
CREDITORS AND BANKRUPTCY

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CREDITORS AND BANKRUPTCY

I. INTRODUCTION¹

The main goal for the ALRP volunteer attorney is to get the creditor off the client's back. The tactics and procedures an attorney uses to do this are simple and straightforward. They basically involve letting the creditor know that you and your client are aware of the laws that limit bill collectors' tactics in obtaining payment. The client does not have to go as far as declaring bankruptcy in order to protect himself, and bankruptcy should probably be avoided because it takes control of all the debtor's property and may have additional unwanted results. To help clients for whom bankruptcy may be appropriate, see Part Two.

Prior to diagnosis, people with AIDS may have had a moderate or high salary. They incurred debt and paid their bills promptly. But as the disease progresses they may find their income forced below the poverty level, and it becomes increasingly difficult to make ends meet, especially if they are trying to pay off old debts at the same time. This chapter summarizes the options a person with HIV/AIDS has when facing his creditors, and what to do when the creditor steps over legal boundaries when trying to collect a debt.

Here are some examples of the extremes creditors will go to:

- A person went on disability because of declining health and couldn't pay all his bills. One collection agency, representing a credit card company, called all his neighbors in his townhouse complex, informing them he was behind in his bills and asked the neighbors what they knew about his financial and health condition.
- A person with AIDS was in the hospital. He lived on Social Security benefits, which were directly deposited into his bank account. The IRS illegally garnished the account. In addition to his physical problems, the patient then became very stressed: he needed the funds to survive and he was anxious about another deposit that was about to be made.
- A collection agency called a very ill person several times a day, including non-business hours. The agency also started to call the person's employer daily, even though the employer told the agency there was nothing the employer could or would do without a court order.

¹ Both parts of this chapter are based on work done originally by Anson Reinhart, updated for this edition by attorneys James D. Lee, Dennis Saxman and Betsy Johnsen. The 2004 version of this chapter was updated by Thomas Burns, Esq.

The services ALRP attorneys provide their clients are very important. Most people with AIDS experience some degree of financial problems due to their catastrophic illness. Some continue to work full or near full time throughout the manifestations of HIV disease, keeping health insurance and other worker's benefits intact. But many cut back or stop work entirely, and ultimately lose any work-related support if they are very sick over a long period of time. Due to the loss of income and high medical bills, they often must rely on public benefit programs such as state disability or Social Security as their sole support.

A client with HIV/AIDS is probably already facing an enormous amount of stress. On top of that, creditors try to intimidate the client and make him feel guilty about accruing the debt or anxious that he will face greater consequences if he doesn't repay them. A little effort on the part of the client's attorney can greatly reduce this stress, which is necessary if the client is to maintain a healthy quality of life. A few letters or phone calls can often keep the creditors at bay.

Panel attorneys trained in simple credit matters can usually best assist their clients by:

- (1) putting a halt to creditor harassment;
- (2) contacting creditors to inform them of the client's judgment proof status; and
- (3) negotiating with creditors on behalf of the client.

PART ONE: CREDITORS AND COLLECTION LAW

II. Stopping Creditor Harassment

There are certain things no creditor can do to a debtor regardless of the size of the debt or the status of the client. Often, the creditor's response depends upon the type of debt owed.

The first thing an attorney needs to do when counseling a client regarding debt collection is to find out whether the debt is secured or unsecured. Creditors usually seek security for loans for larger items like a car, furniture or stereo system, because the creditor has the right to repossess the item when the loan is in default. Usually the most an attorney can do then is negotiate a longer payment schedule with smaller payments if the client can afford it, or get back as much as possible upon surrendering the item. The attorney may also examine the sales contract to see if the client received all he bargained for in the first place. (See PART TWO, SECTION X: SECURED PROPERTY for additional issues.)

Most often, however, ALRP clients are burdened with unsecured debt, such as an accumulation of liabilities for minor consumer goods, services or just plain groceries, mounting on their credit cards. Unpaid credit card debt can escalate at over 20% a year. Those obligations, plus loans, bills and medical expenses, account for the unsecured debt, which often tempts unscrupulous creditors to pursue unlawful methods of collection.

A. Federal Fair Debt Collection Practices Act

Several laws protect your client from harassment. The most important of these is the Federal Fair Debt Collection Practices Act (FDCPA), codified under 15 U.S.C. §1692. This law is important because many debts are passed to out-of-state bill collectors, who will recognize and respond much more readily to the authority of federal law than California law. Citing the FDCPA will immediately put these agencies on notice that you and your client are aware of the protections it provides.

Unfortunately, the FDCPA covers only bill collectors external to the original creditor. Examples of external collectors include a collection agency, an outside attorney hired to collect debts or the original creditor itself collecting its debt through a separately named business. The FDCPA does not extend its protection to internal collection activities, as when a store or dealer tries to collect its own debts from customers. If the original creditor harasses your client, however, it may be covered by California laws. See Section IIB: CALIFORNIA DEBTOR PROTECTIONS, *below*.

Because they are covered by the FDCPA, external collectors are prohibited from certain activities. Under the law they cannot:

- (1) repeatedly use the telephone to annoy the debtor;
- (2) use obscene or profane language;
- (3) contact the debtor's employer, except to verify employment or arrange wage attachment;

- (4) threaten to harm the debtor, his relatives or friends;
- (5) threaten to get public benefits cut off;
- (6) falsely say the debtor committed a crime;
- (7) falsely say they're attorneys or use lawyers' stationery;
- (8) threaten to take property unless they have a court order.

In fact, bill collectors covered under the FDCPA are not supposed to contact the debtor, except for limited communications, if they have been told not to. If the collector is told that the debtor is represented by counsel, the collector should channel communication through the attorney. Sometimes a short letter from the debtor (*see* APPENDIX A) may be enough to stop strong-arm collection tactics. The client or the attorney might also state, if relevant, that the client is currently on disability, or on part-time wages, and cannot currently make payments because the client is living only on this income. If represented by an attorney, the client should state that all communication should be through the attorney. The letter might state that the client has a life-threatening illness, but an attorney should consult with the client before referring specifically to HIV disease because some clients prefer that such information be kept private. *See* APPENDIX B for a sample letter.

If the collector continues with blatantly illegal tactics, § 1692k of the FDCPA provides for civil liability of \$1,000 per violation, plus regular damages and attorney fees. For behavior that is particularly troublesome, a harassed debtor could even collect damages for intentional infliction of emotional distress.

Nonetheless, bill collectors frequently violate this law. They assume the debtor does not know his rights, and the more pressure they apply the sooner they will get the money, or any portion of it they can extract. As part of their tactics, collection agencies have been known to call the client nonstop, invade an unlisted phone number, leave foul and abusive language on the answering machine and even call neighbors. And, of course, they will constantly threaten to sue for payment of the debt, perhaps implying or even stating that the debtor committed fraud.

Despite the threats, a collection agency is not very likely to sue, even if the client is not “judgment proof” and therefore legally protected from having to pay back the creditor. (*See* SECTION III for an explanation of “judgment proof.”) First, bill collectors run asset checks on the debtor and therefore know how little he has to pay off these claims. Second, filing a court claim takes a lot of expensive lawyer time to obtain what will probably be a small amount of money. In addition, most collection agencies are not in California, and out-of-state collectors who must contract with local lawyers instead of their own are unlikely to add that additional cost to sue someone with few available assets.

It is precisely the unlikelihood of a lawsuit that inspires the brutal and illegal communications from some bill collectors: they are hoping the client will be harassed enough to set up a payment schedule in order to avoid future contacts.

The likelihood of harassment is also increased by the common practice of selling debts to another agency. If the original creditor or its collection agency does not receive payment, it “sells” a block of unpaid debts to a new collection agency, which gets to keep a percentage of whatever it collects. The new agency will probably know only the name and address of the debtor and the amount of debt, and will not have received the client’s file containing letters regarding communication or representation. Although the debtor may have already told the first creditor he does not wish to be contacted and that he is represented by counsel, the cycle begins again as the new agency calls or writes the client demanding payment. The client may be justly upset because he thought he had already dealt with this debt. Nonetheless, a new set of letters must be sent to the new agency to get it to stop harassing the debtor. This may happen repeatedly, as each new collection agency tries to get its percentage. For the client with several debts, this can lead to a lot of stress.

Warn your client that he may receive demands for payment from a new agency if the original collector passes the debt along. Since your role is to field all these hassles for him, tell him to forward all “repeat” calls and letters to you at once. Under no circumstances should the client call the “800” number on a letter from a new collection agency: their phone systems automatically collect the caller’s number. The agency will then have the client’s number, even if it is unlisted to avoid creditors. When you contact the new collection agency, send a copy of the previous letter and an identical letter addressed to the new agency.

When a collection agency calls too frequently or uses threatening or abusive language, immediately speak to the supervisor of the agency’s caller. Mentioning the availability of remedies under Section 1692 puts the agency on notice not to infringe the client’s rights. If an agency adds to the client’s burden by leaving abusive messages on an answering machine, advise the client to save any tapes. Copies sent to the legal counsel of the collection agency should squelch that activity.

When behavior by the collector is offensive and out of line, the attorney should consider filing a statement with the Federal Trade Commission. In addition, reporting the acts to the original creditor, e.g., the retail store or the named credit card, may cause the creditor to change collection agencies because its own reputation is threatened. Especially because collection agencies often pass accounts back and forth among themselves, filing a lawsuit to confront abusive behavior by an agency may also be helpful, even if the client is not interested in pursuing a court battle. A collection agency confronted with proof of its illegal behavior is likely to settle before trial rather than have its reputation diminished and risk losing future accounts from the original creditor or from another collection agency.

B. California debtor protections

California has its own statutes to protect the debtor from harassment. As noted above, however, most collection agencies will be out of state, and will not respond as knowingly or quickly to references to a California law. California law adds to the federal protections because it also covers the original creditors who collect on their own behalf, as well as collection agencies. Under California Civil Code § 1788.2, no bill collector

may engage in any communication, harassment or abuse, false or misleading representation or unfair practices prohibited by the FDCPA.

The California Business and Professions Code may also be of use in going after attorneys who act as bill collectors. Under California Business and Professions Code § 6077.5, such attorneys and their employees are also covered by the Civil Code cited above and are therefore limited in their communication with the debtor and are subject to State Bar discipline.

III. Helping the Client Become “Judgment Proof”

A. Judgment proof: protecting minimal assets

If a creditor does sue the debtor and gets a judgment against him, the debtor will probably be able to retain a lot of his property anyway. Like many states, California defines a system of exemptions for property and income that cannot be reached by creditors. Code Civ. Proc. § 704. A summary of the major exemptions allowed is listed in COLUMN 1 of the chart in APPENDIX G.

If creditors cannot reach any asset of the debtor in the normal state court debt-collection process, then the client is judgment proof. Creditors may obtain a number of judgments and still be unable to subject any property of the debtor to execution because all such property is exempt under state law. In this case, counsel the client on sending a “judgment-proof letter” to creditors. If your client is judgment proof, writing a letter to the bill collector explaining your client’s status may convince the collector to stop harassing him, and ultimately not to sue him. *See* APPENDIX C for a sample client letter to creditors and APPENDIX D for a sample attorney letter to the client.

Many creditors consider it a waste of time and money to take legal action against judgment-proof debtors. Creditors may also reach this conclusion if advised that the debtor also suffers from a life threatening illness and is likely to have even fewer assets by the time a court enters a judgment. Advise debtors who are judgment proof or nearly so to inform creditors of their medical condition and to make a copy of their diagnosis available. Some creditors have adopted a specific policy of not pursuing collection against people with AIDS. Creditors actually file only a fraction of their small consumer credit cases. Since the collector’s bark is worse than its bite, advise the client not to be intimidated, and above all not to feel guilty. Every creditor knows it assumed some risk in extending credit.

B. Conversion: becoming judgment proof

As you can see from the list of exempt property in COLUMN 1, APPENDIX G, many exemptions are generous. For a person with a disability the homestead exemption is \$125,000. Disability and health benefits have no set monetary limit. Several categories are merely limited in value to that which is “ordinarily and reasonably necessary” to support the debtor and dependents.

If a debtor has a lot of non-exempt assets, such as cash, stocks or an expensive car, he is not judgment proof. If he also has large debts, creditors are likely to sue him. This client may want to consider declaring bankruptcy to discharge some of his debts, but

bankruptcy also requires evaluating debts in comparison to non-exempt property. (Note that if he declares bankruptcy he may opt for an alternate set of exemptions with a far lower protected homestead value.) Therefore, whether or not a client files for bankruptcy he should consider converting non-exempt assets to exempt assets. For example, he could sell his expensive car, buy one valued at the \$2,775 limit and use the excess to buy clothes, household goods, or pay his home mortgage up to the protected equity value of \$125,000.

Converting these assets may not make the debtor completely judgment proof, but it will protect as much of his property as allowable. If the creditor still proceeds with a lawsuit, the attorney needs to become involved to negotiate with the creditor. It may also be necessary to file, or threaten to file, bankruptcy.

IV. Additional Credit Issues

A. Wrongful liens

Disability payments, like SSI or a check from a private longterm disability plan, are often deposited directly into a bank account. When creditors put a lien on these accounts the banks will notify the account holder and provide ten days for him to respond before paying the money to the creditor. After the lien is placed, a debtor must then apply to a court for a release of assets. It is best to forestall this action in the first place by having the debtor provide a letter to the bank stating that the account holds only assets exempt from collection. If the bank allowed a creditor to attach assets after it received such a letter it would potentially be liable for the amount it relinquished.

B. Student loans

Student loans can be canceled for people who are totally and permanently disabled. The client will need a statement from his treating physician using a form provided by the Department of Education or a guaranty agency. The client's death will also result in cancellation of the debt, so a client's estate will not be decreased by the debt of a student loan. Therefore, a client wishing to preserve as much property as possible for his heirs and beneficiaries should pay off other claims before his student loans.

Going as far as filing bankruptcy does not usually help cancel student loans, although it is possible. An exception allows a bankruptcy judge to cancel a student loan if it would cause undue hardship for the debtor to pay back the loan. Undue hardship requires that the debtor have been impoverished over a long time. Any relief gained will help, of course, but the majority of people who file for bankruptcy do not fit this exception.

C. Taxes

Several tax issues come up for those who are recently impoverished due to illness. Be forewarned that the IRS is one of the more tenacious credit collectors, and even if the debtor files bankruptcy he can't discharge recent tax bills. Nonetheless, the IRS is usually willing to negotiate. If the debtor owes less than \$10,000, they will probably let him pay in installments. The IRS will probably also entertain an offer of a single

payment for less than the total amount owed. A good discussion of the options available from the IRS is available in *Stand Up to the IRS* by Frederick W. Daily (Nolo Press).

PART TWO: BANKRUPTCY

I. INTRODUCTION

People with AIDS almost always experience financial difficulties, and bankruptcy is a potential solution in many cases. It is not appropriate in every case, however, and the attorney must carefully analyze the debtor's circumstances to determine whether bankruptcy is in the best interest of the client. Bankruptcy is necessary when aggressive creditors cannot be dissuaded from suing, and the client is not judgment proof. It is also useful when the client is extremely stressed out and wants a clean sweep of his debts.

This section surveys bankruptcy as a tool for debtors, especially those with HIV disease. Before advising a client on an unusual or complex problem, the practitioner may need to consult authorities, some of which are listed at the end of this article. Because bankruptcy is a highly technical area, the attorney will often need to consult the Bankruptcy Code.

II. Bankruptcy Law in General

The Bankruptcy Code is Title 11 of the U.S. Code. Under the Supremacy Clause, the Bankruptcy Code prevails over all state laws that conflict with it. When not in conflict, state law applies. The Bankruptcy Code frequently refers to state law ("applicable non-bankruptcy law" is a common reference in the Code). Unless otherwise noted, citations herein are to the Bankruptcy Code.

There are three chapters of the Bankruptcy Code of significance here: Chapter 7 (liquidation), Chapter 13 (adjustment of debts for people with regular income) and Chapter 11 (reorganization for corporations and people with extensive debts, \$290,525 unsecured or \$871,550 secured). Because the vast majority of cases for ALRP clients will be filed under Chapter 7, this article does not discuss Chapters 11 and 13 in detail.

The debtor files all bankruptcy petitions in federal bankruptcy court. The federal District Courts have exclusive jurisdiction over bankruptcy filings (28 U.S.C. § 1334) but these matters are "referred" to the respective bankruptcy courts pursuant to 28 U.S.C. § 157(a) and appropriate orders of the District Courts. The Bankruptcy Rules of Procedure govern bankruptcy proceedings and incorporate certain provisions of the Federal Rules of Civil Procedure. Counsel should also be aware of local bankruptcy court rules and local District Court rules that may apply in some proceedings.

Bankruptcy petitions and supporting papers must be in the official form prescribed by the U.S. Supreme Court. The bankruptcy court does not provide these forms. Forms have historically been available in stationery stores and lawbook stores, but three factors make purchasing from those two locations undesirable:

- (1) the price is far higher than in large, general bookstores;
- (2) an attorney cannot always be certain the package contains the latest forms; and
- (3) in many stores, you cannot open the package to determine if it contains the most recent forms.

Nolo Press publishes a kit that is both current and reasonably priced, along with several books on bankruptcy. *See* APPENDIX E for additional resources. Software programs are also available with current information and forms.

III. Initial Interview

To counsel the potential bankruptcy client properly, ask the client to prepare beforehand, and to bring to the initial conference, the following:

A. A complete list of all debts

These include contingent, unliquidated and disputed debts, i.e., everything the debtor owes or may owe now or in the future. The client should include creditors' names and complete mailing addresses and amounts owed.

Have the client review and bring any contracts that may create security interests in goods. Homes and cars are the obvious examples; electronics, furniture and other higher-price consumer items purchased on credit and pledged toward the debt are less so. *See* SECTION IX: WORKING WITH THE EXEMPTION LISTS, *below*.

B. A complete list of all property

Property includes real and personal, choate and inchoate. It also includes, for this purpose, expectancies—property that the debtor may acquire in the future, such as an inheritance.

C. A monthly budget

The budget should include income from all sources, and a list of estimated recurring monthly expenses (as contrasted with debts) such as rent, utilities, food, transportation, insurance, drugs, house and car payments, clothing, medicines and medical care, entertainment, etc.

The budget requirement in Chapter 7 is a fairly recent Congressional amendment to the Code; the purpose is to allow the trustee, or a judge, to evaluate whether a Chapter 7 debtor who has “excess” monthly income should be encouraged to convert to Chapter 13 or Chapter 11, and thereby repay creditors at least part of their debts. Budgets showing a negative cash flow, “washes” and even very small monthly surpluses pose little or no threat to a Chapter 7 debtor.

D. All complaints and other writings showing collection activity

These provide addresses to give collection attorneys and agents notice of the bankruptcy filing.

E. Papers relating to any previous bankruptcy proceeding

These are relevant to the debtor's eligibility for a discharge under § 727. (This and the following sections refer to the Bankruptcy Code, found in 28 U.S.C.)

IV. The Bankruptcy Objective

The object of a bankruptcy petition is discharge of all dischargeable debts under §§ 524 and 727. While most debts can be discharged, certain requirements must be met. First, the debtor cannot discharge debts not scheduled in the petition (§ 523(a)(3)). To ensure that all debts possible receive the discharge, encourage clients to list all debts and give notice to all possible creditors.

Second, some types of debts are not automatically dischargeable: most income taxes (§ 523(a)(1)); alimony and child support (§ 523(a)(5)); criminal fines and penalties (§ 523(a)(7)); student loans (§ 523(a)(8)); drunk driving damages (§ 523(a)(8)); debts incurred in the course of a divorce or separation or in connection with a separation agreement, divorce decree or the order of a court of record or a determination made by a governmental unit, unless an exception applies (§ 523(a)(15)); and specified fees due to condominiums, cooperatives or similar membership associations after the filing of the petition (§ 523 (a)(16)).

Third, under certain conditions the debtor may not discharge debts arising from fraud, defalcation, use of a false financial statement to obtain credit or an extension of credit, and debts for willful and malicious injury by the debtor to another entity or to the property of another entity. The debtor may not discharge these debts if the creditor takes affirmative and timely action and obtains from the court a decree that the debt is not discharged. § 523(a)(2)(A) and (B), § 523(a)(4) and (6). The court will grant this decree after an “adversary proceeding” that is conducted as a regular lawsuit, under Part VII of the Bankruptcy Rules. This non-dischargeability action is separate from the rest of the bankruptcy.

As the client’s bankruptcy attorney, you are only responsible for the filing of the underlying bankruptcy petition and related matters. The bankruptcy attorney assumes no responsibility for representation in adversary proceedings. Question the client about any debt, such as fraud, that may be the subject of a non-dischargeability action. If such an action is possible, advise the client that unless he makes further arrangements the attorney is only responsible for filing the “underlying” bankruptcy petition and related matters. To be prudent, confirm this understanding in writing.

The debtor will receive a discharge within three to six months of the filing unless the court denies a discharge based on a creditor’s complaint or the trustee’s objection. It is important to note that a discharge does not discharge a debt of co-signers or co-debtors who remain fully liable on the entire debt. § 524(e). Neither co-signers nor co-debtors can claim any benefit of the bankruptcy stay in Chapter 7.

V. Filing a Bankruptcy Case

A debtor can initiate a bankruptcy case under any chapter by filing a voluntary petition in the bankruptcy court. The debtor must have resided or been domiciled in the district for at least 180 days. The filing fee for Chapter 7 is \$200, which the court will not waive but which may be paid in installments.

The debtor selects the chapter under which relief is sought and supports the petition with schedules of debts and property and a statement of financial affairs. The petitioner needs to provide a mailing list of creditors and, in most courts, a cover sheet summarizing the property and debts (used primarily to calculate the amount of the trustee's bond).

A summary of the papers and schedules to be filed with the petition is available in APPENDIX F.

VI. Effect of a Filing

The filing of a bankruptcy petition operates as an immediate injunction against all creditor collection activities. 11 U.S.C. § 362(a). On grant of a discharge this injunction becomes permanent. The stay is broad and includes even telephone calls to the debtor. It also includes a proceeding within any state court process, including non-judicial foreclosures and repossessions. Violation of the stay will be considered a contempt of court.

The court automatically appoints a trustee in a Chapter 7 filing. The trustee must collect all of the debtor's non-exempt assets and administer the estate for the benefit of the unsecured creditors. The filing of a petition creates a bankruptcy estate (§ 541), which is composed of all legal and equitable interests of the debtor in any property wherever located, with the exception of exempt property. The estate also includes all property that the trustee is able to recover pursuant to the "avoiding powers" of §§ 544 – 548.

Creditors will receive notice of the filing within two weeks. Forms currently in use include a claim form that creditors must complete and file if they wish to share in distribution of the estate. (They are notified not to file claims in an anticipated "no asset" case.) At the conclusion of the case the trustee distributes pro-rata dividends to creditors based on the priorities established in § 726.

The notice of bankruptcy will include a date for the meeting of creditors, usually held 30 to 60 days after filing. The debtor must attend the meeting so that the trustee and appearing creditors have an opportunity to examine him. A deputy clerk presides over these relatively informal and generally brief meetings.

Counsel and trustee customarily discuss in advance any matters of particular interest to the trustee in order to head off a prolonged examination at the meeting of creditors. Counsel should anticipate these matters and feel free to initiate such discussion.

VII. Trustee's Powers

The trustee has the power to scrutinize the debtor's claims of exemption to determine any improper amounts, examine the value of any exempt property, challenge the validity of liens against any property, void the debtor's attempted transfers of property, challenge claims, etc. § 704.

A. Preferences

The trustee may void a preferential payment pursuant to § 547. These are payments to any creditor within 90 days of the filing (payments of \$600 or more by consumer debtors) and payments made to “insiders,” such as relatives, within one year of the filing. § 101(30).

Advise clients not to pay any creditor (distinguished from a provider of utilities or other current service or regular installment payment on a secured debt) prior to bankruptcy. The trustee can recover these transfers for the benefit of the same creditors whose debts the debtor seeks to discharge. The actions, therefore, are self-defeating.

B. Fraudulent transfers

The trustee may recover a transfer made without adequate consideration, e.g., gifts, within the time allowed by bankruptcy *or* applicable state law. § 548.

C. Lien avoidance

The trustee has “strong arm” powers under § 544 and § 545. These allow him to avoid liens that are legally inferior to the trustee’s status, which is that of a hypothetical bona fide purchaser for value or a creditor holding a judgment lien or unsatisfied execution lien.

D. Jointly held property

The estate’s interest in jointly owned property is limited to the debtor’s interest. The trustee can make no claim against the interest of the co-owner (assuming the co-owner’s interest was acquired for fair value). However, the trustee has the power to sell jointly owned property. § 363(h). The co-owner has a first right of purchase at the price otherwise obtainable by the trustee. § 363(i).

VIII. General or California Exemptions: Choosing the system that benefits the debtor

A. Origin of bankruptcy exemptions

The debtor must specify which property he wishes to keep as exempt on Schedule G. The debtor can amend and change these exemptions at any time until the discharge is granted.

In most states the debtor has a choice of two exemption systems: the one provided by state law (also available in non-bankruptcy situations) and the federal bankruptcy system provided by § 522(d). California has “opted out” of the federal exemption system and therefore § 522(d) is not available in California. *See* CCP § 703.130. California, however, still provides two systems of exempt property, and the second of these is almost identical to the federal system under § 522(d). Thus, although California opted out of the official federal system, its citizens have virtually the same choices available in other states. In California, upon the filing of a bankruptcy, a debtor must choose between these two state exemption systems, one provided in CCP § 703.140 and the remaining exemptions otherwise contained in the Code of Civil Procedure. *See, generally*, CCP § 704.010 *et seq.* and § 704.710 *et seq.* A chart summarizing the two sets of exemptions

is available in APPENDIX G. An extended discussion of the exemptions is beyond the scope of this chapter, however. Counsel must refer to the statutes and carefully compare the exemptions available under the two alternatives, then choose which set will best help the client.

B. The two options

1. Standard “state” exemptions of CCP § 704.710

People who own homes, particularly with equity, invariably choose the standard “state” exemptions because of the availability of the homestead exemption. CCP § 704.710 *et seq.* There is no exemption available for cash or cash equivalent, including tax refunds. A limited exemption for wages is available. CCP § 704.070. For people with AIDS or other HIV disease, note that the homestead exemption for a disabled person is \$125,000. CCP § 704.730(a)(3).

2. Adopted “federal” exemptions of CCP § 703.140

The major feature of the adopted federal exemptions of former § 522(d) is the so-called “wild card” or “grubstake” exemption of CCP § 703.140(5) that permits the debtor to add \$400 to \$7,500 available under subsection (b)(1) for a real property exemption and to apply the combined \$7,900 value to *any* property or combination of property, including cash or cash equivalents. This innovation of the Bankruptcy Code, and its adoption into the Code of Civil Procedure, allows debtors who do not have equity in a residence the freedom and flexibility to shelter \$7,900 in value in any property over and above the other specific exemptions of CCP § 703.140(b). There is no specific exemption for accrued wages available under § 703.140(b). The debtor, however, can protect unpaid wages through use of the grubstake.

Unfortunately, retirement plans may or may not be exempt under either system. The exact nature of the plan must be carefully considered and the caselaw consulted.²

² To provide some example of the complexity in this area, the following cases are cited:

In re Clark (1983) 711 MD. 21 – The Third Circuit upheld the denial of a debtor’s claim of an exemption under 11 U.S.C. § 522(d)(10)(E) for a Keogh retirement plan, except to the extent they were present payments from the plan which were reasonably necessary for the support of the debtor. The Court rejected an exemption for future payments.

In re Innis (1986) 62 B.R. 659 – The U.S. Bankruptcy Court for the Southern District of California held that an IRA corpus was not exempt from the property of the estate under CCP § 703.140(b)(10)(E) because: (1) the exemption applied only to payments; and (2) the debtor’s right to withdraw the funds was not limited to the conditions specified by the statute.

In re Vigghiany (1987) 74 B.R. 61 – The U.S. Bankruptcy Court for the Southern District of California held that an IRA account corpus was exempt from property of the estate under CCP § 704.115 to the extent it was necessary to provide for the support of the judgment debtor upon retirement, and for support of the debtor’s spouse and dependents in light of all the resources likely to be available for the support of the judgment debtor upon the debtor’s retirement.

Patterson v. Shumate (1992) 112 S.Ct. 2242 – Ending a longrunning conflict among the circuits, the Supreme Court held an ERISA-qualified pension plan is not property of the debtor’s estate under 11 U.S.C. § 541(c)(2).

C. Additional Issues: disability and insurance benefits

1. Disability and illness benefits

If a debtor is receiving disability or illness benefits, these payments are fully exempt in or outside of the bankruptcy process. There is no limitation on this exemption. *See* CCP § 704.120 and § 703.140(b)(10)(c). Such payments are free from garnishment, including amounts owed to the IRS, except for judgments on unpaid child support.

2. Insurance

An unmaturred life insurance policy, with no loan value, is also fully exempt in or outside of the bankruptcy process. There is no monetary limitation on an unmaturred insurance policy with no loan value. If an unmaturred insurance policy does have a loan value, up to \$4,000 of that value can be claimed as exempt.

Benefits payable to the debtor from maturred life insurance policies are exempt only to the extent that the payments are “reasonably necessary for support of debtor and dependents.” *See* CCP § 704.100(c) and § 703.140(b)(11)(c). If the client is going to viaticate (settle an insurance policy for benefits), issues of timing are important. The debtor must be careful not to receive a large lump payment immediately before or after declaring bankruptcy.

IX. Working with the Exemption Lists

A. Conversion

Prior to filing, a debtor can legally and properly convert non-exempt assets, such as cash, into exempt assets such as food, household items or tools of the trade. Another example of conversion is when a debtor sells an expensive car, worth more than the exempt value, and buys an inexpensive one and uses the excess to pay off a mortgage. If the conversions involve large assets, however, they may trigger questions of good faith by creditors, even if they are done more than 90 days before filing.

B. Excess value

Sometimes a debtor owns property that has a value in excess of the liens and the applicable exemption. In these cases (assuming the excess is worth the trustee’s bother) the trustee will demand the surrender of the property for sale. Out of the proceeds the trustee will pay any liens, pay the debtor his or her specific exemption and add the excess value to the estate.

To prevent this, counsel should consider negotiating an installment payment plan or some other arrangement whereby the debtor can keep the property and pay the trustee the excess value. Trustees are normally very receptive to such arrangements. It minimizes their time, expenses and risk in liquidating property.

C. Lien avoidance

The debtor has the power to avoid certain non-purchase money liens in certain household property. § 522(f).

X. Secured Property

With some exceptions, bankruptcy does not affect secured debts. A properly secured creditor is entitled to payment or to have the collateral returned. Absent a serious excess equity problem, the debtor may keep secured property so long as he continues to pay on the contract. The debtor can also “redeem” property.

A. Returning property

If the debtor decides to do this, she simply makes arrangements to return the property to the creditor. The debtor will not be liable on the balance of the contract. The same pertains if the creditor repossesses the property, such as a vehicle, and sells it prior to the bankruptcy’s filing. If the creditor then seeks a deficiency judgment, a claim for deficiency is dischargeable.

B. Keeping property

The debtor may also “reaffirm” the debt, that is, sign a document attesting to the debtor’s desire to reaffirm a contract the debtor could otherwise reject. (Experienced counsel will ask the creditor to prepare the form of the reaffirmation agreement. Most creditors have and prefer their own forms. Counsel who attempt to draft the reaffirmation agreement risk spending many hours on a document that is in practice pro forma.)

There is a potential problem with reaffirmation, which could result in a client accumulating a *non-dischargeable* debt. If a secured debt is reaffirmed, but then later the debtor cannot pay it off, the creditor could repossess the consumer good. If the creditor then sells off the good for less than is owed on the debt, the debtor is liable for the difference. Since she has already gone through bankruptcy, she cannot discharge the debt. This commonly happens with a large asset such as a car. For example, if the debtor still owed \$10,000 on the car when she stopped payments and the creditor only got \$7,000 after repossessing and auctioning it, the debtor would be liable for the remaining \$3,000. Unfortunately, having already gone through bankruptcy, she could not discharge that amount. Therefore, if there is any possibility that the debtor cannot make future payments on a large, resalable item, it is better to return it and accumulate the debt before declaring bankruptcy, at which point it can be discharged.

C. Redeeming property

A little-used tool to keep secured property without paying the full contract price is redemption under § 722. If the property is personal property intended for personal, family or household use and is exempted or “abandoned” (meaning the trustee makes no claim to it), the debtor can simply pay the fair value of the property to the creditor, invariably much less than the contract balance, and redeem the property from the lien. The debtor has to redeem the fair value of the property by lump sum payment. *In re Carroll*, 4 C.B.C.2D 1042 (9th Cir. B.A.P. 1981).

For example, Joey owes Slumbertime Sales a balance of \$250 on a box spring and mattress installment contract in which Slumbertime has a purchase money security interest. The original purchase price was \$300 and the debtor paid \$50 down. The

mattress set has depreciated to \$100 fair market value. Joey has the right to redeem the mattress set by a lump sum payment of \$100 to Slumbertime, avoiding the additional \$150 of the contract balance.

In most cases, however, the value of redeemable personal property does not justify the attorney's time in negotiating the redemption price. It is normally sufficient to advise clients of their rights and let them negotiate with the creditor. But also alert clients that many credit personnel are not familiar with redemption rights and will attempt to have clients reaffirm at the original contract terms. A motion in court, rarely cost-effective, is theoretically available to enforce redemption rights.

XI. Maintaining a Line of Unsecured Credit

There are several ways to keep unsecured credit, such as a credit card, charge account or overdraft privilege. A client may want to do so for many reasons, including the security of knowing there is some way to access cash in an emergency, or simply to maintain a gas card or one Visa or MasterCard — identification often necessary to cash checks and do other normal transactions.

Clients will customarily ask if they can simply omit a particular debt from the bankruptcy schedules for this purpose. The answer is “No.” At the meeting of creditors the trustee will ask if the debtor has listed all of his debts. If the debtor has omitted a debt and answers in the affirmative, he has committed perjury. The attorney can only advise the debtor to schedule *all* of his debts.

A. Pay the debt

Pay the creditor the full amount of the balance and wait 90 days before filing bankruptcy. This will insulate the creditor from the trustee's right to recover preferential payments. *See* SECTION VII: TRUSTEE'S POWERS, *above*. If the client owes nothing to this “creditor” on the filing date of the petition, then it is not a true creditor and the client does not need to give it notice of the bankruptcy proceeding.

This is not to say that at some future time the creditor will not find out through a credit check that the client has filed a bankruptcy and revoke or limit credit privileges as a result. Counsel should advise the client of this possibility. However, a creditor being paid on time is unlikely to run a credit check or revoke a credit account.

B. Reaffirm the debt

As with secured debts, the debtor may reaffirm an unsecured debt. The debtor has the unfettered right to choose which debts he wishes to reaffirm. Not only does a debtor frequently reaffirm obligations to family or friends, he may also maintain a valued charge account, credit card or overdraft privilege in this fashion.

To assure that the debtor will be able to keep the card, he should discuss this option with the creditor prior to filing. The debtor should sign a written reaffirmation agreement that also confirms his right to keep the card. Even without a formal agreement, the debtor may voluntarily pay any debt. § 524(f).

XII. After Bankruptcy

A. Post-bankruptcy status

After the filing, the debtor is free to conduct any future business or activity. Except as noted below, the trustee's rights in the debtor's property stop at the moment the bankruptcy petition is filed. The trustee has no claim on after-acquired property.

A major exception is property received by the debtor within 180 days of the filing by virtue of an inheritance (§ 541(a)(5)(A)), or as the beneficiary of a life insurance policy or death benefit plan (§ 541(a)(C)). These provisions are of particular importance to practitioners helping people with AIDS in filing bankruptcy. If the debtor has close friends or a lover who are also infected and who may soon die and leave the debtor a testamentary bequest or other death benefit, the debtor could lose this inheritance or death benefit to the trustee if the right vests within 180 days of the debtor's bankruptcy filing. Counsel should examine these matters carefully in order to give proper admonitions.

B. Anti-discrimination provision

Neither the government nor any employer may discriminate in any manner against a person who has filed a bankruptcy proceeding. § 525.

C. Future credit

In contrast, a bankruptcy proceeding may constitute grounds for denial or restriction of future credit or even housing. (By the time most debtors file bankruptcy they are already established credit risks; bankruptcy is merely an additional factor.) A debtor can reestablish credit through reaffirmed debts, through "easy credit" retail merchandisers or through special arrangements with a credit union, bank or other provider of credit, such as a secured credit card.

Sophisticated creditors are aware that a debtor cannot declare another Chapter 7 proceeding for six years. § 727(a)(8).

XIII. The Special Problem of Medical Care

Medical debts, like any other unsecured debt, are fully dischargeable. How does a bankruptcy affect the ability of a person with AIDS to obtain private medical care?

A. Uninsured debtors

A private medical provider of services may not condition future service on payment of a prepetition debt. Such a demand violates the automatic stay. *In re Olson*, 10 C.B.C. 864 (N.D. Iowa, 1984). Nonetheless, a medical provider with a discharged account may legally refuse to provide future services or it may place the debtor on a pay-as-you-go basis. If the debtor does not have private medical insurance, then discharge of medical debts could disrupt his relationship with the provider. If the debtor values the relationship he may wish to reaffirm the debt.

Please note: despite a bankruptcy filing, medical insurance continues unless the client fails to pay the policy's premiums.

B. Insured debtors

The debtor can discharge any personal liability on the medical debts; such discharge will not affect the insurer's duty to pay the provider, who is in the nature of a third-party beneficiary to the insurance contract. The debtor can also discharge deductibles. The debtor must still pay premiums owed to the insurer since a bankruptcy does not affect them. Absent other factors that may affect coverage, the insurer cannot cancel the policy so long as the debtor continues to pay the premiums.

Renewal of an expiring policy is another matter. Absent a violation of the automatic stay, there is no requirement that a provider of goods or services must continue doing business with someone who has filed bankruptcy. Thus, the creditor need not renew contracts that expire by their own terms subsequent to bankruptcy. Moreover, the protectable interest of a Chapter 7 debtor in insurance policies is in doubt. A debtor in liquidation does not have the same interest in maintaining insurance as does a reorganizing debtor. In order to avoid notice to insurers as creditors, the practitioner should advise a prospective Chapter 7 debtor to make current all insurance policies by the filing date.

The anti-discrimination provisions of § 525 apply only to governmental units and employers. But *see the Olson case, Id.*, for an adventurous application of § 525 against a private medical clinic on "policy" grounds.

C. Debtors eligible for public assistance

Bankruptcy does not affect the debtor's right to receive public assistance, or to have medical care paid by public assistance, so long as the debtor meets eligibility requirements. Even if medical bills constitute the majority of the debt, counsel an eligible debtor to apply for public assistance. A creditor thereby receives payment from a public assistance program that a debtor would otherwise discharge through bankruptcy.

Large-scale discharge of medical debts in bankruptcy is not a desirable community goal even though, in particular circumstances, it may be necessary. The bankruptcy practitioner will encounter many people who are or may be eligible for public assistance, particularly Medi-Cal, which can pay for the debtor's health care needs. The practitioner, sensitive to these considerations, should advise the client to apply for such public assistance. Public assistance benefits are, of course, exempt under both exemption systems.

XIV. Chapter 13

Formerly called "wage earner plans," Chapter 13 is now available to almost any person who has regular income from any source. The object of a Chapter 13 filing is a bankruptcy discharge with some payback to creditors in the process. Chapter 13 plans are proposed by the debtor and approved by the bankruptcy court after a hearing. The plan may provide for unsecured creditors to receive some or all of the debt owed.

It is essential that a Chapter 13 debtor have excess monthly income, i.e. income over and above recurring monthly expenses, to pay to a Chapter 13 trustee who then distributes pro rata dividends to creditors. Chapter 13 plans are usually three years but

can last up to five years, during which the debtor pays back his debts. The debtor retains all his assets instead of turning his nonexempt assets over to a trustee for sale and distribution.

Chapter 13 plans may also be useful when a person with AIDS has already filed a Chapter 7 bankruptcy but then incurs later debts, such as large medical bills. Although she would be prevented from filing another Chapter 7 for six years, she could still file under Chapter 13 and discharge them.

A Chapter 13 petition will also invoke the automatic stay against repossession or foreclosure. For example, it is useful when creditors are about to repossess a car or foreclose on a home of a debtor who just lost her job. If able to show renewed and sufficient monthly income, this debtor can stop the action with a Chapter 13 filing. The debtor can delay the repossession or foreclosure with a confirmed Chapter 13 plan that provides payments to cure the default along with payments on regular installments falling due post-petition.

Chapter 13 and Chapter 11 bankruptcy proceedings may also delay repossession or foreclosure until the debtor can sell the property and preserve some equity. If the debtor accomplishes these purposes, he may later convert Chapter 13 and Chapter 11 to Chapter 7. Chapter 13 has the added advantage that, unlike Chapters 7 and 11, it may be dismissed without court approval should circumstances change.

APPENDICES

Appendix A: Sample Client Letter to Creditor Regarding FDCPA

[Name and address of creditor]

Re: [Debtor's name and account number]

Dear [Name of supervisor, if available]:

Recently I have received a number of phone calls from your collection department regarding my debt to store X. These phone calls come both late at night and early in the morning and the people who call are often extremely rude. They have even yelled at my roommates when they answered the phone.

I already explained to store X that I cannot pay the debt right now, and I have repeatedly explained that to your representatives. Since you are in another state I assume you are not connected to the store directly. I must ask you to request your collection department to stop calling me. I understand that the Federal Fair Debt Collection Practices Act (15 U.S.C. section 1692) makes this activity illegal. If your collection department continues to call me, I will hire an attorney to start legal action against you.

From now on, if you have anything to communicate to me, please do so in writing only.

Yours truly,

Debtor

Appendix B: Sample Attorney Letter to Collection Agency Regarding Client Disability

[Name and address of creditor]

Re: [Client's name and account number]

Dear [Name of supervisor, if available]:

I am the attorney for [Client]. This letter is to advise you that your actions taken to collect my client's debt to credit company Y violate the Federal Fair Debt Collection Practices Act (15 U.S.C. section 1692). Specifically, your collection company has called continuously, before and after business hours. You have often used threatening and abusive language, despite the fact that my client has already explained several times he cannot currently meet the payments required. In addition, your company has called his employer on several occasions.

My client is currently on disability leave from his job. He is living only on state disability benefits and does not have any excess income with which to pay this debt. My client has been diagnosed with AIDS, and he must use all his financial resources to fight this disease.

Please channel all future communications to my client through me. If your collection agency continues to violate the Federal Fair Debt Collection Act, I will not hesitate to sue on behalf of my client.

Yours truly,

Attorney
[cc: client]

Appendix C: Sample Attorney Letter to Collection Agency Regarding Judgment-Proof Client

[Name and address of creditor]

Re: [Client's name and account number]

Dear [Name, if available]:

This letter is to advise you that due to [client's] serious medical problems and inability to continue regular full-time employment, [client] must reluctantly suspend payments on his account. [Client] has been diagnosed with a life-threatening illness [mention AIDS or HIV infection if client is comfortable in doing so] which doesn't permit him to work enough to meet his current obligations. [Briefly describe current situation, work status, income, benefits, etc.]

I have analyzed [client's] financial situation and assets, and it is my opinion that [client] is "judgment-proof," meaning that all of his assets are exempt under California law. There should be no need for [client] to file bankruptcy if his creditors correctly understand his financial situation. I am enclosing for your file a current monthly budget and a complete list of [client's] assets with their fair market values.

Please abate any collection activities you have taken or considered taking against [client]. I specifically request that you do not contact [client] directly, which includes not contacting him at his place of employment. I am happy to provide you with any further information. In order to resolve this matter, I ask that you forward to me at your earliest convenience a letter stating that the debt is satisfied, the matter is closed, and that any claims arising from a deficiency are hereby waived. [I am returning [client's] credit card herewith; please cancel any remaining credit privileges.]

Thank you for your cooperation in this matter.

Yours truly,

Attorney

Enclosures

[cc: Client]

Appendix D: Sample Attorney Letter to Judgment-Proof Client

Dear [Client]:

After briefly interviewing you regarding your financial difficulties brought on by an AIDS diagnosis, it appears that you are “judgment-proof.” This means that the assets you described to me appear to be exempt from execution or levy by any creditors who obtain court judgments against you. If your creditors sue you, obtain judgments and attempt to have the sheriff take your property, you may claim your property “exempt” through the sheriff’s office and later in a court proceeding if any creditor asked for a court determination on your exempt status.

In these situations, we frequently recommend that you first write a businesslike letter to your creditors, explaining the circumstances and advising them of your “judgment-proof” status. Many creditors will abate their collection activities, not wanting to “throw good money after bad.” If this device succeeds, you may avoid the expense and anxiety of formally declaring bankruptcy.

A drawback to the “judgment-proof” letter is that it takes only one aggressive creditor to spoil it. If that creditor insists on taking you to court and threatening you with levy on your wages or execution on your property, then you may want to file bankruptcy to impose a formal, legal injunction against that creditor. You should consider the letter first because you can file bankruptcy later if need be.

Note that if you are still working you are not exactly “judgment-proof.” Wages are not automatically exempt property. A creditor can levy on wages unless and until a judge declares your wages are necessary for your basic subsistence. I have recommended trying the “judgment-proof” letter because it appears to me that your wages are low enough that a judge would probably agree that they are exempt.

Enclosed is a sample “judgment-proof” advice letter. Adapt it to your circumstances.

Be prepared to give up your credit. Once you have written such a letter you have indicated your future inability to pay for credit purchases. To then use their credit card may constitute fraud. If you wish to keep a credit account, you should pay that creditor.

Send a copy of your letter to me or some other attorney with whom you wish to remain in consultation. Keep copies of your letters for future reference. If you have any questions or if you encounter further problems with your creditors, please feel free to call me.

Very truly yours,

[Attorney]

Appendix E: Resources

Collier on Bankruptcy, 15th Ed. Multivolume treatise generally arranged according to Bankruptcy Code sections with annotations. Well-respected and citeable.

Collier Bankruptcy Cases, 2d Series. Contains bankruptcy cases including many cited as treatise annotations. Also includes a one-volume “cumulative codex” for quick research into recent cases.

Bankruptcy Code, Collier Pamphlet Ed. The Bankruptcy Code with pertinent annotations, legislative history and authoritative comments.

Collier Bankruptcy Practice Guide. The “how to” companion to Collier’s treatise. Extremely useful, with forms.

Collier Forms Manual, 3d. A one-volume, quick reference compendium of useful forms.

West Bankruptcy Reporter. Contains bankruptcy cases with West key numbers and digest and advance sheets with a cumulative digest for case research.

Cowans Bankruptcy Law and Practice. Another general treatise. Less comprehensive than Collier, but less academic, too. Annotations to West key numbers, some forms included.

Norton Bankruptcy Law and Practice. Same as above but published by Callahan. Written for the bankruptcy practitioner, includes a volume of forms.

Stand Up to the IRS, 2d Ed. How to handle audits, tax bills and tax court, with sample forms, answers and addresses. By Nolo Press.

Appendix F: Summary of Papers to be Filed with Bankruptcy Petition

- A. Schedule A (Real property): List all real property and interests in real property, including leasehold interests. Explain briefly the nature of interest, e.g., fee, leasehold, life estate, etc. Give the estimated market value of the interest and separately list liens against the property, e.g., first, second and third deeds of trust and lien balances.
- B. Schedule B (Personal property): List all personal property of the debtor of whatever kind.
- C. Schedule C (Property claimed as exempt): List the property of the debtor for which an exemption is claimed, the law providing for the exemption, the value of the claimed exemption and the current market value of the property without deducting the exemption.
- D. Schedule D (Creditors holding secured claims): List information regarding secured creditors, the nature of their claims and the claims' values. Debts in which creditors hold security interests (determined by non-bankruptcy law) include homes, cars, purchase money security interests in personal property, etc. List a contested security interest as "disputed."
- E. Schedule E (Creditors holding unsecured priority claims): List only holders of unsecured claims entitled to priority under the Bankruptcy Code.
- F. Schedule F (Creditors holding unsecured nonpriority claims): List all other unsecured debts.
- G. Schedule G (Executory contracts and unexpired leases): Describe all executory contracts of any nature and all unexpired leases of real or personal property, including any timeshare interests.
- H. Schedule H (Codebtors): Provide information regarding any person or entity, other than a spouse in a joint case, that is liable with the debtor for any debts listed by the debtor on the schedules of creditors.
- I. Schedule I (Current income of individual debtors): Provide information requested by schedule.
- J. Schedule J (Current expenditures of individual debtors): Complete by estimating the average monthly expenses of the debtor and the debtor's family.
- K. Summary of Schedules A-J.
- L. Declaration Concerning Debtor's Schedules: Declaration as to accuracy made under penalty of perjury.
- M. Statement of Financial Affairs: Questionnaire regarding recent financial and property transactions and income.

- N. Attorney's Declaration: The attorney must declare the amount of the fee received and the source of the fee. "Debtor's earnings" or "savings" are acceptable.
- O. Mailing List: A mailing list, sometimes called a "matrix," must be on an approved format, which differs from court to court. Check the local practice. It is critical that a creditor whose debt is to be discharged receives notice of the filing. Client and counsel should be liberal in giving notice to creditors or even potential creditors at their last known addresses.
- P. Statement of Intentions: The debtor must state whether he intends to reaffirm, return or redeem secured debt collateral.

Appendix G: Comparison of Representative Exemptions

CALIFORNIA STATE EXEMPTIONS		CALIFORNIA BANKRUPTCY EXEMPTIONS
ASSETS		
	CCP 704.010 et seq. [Note: some exemptions are limited for married persons.]	CCP 703.140
HOMESTEAD		
	Equity in residence up to \$50,000 single, \$75,000 head of house, \$100,000 over 65 years or disabled. CCP 704.730, and see CCP 704.710, 704.790	\$7,500 of value in residence; unused amount of residence may be used for any property. CCP 703.140(b)(1), (5)
PERSONAL PROPERTY		
Motor Vehicle	\$1,200 aggregate in all vehicles. CCP 704.010, 704.110	\$1,200 total in one vehicle. CCP 704.140(b)(2)
Household Goods	Household furnishings, “ordinarily and reasonably necessary” CCP 704.020 (no \$ limit)	Not to exceed \$200 in value in any particular item. CCP 703.140(b)(3)
Jewelry, heirlooms, works of art	\$2500 of aggregate equity. CCP 704.040	\$500 value in jewelry; heirlooms and works of art not specified. CCP 703 140(b)(4)
Health Aids	“Reasonably necessary.” CCP 704.050	No dollar value stated. CCP 703.140(b)(9)
Personal Injury Awards	Necessary for support of debtor/dependents. If paid periodically, may be garnished. CCP 704.140	\$7,500. CCP 703.140(b)(10)(D)
INSURANCE BENEFITS		
Disability – Health	No \$ limitation. CCP 704.130	No \$ limitation. CCP 703.140(b)(10)(C)
Matured Life Insurance	“Reasonably necessary for support of debtor and dependents.” CCP 704.100(c)	“Reasonably necessary for support of debtor and dependents.” CCP 703.140(b)(11)(C)
Unmatured Life Insurance	No \$ limit if no loan value. CCP 704.100(a)	No \$ limitation if unmaturred. CCP 703.140(b)(7)
	\$4,000 of loan value. CCP 704.100(b)	\$4,000 of loan value. CCP 703.140(b)(8)

PUBLIC BENEFITS		
Social Security	Deposit Account: \$500 for one, \$750 for two. CCP 704.080	Benefits: no \$ limitation. CCP 703.140(b)(10)(A)
PENSIONS		
Public retirement & related benefits	Entire amount exempt except for child/spousal support. CCP 704.110, CCP 704.113.	No distribution between public and private retirement benefits. See below.
Private retirement	“Reasonably necessary” for support of debtor & dependents. If paid periodically, may be garnished. CCP 704.115	“Reasonably necessary” for support of debtor & dependents. CCP 703.140(b)(10)(E)

NOTE: this chart is not intended to be exhaustive.