” and the debtor would have no equity in the “property.” The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under not obligation to, release the license.



Bankruptcy Resource Guide

Bankruptcy

Chapter 11 Bankruptcy: Business Reorganization


Chapter 11 Bankruptcy: Business Reorganization

- Notice to Withhold is not allowed
- Credit reporting is allowed
- Debts are non-dischargeable



March 2005

Reporting is not a violation of the stay.




Bankruptcy

Bankruptcy Resource Guide


Chapter 12 Bankruptcy: Family Farmer

Chapter 12 Bankruptcy: Family Farmer



- A family farmer with regular income
- Same as a Chapter 13 bankruptcy for child support actions

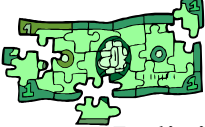
March 2005



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization




Chapter 13 Bankruptcy: Individual Reorganization

- Individual or married debtors with Regular income
- Unsecured debts less than \$250,000
- Secured debts less than 871,550
- Voluntary Petition lists assets and liabilities
- Plan to reorganize debts
- Repayment plan lasts 3-5 years
- Debtor pays trustee who pays creditors

March 2005

The plan to reorganize debts is called in statute “Plan of Reorganization” in Chapter 11, but in Chapter 13 simply “Plan”



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Impact on Child Support


LCSA does:

- File a Proof of Claim
- Attach child support judgment or order
- Attach pay records or audits

Debtor may:

- Contest Claim amounts
- Propose not paying child support debt –

CONTACT YOUR BANKRUPTCY ATTORNEY




March 2005

Property of the estate includes earnings and income received by the debtor during a Chapter 13 bankruptcy as these are necessary to conduct the wage earner plans. Most commonly seen by LCSA.

In Chapter 13 bankruptcy cases in which the obligor has unpaid arrears with no ongoing child support, the obligor will assume that all debts have been paid in full once the amount of the proof of claim has been paid and the Chapter 13 discharged. However, if the Proof of Claim includes only monies owed up to the filing date of the Chapter 13 bankruptcy, interest will continue to accrue on the unpaid debt throughout the pendency of the bankruptcy. Therefore, the obligor may have an unpaid balance at the end of the bankruptcy.

To avoid this situation, provide the Bankruptcy Trustee with information and documentation that child support debt accrues at 10% interest. The Trustee can input the accruing interest amount into the Plan and adjust the payments to provide for the continuation of the 10% simple interest. As a result, the total amount of child support arrears and interest will be paid in full when the Chapter 13 is discharged. The Trustee may request the code sections. Refer the Trustee to the Code of Civil Procedure, Sections 695.221 and 685.010.

In very rare cases, the Chapter 13 Plan will order that interest cease to accrue during the pendency of the bankruptcy. The LCSA attorney is responsible for objecting to this at the time the Plan is proposed.



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Impact on Child Support

Do Not:


- File an Abstract of Support Judgment or record a judgment
- Contact the debtor about the next payment
- Inquire about payment on arrears
- Release property liens or recorded Abstracts of Support Judgment. If debtor requests a release of lien, refer debtor to bankruptcy court.
- Negotiate a SLMS, but may suspend a professional or driver's license
- Release a license just because a bankruptcy has been filed

March 2005

A license is a privilege and not property of the estate. Revocation is an operation of the licensing board or DMV. Even if a license was considered "property," submitting to SLMS before the bankruptcy filing makes the LCSA a "secured creditor" and the debtor would have no equity in the "property." The debtor would have to petition the court to remove the lien.

If you are receiving payments by a Notice to Withhold or debtor has provided a significant lump sum payment, you may release the license. You may not issue SLMS or retaliate with an SLMS issuance to due bankruptcy.

Refer debtor who request SLMS review to court. If you receive Notice to Withhold payments or other SLMS release criteria are present, you may, but are under not obligation to, release the license.



Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Notice to Withhold

Current support only (contact debtor's attorney)


Not allowed:

- for arrears - Arrears paid by trustee pursuant to Proof of Claim
- after Voluntary Petition filed

If debtor contests the Notice to Withhold and refuses to pay current child support, criminal action may be the only resort

March 2005

Debtor's wages may be part of the estate



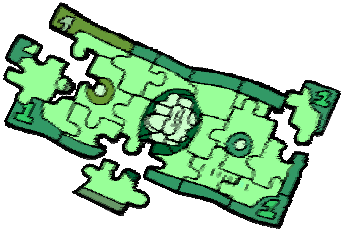
Bankruptcy

Bankruptcy Resource Guide

Chapter 13 Bankruptcy: Individual Reorganization

Chapter 13 Bankruptcy: Individual Reorganization

- Credit reporting is allowed
- Debts are non-dischargeable



March 2005

 **Department of Child Support Services**

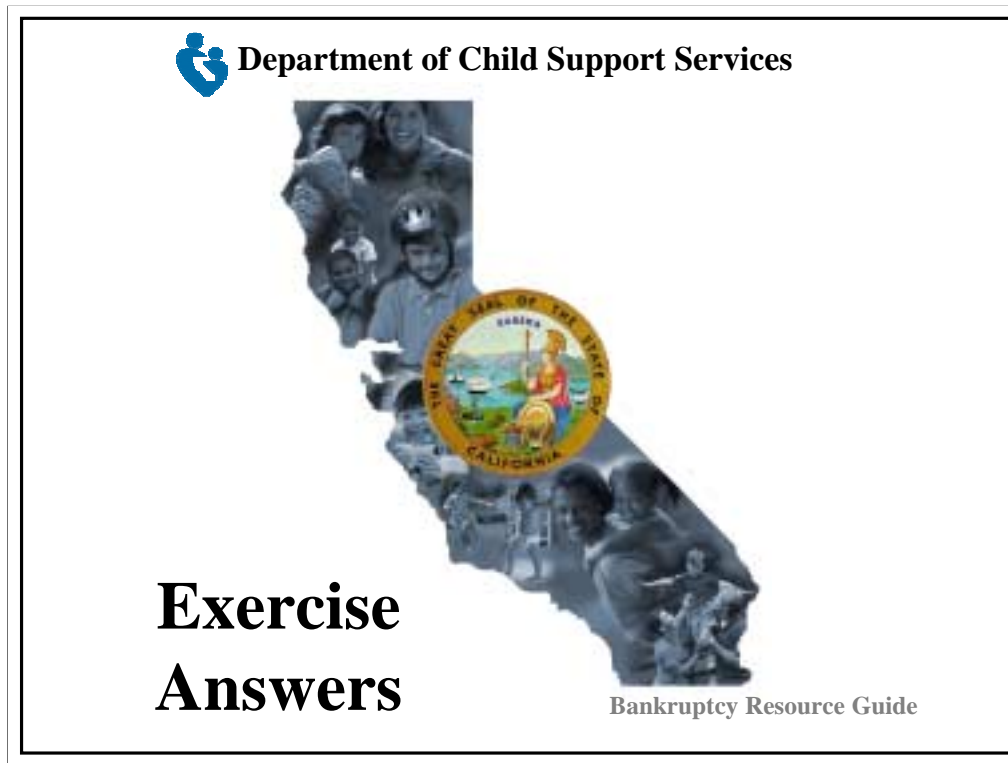


Exercise

Bankruptcy Resource Guide

Sample Script:

Please take a few minutes to work on the exercise on the last page of your guide. Use the Guide to look up your answers if you are not certain whether or not you can take the action described for each of the chapters of bankruptcy that affect child support. If it is necessary to consult an attorney, place the letter A in the box. We will discuss the answers in a few minutes.



Sample Script:

Insert sample script here.

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
You can continue to collect child support.	Yes			Yes
You can continue to collect arrears.	Yes			
Release a license Discuss case options				
Once the Petition in Bankruptcy is filed, you cannot do a wage assignment.		Yes	Yes	Yes
You must release a property lien that was filed prior to the debtor's filing for bankruptcy.				

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
Credit reporting is allowable.	Yes	Yes	Yes	Yes
You cannot file or record an Abstract of Judgment.	Yes	Yes	Yes	Yes
You cannot negotiate an SLMS stipulation or inquire about payment on arrears.	Yes	Yes	Yes	Yes
You cannot contact the debtor to find out when the next payment will be made.	Yes	Yes	Yes	Yes
If the debtor requests a lien be lifted, refer the debtor to the bankruptcy court.	Yes	Yes	Yes	Yes

Bankruptcy Exercise

Situation	Chapter			
	7	9	11	13
Repossessions are allowed.				
You can continue action to establish paternity.	Yes	Yes	Yes	Yes
You can use a Civil Contempt proceeding to enforce the payment of debt.	A	A	A	A
An action to modify support is not affected by filing of a bankruptcy.	Yes	Yes	Yes	Yes

Department of Child Support Services

Questions ?

Thank You

Bankruptcy Resource Guide

Sample Script:

Are there any questions regarding bankruptcy and how it affects child support cases?

Note: New federal law effective October 17, 2005 applies to bankruptcies filed on or after that date.

If there are no questions, I thank you for your attention and participation ...