

BankruptcyAcademy.com

The Bankruptcy Academy 2006

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The Cathedral Hill Hotel

Handling & Managing A Case *Under The* Bankruptcy Reform Act of 2005

**Incorporating changes
Made by BAPCPA***

THE DEVELOPING CASE LAW OF BAPCPA

***The Bankruptcy Abuse Prevention & Consumer Protection Act
Of 2005**

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HANDLING A CASE UNDER BAPCPA

Key reference: King's Guide to Practice Under The Bankruptcy Reform Act of 2005

The Bankruptcy Abuse Prevention & Consumer Protection Act of 2005

1. Review of key BAPCPA amendments to the Bankruptcy Code
2. Enhanced lawyer accountability
 - “Debt Relief Agencies”
 - Due diligence
 - Disclosures
 - Reaffirmations
 - U.S. Trustee audits
3. The role of the paralegal
4. Documents to prepare in advance
 - New official forms
 - Disclosure statements
 - Fee agreement
 - Addresses for notice to creditors
 - Checklists
5. Handling the means test and median income test
 - Income
 - IRS Collection Standards
 - § 707(b) permissible expenses
6. Technology to calculate the means test and median income test
7. Advertising requirements imposed by BAPCPA
8. Arranging for credit counseling

9. Arranging for
10. **CHECKLIST:** The initial interview checklist
 1. Basic personal information
 2. Special attention to dates homes and vehicles purchased
 3. Special attention to dates assets disposed of
 - Checklist of lookback periods
 4. Special attention to budget issues
 5. Special attention to dates of prior bankruptcy filings
 6. Special attention to eviction proceedings
 7. Special attention to documents clients must produce
 8. Special attention to addresses for creditors in schedules
10. **CHECKLIST:** Documents and forms required before filing
 1. Credit counseling
 - 2.
 - 3.
11. **CHECKLIST:** The Due diligence checklist
 - Internet resources
 - Due diligence services
 - Credit counselors
 - Financial education providers
12. **CHECKLIST:** Which chapter to file?
 - Median income test
 - The means test
 - Automated assistance in calculations
 - Other considerations
 - Changes in exemptions
 - Changes in Dischargeability of debts
13. **CHECKLIST:** What must be filed with petition & after
14. **CHECKLIST:** Post-petition deadlines calendaring & issues

15. **CHECKLIST:** The meeting of creditors

File tax return with trustee
File

16. **CHECKLIST:** Debtor's postpetition duties

Statement of Intentions & reaffirmations
Payment of ongoing family support
Tax returns

17. **CHECKLIST:** Postpetition problems

Motion based on presumption of abuse under 707(b)
Motion based on bad faith considerations under 707(b)
Motion to dismiss for failure to pay domestic support
Avoidance of preferential transfers
Assume or reject lease
Pre-discharge hearing in chapter 13

17. **CHECKLIST:** Pre-discharge issues

18. **CHECKLIST:** Traps for the unwary

19. **CHECKLIST:** Motions

DEVELOPING CASE LAW OF BAPCPA

Hot areas

Credit counseling & certification

- Exigent circumstances
- Contents of certificate
- Failure to file certificate
- Post-petition credit counseling

Exemptions

- Homestead exemption issues
- Motor vehicle exemption issues
- Other exemption issues

Automatic stay

- Motions to extend automatic stay
- Motions to invoke automatic stay

Calculation of budget

- Median income test
- Means test
- Calculation of disposable income for chapter 13
- Permissible expenses
- Included in income

Cramdown issues:

- “Personal use”
- Surrender in full satisfaction
- Effect of § 506 not applying to claim
- Creditor’s claim for unsecured balance
- PMSI debts
- Interest rate

