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# The Bankruptcy Attorney Start-Up Kit

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*Learn how to start or expand a debtor bankruptcy law practice*



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## Introduction

Thank you for taking the time to download this free eBook. It is evident that you are interested in starting or expanding your current law practice to include debtor bankruptcy. You are not alone. For the first time in history, the field of bankruptcy is increasing at an alarming rate. This is caused by the financial crisis the United States is currently experiencing as I am sure you are aware of.

However, there is one question you are asking yourself: Where can an attorney go to learn how to set up a bankruptcy practice with no prior bankruptcy knowledge?

One solution some attorneys have tried in the past is hiring an experienced bankruptcy attorney to spend time training them. But right now, bankruptcy attorneys are very busy and finding one that is available to provide training to a new law firm is extremely difficult. Another problem is competition. What would be the incentive for an experienced bankruptcy attorney to spend time training the “new kid on the block”?

However, there is still an even bigger problem starting a new debtor bankruptcy law practice: There are no training materials specifically designed to train professional level skills in the preparation of the Chapter 7 and Chapter 13 bankruptcy petition.

This situation was caused because most attorneys were taught that the bankruptcy petition was nothing more than “filling out forms.” They did not think there was a skill in how to properly place information on the forms in order for cases to go smoother and increase their profits (due to the savings in time and overhead). Only until the bankruptcy law change in 2005 did the bankruptcy petition take on a more important role. And some attorneys are still struggling with accepting this new concept.

How was training conducted in the past? Until 2004, the only way an attorney or law firm employee learned how to properly prepare a bankruptcy petition was by trial and error. The petition was filed, the Trustee objected to the things that were wrong, the attorney amended the schedules and lessons were learned the old, time consuming method. Think of the wasted time that Trustees had to endure when new bankruptcy attorneys filed their first petitions. It was a nightmare for them as well as costing the attorney and the law firm employees a great deal of time and headaches.

This is why Victoria Ring, a paralegal who was trained by a wide variety of excellent, top-level bankruptcy attorneys, decided to begin developing training materials specifically for training the skills of preparing Chapter 7 and Chapter 13 bankruptcy petitions. Victoria released her first book: *How to Draft a Chapter 7 Bankruptcy Petition* in 2004, before the law changed. After the law changed, she removed this book from print and developed many more training products including a full line of eBooks, audios and videos.

Today, Victoria Ring continues to work in order to educate attorneys and their staff in ways that will improve the operational procedures within the law firm. She also helps them to save money, reduce time and overhead costs as well as providing the client with a better quality of services and excellent customer service due to a well-organizing operation.

But before these goals can be achieved, you will need to start at the beginning. This eBook is designed to take you from Point A to Point B so that you are armed with the information you need to make an informed decision on what steps to take moving forward.

Let's begin by reviewing some common and questions we receive and provide you with answers and options to consider.

## Questions and Answers

Before we discuss the purchase of training materials, let us first address some concerns you may have about the debtor bankruptcy field.

### Is this a good time to start a bankruptcy practice?

According to PACER (public access court electronic records), for the 30-day time period covering March 1, 2009 through March 31, 2009; a total of 134,282 bankruptcy petitions were filed in the United States with 99,575 of those being Chapter 7 and 33,123 being Chapter 13. The bankruptcy court was open 22 days during the month of March 2009, so this averages out to be 6,104 petitions filed per day, 254 per hour or 10.58 per minute.

During the same period of March 2008 (the previous year), a total of 92,173 bankruptcy petition were filed in the United States. The bankruptcy court was open 21 days during the month of March 2008, so this averages out to be 4,190 petitions filed per day, 175 per hour or 7.29 per minute.

#### ONLINE RESOURCE:

[https://pacer.login.uscourts.gov/cgi-bin/login.pl?court\\_id=00idx](https://pacer.login.uscourts.gov/cgi-bin/login.pl?court_id=00idx)

What does this tell you? It tells you that a lot of people are filing bankruptcy and it also tells you that the number of bankruptcy filings is significantly increasing. Just in the two statistics provided above, there was a just under a 46% increase. Statistics are projected to continue increasing throughout 2010, 2011 and even beyond.

Now is the perfect time to open up a debtor bankruptcy practice. In fact, many attorneys are finding it the best area of law to pursue at this moment in time. Since the surge of attorneys that are rushing to open new debtor bankruptcy law firms, one might think that the market will

become flooded. However, if you take a moment and view the statistical data on PACER (which provides the latest figures) or the American Bankruptcy Institute at <http://www.abiworld.org>, it will be easy for you to see that the demand for services is much higher than the number of attorneys practicing in debtor bankruptcy law.

### **What are your reasons for starting a new bankruptcy practice?**

No attorney should ever start a bankruptcy law practice (or any type of practice) based solely on the goal of making money. If money is the only thought on your mind, you may want to concentrate on creditor bankruptcy versus debtor bankruptcy. Why? Because the only way you are going to succeed and establish yourself as an honest, reputable debtor bankruptcy attorney is your sincere desire to have a concern for people in general. Are you the type of person who stops your car to help a hurt animal who was struck by a car? Are you the type of person who has filed bankruptcy yourself or have a family member that experienced a period in their lives where they lost their income? Do you know what it is like to suffer catastrophes? If so, you may make an excellent debtor bankruptcy attorney.

Of course, not everyone fits this type of scenario; which is why some attorneys choose to work with businesses who file large Chapter 11 bankruptcy petitions. This area of bankruptcy requires knowledge of corporate law and litigation experience if you effectively want to have a financially rewarding Chapter 11 practice.

However, this publication is solely focused on the Chapter 7 and Chapter 13 bankruptcy field. We are the people who deal with the average consumer. For example: The guy next door who just lost his job; the wife that has no income and no spouse; a business woman who is unable to pay her back taxes; a hard worker who diagnosed with cancer and lost his insurance because of uncovered expenses. For people like this, and many more who are currently living in bad, financial times; a compassionate, caring bankruptcy attorney will be the person they need to help them.

Therefore, if you do not have a personality that understands and cares about your typical market of customer-clients, it would be a waste of time for you to start a debtor bankruptcy practice because you are not going to stay in business for very long and your job will become nothing more than a blur. If you really want to enjoy life, find something you enjoy doing and can get paid to do.

### **How much money will it take to start a bankruptcy practice?**

The answer to this question will depend on how much of the actual work you want to do as an attorney. If you only want to attend the 341 Hearing, meet with the client and have others interview the clients and process the paperwork, you will require less training compared to an attorney who wants to do it all. However, the following guidelines will provide you with a general idea of the start-up costs involved in starting a new bankruptcy law practice:

## INITIAL RESEARCH

The list of materials below is highly recommended to begin your initial study and understanding of debtor bankruptcy law:

- a. [Bankruptcy Basics](http://www.consumerlaw.org), a step-by-step guide for pro bono attorneys, general practitioners and legal services offices. Available from the National Consumer Law Center:  
<http://www.consumerlaw.org>
- b. [Chapter 13 Bankruptcy, Keep Your Property and Repay Debts Over Time](#), by Robin Leonard, J.D. and Attorney Stephen R. Elias; and
- c. [How to File for Chapter 7 Bankruptcy](#), by Attorney Stephen R. Elias, ISBN: 9781413308976. Both available from Nolo Press:  
<http://www.nolo.com>

The two recommended books published by Nolo Press, are actually written for the consumer to understand the basics of bankruptcy and how it affects them. An attorney told me one time: “If you study consumer law, study it both from the perspective of the consumer as well as the legalese. This allows you to study the law from both sides which results in a much better education.”

## BANKRUPTCY SOFTWARE

The major players in the bankruptcy software market are:

<http://www.BankruptcySoftware.Com>  
<http://www.EZFiling.Com>  
<http://www.BestCase.Com>

All of them charge approximately \$1,000 for their basic Chapter 7 package. But you do not need to purchase any bankruptcy software at this time. Instead, download the free demo versions and find out which one you like. Just like some people prefer WordPerfect over Word, only you can choose the right software with the look and feel you are comfortable with.

If you do decide to make the investment into purchasing bankruptcy software at this time, remember that it is always best to purchase the least expensive version and purchase upgrades as you need them. Additionally, never purchase add-ons for Chapter 13 Plans because they are available free from the bankruptcy court.

## **An Example of a Scam Used by a Bankruptcy Software Company**

The paralegal to a bankruptcy attorney in Pennsylvania called to tell me about her experience with Best Case software. Her attorney is a registered user of Best Case and the paralegal had called them because they had to upgrade their license from a Chapter 7 to a Chapter 7 and 13.

While the paralegal was on the phone with Best Case, she asked the sales person about preparing petitions for attorneys outside of her area. The sales lady told the paralegal that she could NOT prepare Chapter 13s for any other district except the district the attorney was in. Even if she prepared a bankruptcy petition that was not in the same district but within the state of Pennsylvania she would have to pay another \$150 to \$200 for the Chapter 13 Plan.

The paralegal called me because she felt something was wrong and that Best Case had misrepresented the federal forms. She asked me how Best Case could do this; so I explained to her the scam some bankruptcy software companies are using to sell federal forms. Of course this scam is one of those legitimate scams. In case you did not know, a legitimate scam is one where the customer is still ripped off, but the thief operates the scam legitimately. Best Case is using this age old scam and eventually it will harm them; but who am I to judge?

### **What is the Scam?**

First, you need to be aware that every federal form pertaining to bankruptcy is provided free by the government because consumers have the right to represent themselves. (This is why the first form in a bankruptcy petition is called a Voluntary Petition; the petition is filed by the debtor voluntarily).

Back to the subject, you should never be required to pay for a federal form. The bankruptcy software companies like Best Case know this; so they sell the federal forms under the disguise that their forms work with their software. Big deal! But they will make you think their forms are the best thing since sliced bread so they can sell them to you and laugh all the way to the bank.

### **The Proof**

<http://www.bankruptcydata.com/CourtDirectoryIndex.asp>

Visit your local bankruptcy court website (see link above) and look under FORMS. If your local bankruptcy court requires a certain local form for the Chapter 13 Plan, you can download it free (in PDF format) and personalize it.

You will find that every PDF form on the bankruptcy court website is fillable; which means that you can open up the document, click on a line and begin typing in the information on your computer. This is often faster compared to printing out the document and filling it out by hand.

**One tip though:** Only Adobe provides software that makes forms fillable; therefore, you must download the free Adobe Reader in order for the fill-in-the-blank capability to properly work.

### **How To Use the PDF Version Instead of the Paid Version**

Prepare the petition in your bankruptcy software as you normally would. For any forms that are blocked out (such as the Chapter 13 Plan) simply download them from the bankruptcy court website. Allow the bankruptcy software to still compile the data and figures for the form; but instead of spending \$150 or \$200 to purchase an unlock code, simply transfer those figures onto the PDF document and you are good to go. The PDF will need to be filed separately with the court, but who cares? For most people, spending 2 extra minutes to save a great deal of money is worth it.

Of course, if you want the convenience of purchasing an unlock code for your bankruptcy software; there is nothing wrong with doing so. The part that bothers me is that software companies like Best Case are forcing law firms to believe they cannot even do a Chapter 13 outside of their district unless they purchase a \$150 or \$200 module of the Chapter 13 Plan. This is a lie and I would certainly question the integrity of a company that implemented these types of sales tactics just to steal money from people.

For additional information about taking control of your bankruptcy software and understanding it for what it really is, read the article on Page 13.

### **TRAINING**

At this time, Victoria Ring is the only person dedicated to the training and support of debtor bankruptcy attorneys. Depending on the method you choose to use in setting up your bankruptcy practice, you may be interested several different options available to you.

For details and prices, visit:

<http://www.coloradobankruptcytraining.com>

### **Other Start-Up Costs**

Essentially, other than purchasing your software, and the training for you and your staff; the only other expenses are: (1) Obtaining your ECF number; (2) Finding a location to meet with your clients; and (3) Joining professional bankruptcy attorney organizations that appeal to you.

## **OBTAINING YOUR ECF NUMBER**

ECF Number means “electronic court filing” number. We assume that you have already following the procedures necessary in your jurisdiction to practice before a federal judge. Now all that is left to do before you should start accepting bankruptcy clients is to obtain your ECF Number.

There is no simple set of rules to follow for obtaining your ECF Number. Every jurisdiction is different. Some states will only require you to attend a short training session at the court and your ECF Number is issued before you leave the class. While other states (like California) make it extremely difficult and time consuming to obtain an ECF Number. In fact, their rules are so strict attorneys are allowed to file their first 20 petitions manually while they go through the testing process to obtain their ECF Number.

The only way to know the procedure you need to follow as an attorney is to visit your bankruptcy court website. To find your bankruptcy court, visit:

<http://www.uscourts.gov/courtlinks/>

## **JOINING ORGANIZATIONS**

The bankruptcy-related national organizational links below will help connect you to specialized resources that will be important to the growth of your bankruptcy practice:

### **National Association of Consumer Bankruptcy Attorneys**

<http://nacba.org/>

Use the Attorney Directory and search for bankruptcy attorneys you may wish to contact. Send them an email, tell them you are considering opening up a new law practice and would like to schedule a time to talk to them. Not every attorney will reply, but many will probably provide you with links to other ideas that can help you.

### **American Bankruptcy Institute**

<http://www.abiworld.org/>

This organization will not allow you to view their Member Directory unless you pay to join as a member. This is a good thing because it helps to stop bogus email filled with advertisements and spam. However, the bad side is that attorneys cannot use this organization for marketing. Consumers would never pay to join this organization and therefore would not look for an attorney here. However, this is an excellent organization to join and you get a wide range of other benefits to help your law firm grow.

### **National Conference of Bankruptcy Judges**

<http://www.ncbj.org>

According to their website, and in their own words: “The National Conference of Bankruptcy Judges is an association of the Bankruptcy Judges of the United States which has several

purposes: to provide continuing legal education to judges, lawyers and other involved professionals, to promote cooperation among the Bankruptcy Judges, to secure a greater degree of quality and uniformity in the administration of the Bankruptcy system and to improve the practice of law in the Bankruptcy Courts of the United States.”

### **American College of Bankruptcy**

<http://www.amercol.org>

According to their website, and in their own words: “The American College of Bankruptcy is an honorary association of bankruptcy and insolvency professionals. Its Fellows include: Commercial Bankruptcy Attorneys, Consumer Bankruptcy Attorneys, Corporate Turnaround Specialists, United States Trustees, Bankruptcy Trustees, Investment Bankers, Insolvency Accountants, Law Professors, Judges, Government Officials, Appraisers, and others involved in the bankruptcy and insolvency community. Nominees are extended an invitation to join based on a proven record of the highest standards of professionalism and service to the profession.”

### **National Association of Chapter 13 Trustees**

<http://www.nactt.org>

Founded in 1965, this organization is dedicated to the highest standards of education related to Chapter 13 bankruptcy and education is the focal point of the NACTT's annual seminar. Members of the NACTT receive the NACTT Quarterly, the official publication of the organization, and reduced rates on NACTT seminars. Membership consists of trustees, bankruptcy judges, lawyers for debtors and creditors, certified public accountants and other insolvency related professionals.

### **National Association of Bankruptcy Trustees**

<http://www.nabt.com>

Membership benefits in this organization include a directory, listserv, case summaries, access to bankruptcy assets for sale and much more. Once you become a member you also can enjoy discounted Errors and Omission insurance as well as excellent resource information such as seminar materials, creditor contact lists, Trustee Tips, NABTalk articles, and much more.

## **LOCATON TO MEET WITH CLIENTS**

We assume that you already have a computer (or laptop) and a printer to set up your new law practice, as well as all the beginning office supplies you need. The next question is: Where will you conduct your client intake interviews? You will need to have a secured area to meet with clients to obtain a retainer fee and have them sign a Retainer Agreement. This can be accomplished in several ways.

For example, one attorney rented a small office space in downtown Los Angeles for only \$400 per month. She used it only to meet with clients for a short period of time. Most of the preliminary work had been done by email and telephone. By the time the clients met with the attorney they were ready to retain her services. The attorney collected the fee, had the

Retainer Agreement signed and gave the clients a set of Client Intake Forms to take home and complete.

For a free set of Client Intake Forms as well as other bankruptcy attorney tools, visit:  
<http://coloradobankruptcytraining.com/free.html>

Small offices like these can normally be found on Craig's List; or attorneys can consider renting a fully equipped office by the hour. Three examples of national companies providing this type of service are:

<http://www.regus.com/>  
<http://intelligentoffice.com/>  
<http://www.virtualofficecenters.com/>

You can find several more by using the search words: "virtual office space" at any search engine.

### **How much do attorneys charge per bankruptcy petition?**

At the time of this writing, the average price charged for Chapter 7s throughout the United States is approximately \$2,500. Chapter 13s are charged a fee of approximately \$3,500. In most cases, attorneys charge one price (\$2,500) for both Chapter 7 and Chapter 13 petitions. All petitions are first prepared as a Chapter 7. If the Means Test dictates that the client becomes a Chapter 13, the attorney places an additional \$1,000 into the Chapter 13 Plan and is paid first, along with the Trustee and other administrative costs.

In order to obtain the most up-to-date attorney fees charged by bankruptcy attorneys in your area, do a search on PACER for recent filings and view the Attorney Compensation Statement which is included in every bankruptcy petition.

### **How much do virtual bankruptcy assistants charge?**

If you do not want to hire and train a staff, or hire new employees to help run your bankruptcy law firm; virtual bankruptcy assistants are the perfect choice.

Victoria Ring (CEO of 713Training.Com) is the developer of the virtual bankruptcy assistant industry. She developed the first training materials that provided training to virtual bankruptcy assistants (VBAs) and is fully aware that some VBAs have poor skills. That is why she developed the VBA Certification Exam which is difficult to pass unless the VBA has invested time and money into training. Many bankruptcy attorneys have come to rely on the results of this Exam which can be viewed online at: <http://www.vbacertification.com>

Attorneys who understand the value of hiring professionals who produce professional work over saving a few dollars by hiring an untrained VBA will appreciate a long-term business relationship with a Certified VBA. At the time of this writing, the standard fee for professional level work from a trained and knowledgeable VBA is approximately \$500 or more for a Chapter 7 and \$700 or more for a Chapter 13; however, every VBA sets their own prices.

### **How do I know if I will be satisfied with the Certified VBAs work?**

Attorneys often ask VBAs for references before they use their services. However, even the best petition preparer may still lack skills dealing with clients. It may take several attempts before an attorney finds a VBA that fits his or her personality and the operations of the law firm; which in this case, references do not always work. Besides, no one gives a bad reference anyway so how reliable can a reference be?

Often, the best way to find a Certified VBA that you are satisfied with is to give VBAs a petition to complete and measure their skills and professional attitude throughout the process. Besides, it does not matter how good or bad the VBA performs their work because they are paid AFTER the work has been completed in a satisfactory manner. In this way, the attorney does not risk any money and only pays for the quality of work they approve.

### **If I use a VBA, is this considered "sharing fees"?**

Absolutely not! You pay VBAs the same as you pay a contract worker, temporary or other off-site employee on a "per job" basis. The VBA is not paid by the debtor(s). The fee for a VBA is only for services; much the same as when you pay your paralegal a salary. This type of payment is not considered "sharing fees" since employees, contract workers and VBAs are providing a service to the law firm and not being paid by the debtor(s).

### **How do I find Certified VBAs?**

To find Certified VBAs, scroll down to the bottom of the front page at:

<http://www.navba.org>

To find members of the National Association of Virtual Bankruptcy Assistants, some of which may not be certified are located at:

<http://navba.org/FindaVBA>

## **BANKRUPTCY SOFTWARE CANNOT THINK FOR YOU**

-- by Victoria Ring

*\*\* This article will help you to understand important basic information if you are an attorney just getting started or transitioning to the field of debtor bankruptcy law.*

An attorney called me today. She was in a hurry and wanted to know what software she needed that would prepare a bankruptcy petition in about an hour. I told her that none existed. She then proceeded to tell me about an attorney who had a software program that imported credit reports, filled in all the creditor addresses and did everything, including filing her petition at the press of a button. I explained to her that almost all bankruptcy software programs perform these same functions; but there is no bankruptcy software program that is going to practice law for her. She was disgusted at my response but it is the same response I get from new attorneys quite often.

Remember the old saying: What looks too good to be true, probably is? All adults should know by now that anything that appears to be simple and easy actually requires a skill. I wrote an article one time about how horrible I was at trying to bag my own groceries at the store. I explained that even something that sounds like it could be simple (like bagging groceries) still takes a skill that is only learned by practice.

Therefore, every person reading this article needs to reprogram their brain to understand that no bankruptcy software program is going to THINK for you. Software programs only make some jobs easier. You still need to go in and check data, categorize it, determine priorities and much more. No software program is going to do that no matter how much you pay for it.

### **HOW DID THIS RUMOR GET STARTED? LETS EXAMINE A REAL LIFE SITUATION:**

John Q Public is sitting at home watching television. He hears the rumor (started by the new media) that he can save his home if he files a Chapter 13 bankruptcy. John Q Public is 9 months behind on his mortgage and facing a foreclosure because he lost his job. Mr. Public rushes to the phone to call Ms. Attorney and tell her he wants to file a Chapter 13.

Note: For those of you who work within the bankruptcy system, you already know this statement by the media is only partially true. The media conveniently leaves out the fact that a person cannot qualify to file a Chapter 13 if they are unemployed and have no money left after paying their basic living expenses. That is the catch; however, John Q Public does not know that.

Ms. Attorney, who, through a lack of training, offers to file a Chapter 13 for John Q, Public. Ms. Attorney uses her bankruptcy software program to prepare the bankruptcy petition. Ms. Attorney has little or no training in preparing the petition and she spends from 6 to 8 hours just correcting and adjusting information (that the software cannot do). She was unaware of this when she purchased the software because she was under the assumption that it did everything for her.

Next, Ms. Attorney is overwhelmed by the fact that she has also not been properly trained in how to gather all the necessary information for preparing petitions, properly counseling her clients and how to filter out clients who do not qualify for bankruptcy and help them through debt counseling or some other form of assistance. Without this basic knowledge, new bankruptcy attorneys are going to be in for a very rocky road ahead; especially since there is no software program that is going to do all of this for them.

What happens next is another nightmare. After Ms. Attorney enters in all the income for John Q Public and his wife, John Q Public does not qualify for a Chapter 13. In a situation like this some attorneys will try to still push the bankruptcy through by finding an income from another source or suggest the debtor get a part-time job so he or his wife can qualify to file a Chapter 13.

Or, if Ms. Attorney manages to get the bankruptcy petition filed by some other method, she will still risk extreme embarrassment at the 341 Meeting when she is in front of the client, creditors and the Trustee. When the Trustee finds these issues and brings them to the table, many attorneys will simply stop accepting Chapter 13s or stop doing bankruptcy altogether rather than face this situation again. This is sad; because the result was only caused from a lack of training and knowledge in building her practice. Another old saying: An ounce of prevention is worth a pound of cure.

### **LOGICAL POINTS TO CONSIDER**

If you are a seasoned bankruptcy attorney, I urge you to pass this information on to new attorneys. In doing so, you and I are helping to improve professionalism and positive growth within the bankruptcy field. If you are a new attorney, I urge you to study the following logical points:

- 1.** If a bankruptcy software program existed that could do all the thinking for you, why would someone need to hire a bankruptcy attorney? Why not just buy the software and call it a day?
- 2.** If the bankruptcy court allows an attorney to charge \$1,000 or more for a Chapter 13, do you not think there must be more work involved? Some attorneys think the software does the work for them; but remember that the court does not just grant a large sum like this to an attorney without good reason.

3. If you were going to open a pizza shop, would it be a good idea to learn how to make pizza first? If you are going to start a new bankruptcy practice, would it be a good idea then to learn about the process first? The least a new attorney can do is login to the American Bankruptcy Institute and view the free training videos at:

<http://www.uscourts.gov/video/bankruptcybasics/bankruptcyBasics.cfm>

Although these videos were made for attorneys to place on their websites to inform their clients about bankruptcy, they are still excellent in helping new attorneys understand the basics. I always tell my students to study the law from a legal perspective as well as the consumer perspective. It provides you with a better balance of knowledge that will carry throughout the life of your law career.

### **ONE SOLUTION TO CONSIDER**

The videos from the American Bankruptcy Institute will NOT show you how to gather information from your clients, prepare the petition or run your practice. That education has never been taught to attorneys and either they learn the skill through trial and error or from an experienced paralegal.

Victoria Ring is working hard to bring professional training and support to Chapter 7 and Chapter 13 debtor bankruptcy attorneys. This field has been overlooked in the same way that immigration, divorce and other types of consumer law have been overlooked. As an attorney, you are encouraged to suggest professional training be endorsed by your local bankruptcy court in an effort to end this ongoing problem.

## BANKRUPTCY PETITION CASE REVIEW #1

The following two articles were written by Victoria Ring to assist debtor bankruptcy attorneys. The following two case reviews were chosen for this eBook to help you understand some of the intricate parts of working in this field of law.

### **The problem:**

There is not enough left over for the debtors to make a Chapter 13 Plan payment.

I talked with an attorney today who said: For a Chapter 13 Plan, I thought all I needed to do was take the amount left over between Schedules I and J and this was the Plan payment.

Unfortunately, in 90% of the cases, it is not that simple. For example: Today I had a married couple who owed three mortgages on their home. Here are the particulars:

\$420,000 - Current market value of home

\$320,000 - First mortgage

\$ 20,000 - Second mortgage

\$200,000 - Third mortgage

\$ 20,725 - Exemption allowance

Adding up  $\$320 + \$20 + \$200$  we have a total of  $\$540$ . The home is valued at  $\$420$ , leaving the debtors with  $\$120$  in equity. Minus out the exemption allowance and the debtors are UNDERWATER by approximately  $\$100$ . This means that the attorney could propose a cram down on the THIRD mortgage and save the debtors  $\$100,000$ .

This is a good thing, right? Wrong. Even with the cram down, the debtors only have  $\$2,300$  left over every month to make a Chapter 13 Plan payment. After plugging in the figures into the Chapter 13 Plan, it would take a MINIMUM of  $\$3,000$  in a monthly payment just to cover the mortgage obligation, and still then, the unsecured creditors would only be paid 9 percent (which could be a problem.)

### **BAD SOLUTION:**

Some attorneys, when faced with a problem like this will reduce the expenses on Schedule J just to get the case filed. But these are the types of things that will drive a Trustee insane. Also, these are the types of things that can embarrass an attorney in court in front of their clients because they have not done their job properly. They took the easy way out and left the Trustee to figure it out.

## **GOOD SOLUTION:**

The best approach to solving this dilemma is for the attorney to meet with the debtors and explain the situation. The attorney should start by giving the debtors a copy of Schedule J and ask them to look over the figures and let them know if everything looks okay. After the debtors approve the figures (or change them) the attorney can explain the problem to the debtors in terms they will be better able to understand.

The attorney may say something like: Since the figures are correct on Schedule J, you can see that you have \$2,300 left over per month. However, since your house payment is almost \$2,000 that leaves you with only \$300 to pay on your cars and the \$250,000 in credit card debt. As you can see, there is not enough money to do that. Can you look over Schedule I and J and let me know if you can find an extra \$700 so that I can make the Chapter 13 Plan work?

This puts control in the debtor's hands and allows them to feel they are taking an active role. If debtors understand issues, they will be more cooperative in staying in the Chapter 13 Plan. However, if the debtors are unable to come up with a solution, at least they will be able to understand the problem and the attorney can explain different options.

## **WHAT IS THE BEST SOLUTION TO THIS PROBLEM?**

If the debtors are unable to afford their home or do not anticipate increasing their income, the best solution would be to surrender the home. This would give the debtors a fresh start and since there are only two of them, they could downsize and still leave a comfortable lifestyle.

However, people are attached to their THINGS, like homes and cars. In fact, they are so emotionally attached that they cannot stand for a day to pass unless they have that particular home or particular car in their possession. I personally do not understand it. Everything in life comes and goes. Everyone has a time when they have money and a time when they do not. During the times when I have less money, I spend less and adjust my spending habits. When I have money again, I celebrate and spend more.

Unfortunately, many people today are not willing to make sacrifices, but I hope this article at least puts the problem into a more understandable perspective.

## BANKRUPTCY PETITION CASE REVIEW #2

### **The problem:**

Is there really too much equity in the motor vehicle?

An attorney emailed me a Chapter 13 petition for a bankruptcy petition review. He had balanced out Schedule I and J and had a remaining excess of \$2,822.55. However, when the attorney proposed a Chapter 13 Plan payment of \$2,822.55; the Chapter 13 Plan calculator said the payment needed to be higher to cover the debts. An amount of \$3,750.16 was suggested by the software program.

In many circumstances, when a law firm is faced with a similar scenario, they will immediately start trying to reduce expenses on Schedule J. This line of reasoning is NOT protecting the debtor. Before you reduce expenses and take money out of the debtors pocket (which should be a strategy that is used as a last resort), go over Schedule A and B with a fine tooth comb. You may be able to find an error you made or the attorney may be able to reduce the interest rates, calculate a different monthly payment, do a cram down, strip a mortgage lien or any other number of options to protect the debtor.

However, the petition I reviewed for my attorney today was caused by a very simple error that is impossible to see on the surface. I wanted to pass this important information on to you as soon as it happened so you can recognize the problem and deal with it on a future case to avoid this same problem. Allow me to explain the process I went through to solve this issue so you will have a better understanding of what I am talking about:

- 1.** I began my analysis by reviewing Schedule A and B to understand how the debts were classified. Attorneys and their assistants often do not classify debts correctly and this will throw off the Chapter 13 calculation.
- 2.** Next, I review Schedule I and J to see if any of the figures seemed out of line. (Note: If you are a beginner in this field, you will not be able to do this when you begin your career because it is a skill you need to learn over time.) For this particular petition, nothing was out of line so I had to dig a little deeper.
- 3.** Next, I reduced the claim amount on the motor vehicles to the market value. This is called a CRAM DOWN. Because the claim amount was reduced, the monthly payment was reduced. However, this reduction still did not make any dent into lowering the Chapter 13 Plan payment from \$3,750.16 to the \$2,822.55 the debtors could afford.

4. Next, I double and triple checked every piece of information on Schedule A and B. When I was reviewing the motor vehicles on Schedule B and determining if they could be crammed down any further I decided to check the Kelly Blue Book value on a 2008 Lexus. The attorney had a market value of \$27,450 but Kelly Blue Book showed only \$16,200.

I asked myself: Why was there an \$11,000 difference on this one vehicle and the other vehicles matched their Kelly Blue Book values? I called the legal assistant at the law firm and asked her to get the client file and tell me what the year, make and model of the 2008 Lexus was. When she reviewed the car title she found that the model was different from the information the debtor provided on the Client Intake Forms. When the change to the market value on the 2008 Lexus was made on Schedule B, the Chapter 13 Plan balanced out perfectly with the \$2,822.55 proposed monthly payment.

Think about this for a moment; this one tiny, simple little error could have cost the debtor almost \$1,000.00 per month. I was so thankful that a lady in our office helped me to discover the problem so that it could be fixed before it went to court. Not only did this simple change save the debtor \$1,000 per month, it also saved the attorney money and time because eventually they will discover the problem and need to fix it. Or, in the worst case scenario, the debtor stops paying into the Chapter 13 Plan and the case is dismissed for non-payment. However, making this minor adjustment prior to filing the bankruptcy petition, problems like these are eliminated.

## **SUMMARY**

Although this article centers around a Chapter 13 scenario; the information is essential for any other bankruptcy chapters also. It is EXTREMELY important to make sure you have the correct market value of ALL assets as well as ALL motor vehicles. Whether you use Nada Guides or Kelly to obtain motor vehicle values, when you obtain the [trade in] value dollar amount, PRINT the webpage to a PDF or paper so the attorney has it with him or her when attending the 341 Meeting. This print out provides the verification the attorney needs to negotiate settlements with the lender or aide in allowing the Trustee to accept the cram down dollar amount for the motor vehicle debt.

For a list of links specifically to help you when preparing bankruptcy petitions, visit:  
[http://coloradobankruptcytraining.com/links\\_petitions.html](http://coloradobankruptcytraining.com/links_petitions.html)

## Get Information from Other Attorneys

Please feel free to contact any of the attorneys below for additional information on starting your own bankruptcy practice. All of these attorneys are at various stages in the development of their law firms, but they will be able to share their personal stories with you about the status of the industry and the projected growth.

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