

**ANALYZING THE RAW DATA YOU HAVE  
COLLECTED & ASSESSING THE  
AVAILABILITY OF RELIEF FOR THE CLIENT**

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## **ANALYZING THE RAW DATA YOU HAVE COLLECTED & ASSESSING THE AVAILABILITY OF RELIEF FOR THE CLIENT**

### **A. *Discharge, Exemptions, and Automatic Stay Limitations***

1. ***Discharge Limitations:*** List all prior bankruptcies filed within the last eight years and complete the Filing/Discharge & Stay Limitations Worksheet.
  
2. ***Establish the Exemption State (730 Day Rule)***
  - (a) The state of exemptions for the debtor is based upon the debtor's place of domicile during the two or two and one-half years (730 days) prior to filing the bankruptcy. [522(b)(3)(A)]
  
  - (b) List all time-periods and addresses in which the client was domiciled within the previous two years (730 days). If the debtor was domiciled within the current state during the entire two-year period, the current state is the state of the exemptions. See Exemption State & Worksheet.
  
  - (c) If the debtor was domiciled out of the current state for any length of time during those two years, the state of exemptions will be the state of the longest domicile during the six month period immediately preceding the last two years. If exemptions are not available based upon the period of longest domicile within those six months, the federal exemptions apply. In this case, also list all time-periods and addresses within the six months prior to the two-year period. I like [www.exemptionsexpress.com](http://www.exemptionsexpress.com) for determining if federal exemptions can be used.
  
3. ***Exemption Limitations:***
  - (a) **Intent to Hinder, Delay Creditors Exemption Limitation:** Within the last ten years, has the client invested funds that would not have been exempt, in the homestead with the intent to hinder or delay creditors? Or, within the ten years, has client disposed of an asset that, itself, would not have been exempt on the petition date, with the intent to hinder or delay creditors? If so, the homestead exemption may be reduced to the extent of the otherwise non-exempt investment in the homestead. [522(o)]
  
  - (b) **Basic \$146,450 Exemption Cap:**
    - (1) Would the client claim a homestead exemption under the federal exemptions or as a tenant by the entirety? If so, the homestead exemption cap does not apply.
  
    - (2) Would the client claim a homestead exemption under the state exemption laws, in excess of \$146,450? If so, has the client

acquired an interest in the property within 1215 days (appr. 3 years, 4 months)? If so, the homestead exemption cap may be capped at \$146,450. [522(p)]

4. *Felony and Securities Violation Exemption Cap*: Has the client been convicted of an 18 U.S.C. 3156 felony which demonstrates debtor abuse, or does client owe federal securities-related debt, 18 U.S.C. 1964 civil liability, or caused any serious injury or death within five years pre-petition? If so, the homestead exemption may be capped at \$146,450. [522(q)]

5. *Automatic Stay Limitations Effective Immediately in a Case*

(a) Real Property - Mortgages:

(1) Is there a stay relief order (an *in rem* order) from a prior case finding debtor's scheme to hinder/delay creditors recorded by creditor? If so, the stay relief order provisions apply to cases filed within two (2) years of the order. [362(b)(20) and (d)(4)].

(2) Is the client ineligible to file this case under 109(g)? If so, there is no stay in the new case. [362(b)(21)]

(b) Residential Lessee/Renter:

(1) Did the lessor obtain state court eviction order before the petition date? If so, there is no stay unless debtor files certification and deposits post-petition rent. [362(b)(22)]

(2) Has the landlord filed a state court eviction proceeding complaining that the client has endangered the premises or engaged in illegal drug use? If so, there will be no stay 15 days post-petition if the landlord certifies that to the bankruptcy court and debtor fails to object. [362(b)(23) & 362(m)]

(c) Other Refiling Automatic Stay Limitations (Prior Bankruptcy Cases):

(1) Did the client file a prior bankruptcy case that was dismissed within the past year (do not include cases dismissed pursuant to 707(b) and if case is an 11, 12, or 13)? If so, the stay regarding debts and security terminates as to the debtor (not the estate) 30 days post-petition if the landlord certifies that to the bankruptcy court and debtor fails to object. [362(c)(3)(A)]

(2) Did the client file at least two prior bankruptcy cases that were dismissed within the past year? If so, there is no stay, although the debtor may move for such stay within 30 days post-petition. [362(c)(4)(A)]

B. *Chapter 13 Debt Limits*

1. Are the client's total debts within the Chapter 13 debt limits [as of February 2012]? Noncontingent and liquidated debts of less than [109(e)]:
  - (a) Secured: \$1,081,400.
  - (b) General and priority unsecured: \$360,475.

C. *Exceptions to the Means Test*

1. Is the client a Disabled Veteran and *not subject* to 707(b) Motion?  
Is the client a disabled veteran and was the indebtedness primarily incurred while on active duty or on homeland defense activity? [707(b)(2)(D)]? If so, the client is not subject to a motion to dismiss or convert under 707(b) based upon the means test; however, more general abuse may still be grounds for such a motion.
2. Are the Client's Debts **Not** Primarily Consumer? If so,
  - (a) the means test (Form 22A) does not apply to the debtor in a Chapter 7 case.
  - (b) if the case is a Chapter 13, Form 22C **does have to be completed** in order to determine whether there is any Disposable Income.
  - (c) Definitions: 11 U.S.C. 101(8): "The term "consumer debt" means debt incurred by an individual primarily for a personal, family, or household purpose." "Personal", "family", and "household" are not defined by the Code. Tax and tort claims are examples of typical non-consumer debts.

D. *CMI, Means Testing, and Budgets*

1. Determine the number of persons in the Debtor's household. The Code refers to the number of "individuals" in the "household" in which the debtor lives, as the basis for choosing the applicable Median Family Income. [707(b)(6) and (7)]. There is no requirement that the individuals be dependents or family members.
2. Determine the Current Monthly Income ("CMI").
  - (a) CMI includes "all sources that debtor receives" [101(10A)]:
    - (1) Taxable and non-taxed income are included.
    - (2) 6-month period ends on the last day of the calendar month prior to the month in which the case is filed.
    - (3) "receives" indicates an ongoing aspect of the source or amount of income required to be included.
    - (4) Exceptions include Social Security Act benefits (which may include unemployment benefits), war crimes reparations, and international terrorism victim payments {101(10)(B)}
  - (b) Using the CMI-EZ worksheet

- (1) determine which sources of income are included in CMI
  - (2) chart out time-periods for each job or income source included in CMI
  - (3) calculate income for each CMI income source
    - (A) add each pay stub received during the CMI period - or
    - (B) calculate by taking year-to-date total on the last pay stub of the last month in the CMI period and subtracting the year-to-date total on the last pay stub of the month prior to the beginning of the CMI period. Repeat the process if the CMI period extends backwards into the prior calendar year and add the two subtotals together.
  - (c) Determine whether CMI is Above Median Family Income (“AMFI”) or Below Median Family Income (“BMFI”)
    - (1) If debtor is AMFI, the long form of 22A/C will be required and more detail regarding the debtor’s expenses will be needed. Fill out the back side of the CMI-EZ worksheet.
    - (2) If debtor is BMFI, the short form of 22A/C will be required and less detail regarding the debtor’s expenses will be needed - only as required by Schedule J.
  - (d) Using the Current Actual Income & Expense Worksheet - for Schedule J and assisting 22A/C if your debtor is AMFI
    - (1) mortgage payments, homeowners association fees, real property taxes, homeowners insurance
    - (2) some telecommunication expenses
    - (3) extra medical expenses beyond the per person dollar allowance
    - (4) term life insurance paid directly, not through payroll deduction
    - (5) medical insurance paid directly, not through payroll deduction
    - (6) childcare expenses
    - (7) limited educational expenses for minors
3. Claiming Special Circumstances: Forms 22A and 22C allow the debtor to claim “Special Circumstances,” which now subtract from CMI in determining the amount of Disposable Income. {707(b)(2)(B)(ii) and (iii)}. It is advisable to file a separate declaration under penalty of perjury describing in more detail than allowed on the 22A/C form, the nature of the claimed “special circumstances.”
- (a) Special circumstances may be used to: [707(b)(2)(B)(ii)]
    - (1) adjust income; or
    - (2) supplement monthly allowed expenses.

- (b) Examples of possible special circumstances: [707(b)(2)(B)(I)]
  - (1) serious medical condition (listed)
  - (2) active duty in armed forces (listed)
  - (3) significant loss of income - phantom income
  - (4) recent separation from spouse
  - (5) moving costs and difficulty taking children out of school during school year.
  
- 4. Important differences between 22A (Chapter 7) and 22C (Chapter 13) for AMFI debtors
  - (a) Voluntary retirement contributions and loan repayments are deductible in Chapter 13.
  - (b) Support, foster care, and disability income for a dependent child income is deductible in Chapter 13.
  
- 5. Calculating Disposable Income
  - (a) For a Chapter 7 BMFI debtor, the Disposable Income is zero
  - (b) For a Chapter 7 AMFI debtor, the Disposable Income is shown at the end of Form 22A.
  - (c) For a Chapter 13 AMFI debtor, the Disposable Income is shown at the end of Form 22C.
  - (d) For a Chapter 13 BMFI debtor, the Disposable Income is calculated by taking the CMI amount shown on Form 22C and subtracting “Reasonably Necessary Expenses” pursuant to 1325(b)(2). “Reasonably Necessary Expenses” are not the same as “current expenditures” which are reported on Schedule J pursuant to 521(a)(1)(B)(ii). The debtor should file a “Statement of Reasonably Necessary Expenses” in this case.
  
- 6. What happens if there is “Disposable Income”?
  - (a) Disposable Income (“DI”) multiplied by the applicable commitment period equals Projected Disposable Income (“PDI”).
    - (1) PDI is paid on unsecured claims
  
- 7. Function and purpose of Schedules I and J under BAPCPA
  - (a) Support claim of Special Circumstances
  - (b) Show feasibility of proposed Chapter 13 plan payments.
  
- 8. What happens if Schedule I substantially exceeds J although there is no Disposable Income?
  
- 9. If the case is a Chapter 7, would the court otherwise find the case to be an abuse of Chapter 7? The court shall presume abuse exists if the debtor fails the basic means test calculation. [707(b)(1) and (b)(2)(A)]. Failure of the means test by the

debtor and the consequent “..presumption of abuse may only be rebutted by demonstrating special circumstances...” [707(b)(2)(B)]. For a case that passes the means test (is not presumptively abusive or the presumption is rebutted), the court shall consider [707(b)(3)]:

- (a) debtor’s bad faith in filing the petition
- (b) the totality of the debtor’s financial circumstances

## **Abbreviation Guide**

AMFI - Above Median Family Income

BMFI - Below Median Family Income

CMI - Current Monthly Income

DI - Disposable Income

PDI - Projected Disposable Income

22A - Means Test for Chapter 7

22C - Means Test for Chapter 13