

Lou Jones Breakfast Club

October 10, 2006

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Debtor Education Requirements under BAPCPA

I. Pre-Filing

109(h)(1). In order to qualify as a debtor, a prospective debtor must complete a credit-counseling course through an approved agency during the 180-day period preceding the date of filing. Under 521(b) certificate of completion must be filed along with any debt repayment plan.

- A. "180-day period preceding the date of filing"— does this require the course to be done at least one day prior to date of filing? Differing opinions. In re Spears, 06-21015, In re Warren, 339 B.R. 475 (Bankr. E.D. Ark. 2006), In re Mills, 341 B.R. 106 (Bankr. D. DC. 2006), In re Murphy, 2006 WL 1071153 (D. DC. 2006). See also In re Bricksin, 2006 WL 2096413 (Bankr. N.D. Cal.) where pre-filing course completed more than 180 days prior to filing, court held that debtor's participation in and performance under debt repayment plan qualified as "ongoing credit counseling sufficient to satisfy the statutory requirement".
- B. Exception- "Exigent Circumstances" under 109(h)(3). Debtor may obtain waiver of pre-filing debtor education course if i) can show "exigent circumstances that merit a waiver", ii) debtor attempted to do course but was unable to obtain w/in 5 day period, and iii) i and ii are satisfactory to the court. In re Carr, 344 BR 774 (Bankr. N.D.W.Va.) Sheriff sale scheduled for the Monday following the Friday that debtor contacted attorney to file bankruptcy, case dismissed where pre-filing course not completed until 7 days after petition filed, debtor could not certify that he requested counseling and that no such counseling available during the 5-day period following such request. Dixon v. LaBarge, 338 BR 383 (8th Cir. BAP 2006) Affirming bankruptcy court's ruling that a foreclosure was not an exigent circumstance due to the length of the State law statutory notice provision preceding a foreclosure suit. In re Wallert, 332 BR 884 (Bankr. D. Minn. 2005) "The Debtor's statements identify a circumstance, an impending sheriff's sale in foreclosure of a mortgage against her homestead, that in isolation is 'exigent', as contemplated by 11 U.S.C. Sec. 109(h)(3)(A)(I)."
- C. Waiver under 109(h)(3)(A) only good for 30 days, or an additional 15 upon court approval. 109(h)(2)(A) and 109(h)(4) list very limited circumstances in which credit counseling course not required.
- D. New Attachment to Voluntary Petition effective 10/1/2006- Exhibit D, "Individual Debtor's Statement of Compliance with Credit Counseling Requirement"
Pursuant to Rule 1007(c) a separate form is now required to be filed with the petition and in addition to the credit counseling certificate. Replaces

short section formerly within body of petition with separate, more extensive exhibit, to be separately signed by each debtor.

II. Credit Counseling Agencies and Financial Management Courses – United States Trustee Approval

Section 111 sets out the requirements necessary to be met by nonprofit budget and credit counseling agencies and financial management instructional courses in order to provide services which satisfy 109(h), 727(a)(11), and 1328(g).

- A. Clerk to maintain list of approved credit counseling agencies and financial management courses.
- B. US Trustee shall only approve credit counseling agency that, among other requirements: charges a reasonable fee and provides services without regard to ability to pay the fee, provides full disclosures to the prospective debtor, provides adequate counseling, trained counselors, and demonstrates adequate experience and background in providing credit counseling.
- C. US Trustee shall only approve financial management course which provides, among other requirements: trained, adequate personnel, useful learning materials and teaching methodologies, adequate and convenient facilities, reasonable fees and the provision of services without regard to ability to pay the fee.
- D. US Trustee to review approval of each agency/course in 1-year periods.

III. Post-Filing

727(a)(11) and 1328(g). Discharge will not be granted unless the debtor completes an instructional course concerning personal financial management.

- A. Course to be completed “after filing the petition”.
- B. Official Form 23 “Debtor’s Certification of Completion of Instructional Course Concerning Personal Financial Management”. Rule 1007(b)(7). Updated 10/1/06 to now require financial management course certificate number. Under Rule 1007(c), Form 23 to be filed within 45 days of first date set for Meeting of Creditors in a chapter 7 case, and no later than the last payment made by the debtor as required by the plan or the filing of a motion for entry of a discharge under 1328(b).
- C. Reopening Case Closed w/out Entry of Discharge for Failure to Complete Financial Management Course. Filing fee of \$220, motion to reopen and order. Is it necessary to show cause?
- D. Very limited exceptions to course requirement similar to pre-filing exceptions. 109(h)(4), 727(a)(11).