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CONSUMER BANKRUPTCY

Keeping Track of Dollar Amounts and Key Dates in the New Law

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The Bankruptcy Amendment Act contained a number of significant revisions which changed various dollar amounts and dates on which we often rely. Considering that there were so many changes to the law, it became somewhat difficult to keep track of all of this important information. I initially went from the aggravation of constantly looking up the new statutes, to being in a somewhat disorganized state of maintaining numerous post-it notes and scraps of paper containing the various changes. I finally evolved

into a state of organization by creating a master list which I will now share with you.

The Act also provides that certain dollar amounts will automatically change on certain dates. The most recent changes went into effect earlier this month, on April 1, 2007. That means that if you use computer software to calculate the means test, you will want to have the most up-to-date version, especially if your client's data puts him or her in a grey area.

You should also be aware that on April 1, 2007, some of the official forms changed as well.

The following is a list of some of the most commonly-referred to changes in the law that contain dates or dollar amounts. I urge you to cut this out and keep it handy for your own reference.

Recent Cash Advances Presumed Non-Dischargeable. Cash advances of more than \$825 taken within 70 days of filing are presumed

to be non-dischargeable. Section 523(a)(2)(C)(i)(II). This changed April 1, 2007.

Recent Luxury Goods Purchases Presumed Non-Dischargeable. Purchases of luxury goods exceeding \$550 incurred within 90 days prior to filing are presumed non-dischargeable. Section 523(a)(2)(C)(i)(I). This changed April 1, 2007.

Determination of Abuse Under Means Test. This is perhaps the most consumer-friendly change which will affect those debtors whose incomes are above the state median. The amounts of disposable income for a determination of abuse are now slightly increased. See section 707(b)(2). In the past, if a debtor had more than \$10,000 of disposable income, then there was a presumption of abuse. The new amount is \$10,950. Previously, if a debtor had less than \$6,000 in disposable income, there was no presumption of abuse. The new amount is \$6,575.

Educational Expenses in Means Test. This deduction changed from \$125 per month to \$137.50 per month.

Expiration of Credit Counseling Certificate. Credit Counseling Certificates are only good for 180 days and then expire. Section 109(h)(1). If you have a client who has been slow to move forward, don't get caught with an expired certificate.

Number of Days of Pay Stubs to File with Petition. You are required to file 60 days of pre-petition payment advices at the time you file the petition. Section 521(a)(1)(iv). If the debtor did not work for the entire 60-day pre-petition period, then you will also need to prepare an affidavit for the debtor to sign, explaining that there was no income for a certain period of time.

Location of Debtor's Domicile for Determining Exemptions. A debtor's domicile must be in this state for 730 days in order to use the New York State exemptions. Section 522(b)(3)(A). If the debtor's domicile has not been located in a single state for this period, then consult this statute for the 180-day rule.

Repeat Filing: Prior Case Was Chapter 7 and New Case Will Be Chapter 7. Debtor must wait **eight** years from the date of commencement of the prior Chapter 7 case. (Code section 727(a)(8)).

Repeat Filing: Prior Case Was Chapter 13 and New Case Will Be Chapter 7. If the allowed unsecured claims in the prior Chapter 13 received more than 70% of the amount of their claims, then no waiting period applies. However, if the allowed unsecured claims received less than 70%, then the debtor must wait **six** years from the date of the prior Chapter 13 date of filing. (Code section 727(a)(9)).

Repeat Filing: Prior Case Was Chapter 7 and New Case Will Be Chapter 13. Debtor must wait **four** years from the date of the prior Chapter 7 date of filing. (Code section 1328(f)(1)).

Repeat Filing: Prior Case Was Chapter 13 and New Case Will Be Chapter 13. Debtor must wait **two** years from the date of the prior Chapter 13 date of filing. (Code section 1328(f)(2)).

Length of Automatic Stay If Prior Petitions Filed in Past Year. If a debtor had any case (Chapter 7 or 13) dismissed in the past 12 months, then the automatic stay expires 30 days after the petition is filed, unless the Court extends this time upon a showing by the debtor that the case was brought in good faith. Code section 363(c)(3). Note that there is no stay if the there were

more than two cases dismissed in the past 12 months.

Chapter 13 Eligibility. Only an individual whose non-contingent, liquidated, unsecured debts are less than \$336,900, and whose non-contingent, liquidated, secured debts of less than \$1,010,650 on the date of filing is eligible to file for relief under Chapter 13. Section 109(e). These amounts changed on April 1, 2007.

Priority Claim Adjustments. Although most consumer practitioners will rarely need to schedule non-tax priority claims, you should nevertheless be aware of them. The amount of priority for claims for wages owed to employees was increased from \$10,000 to \$10,950. Section 507(a)(4). Claims for rental deposits were increased from \$2,225 to \$2,425. Section 507(a)(7). These amounts changed on April 1, 2007.

*Editor's Note (revised 2008):
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