

II. BEFORE YOU BEGIN

Make Sure You Should File Your Bankruptcy In The Eastern District of California

The bankruptcy court is a federal court. The federal court system divides the United States into judicial districts. Every state has at least one federal judicial district. Many have more. In California, for example, there are four federal judicial districts. This package contains information about filing bankruptcy in the Eastern District of California.

As a general rule, you should file your bankruptcy case in the bankruptcy court for the federal judicial district where you have lived for the greater part of the previous 180 days. You can also file in the district where your principal place of business or principal assets have been located for the greatest part of the previous 180 days.

The Eastern District of California covers the 34 counties in northern California indicated below. If your residence, principal place of business, or principal assets have been located in one or more of these counties for the necessary period of time, you should file your bankruptcy in the U.S. Bankruptcy Court for the Eastern District of California. The specific county of your residence, principal place of business, or principal assets determines in which of the Eastern District of California's three divisions your case should be filed.

Sacramento Division: Petitions from Alpine, Amador, Butte, Colusa, El Dorado, Glenn, Lassen, Modoc, Mono, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sutter, Tehama, Trinity, Yolo, and Yuba counties should be filed in Sacramento.

Modesto Division: Petitions from Calaveras, Stanislaus, and Tuolumne counties should be filed in Modesto.

Fresno Division: Petitions from Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare counties should be filed in Fresno.

If your residence, principal place of business or principal assets have NOT been located in one or more of the counties listed above for the necessary period of time, please refer to Appendix 1, *United States Bankruptcy Courts Within California (Form EDC 2-070)*, to determine where your case should be filed and contact the U.S. Bankruptcy Court located in that district and division for additional information.

Determine the Bankruptcy Code Chapter That Best Suits Your Needs

You have a choice in deciding which chapter of the Bankruptcy Code will best suit your needs. The decisions whether to file bankruptcy and under which chapter to file depend on your particular circumstances. In general, chapter 7 liquidation, or "straight bankruptcy," is appropriate when you have insufficient income to pay all or most of your debts. If you have an income or property and can afford to pay all or a substantial portion of your debts, a chapter 11 reorganization, or the repayment of debt under chapter 12 or chapter 13 may

be appropriate depending on whether the debtor is an individual, partnership, corporation, or family farmer.

These are just a few of the factors to consider, however. There is no way that a simple package like this one can address all the things to be considered. Also, considering your personal facts, comparing them to the requirements of each chapter and deciding which chapter to select would require legal advice. The Bankruptcy Clerk's Office staff and non-attorney bankruptcy petition preparers¹ are prohibited by law from giving legal advice.

Only a lawyer can give legal advice. Many lawyers charge a modest amount to help you and most give a free consultation during which they go over your circumstances and needs and tell you what you should do and how much it will cost. There are also several "do it yourself" books that set out the details of each chapter and attempt to explain the bankruptcy process.

The decision whether to file a bankruptcy and under what chapter is an extremely important decision and should be made only with competent legal advice from an experienced bankruptcy attorney after a review of all the relevant facts of your case.

Determine the Appropriate Filing Fee and How You Will Pay It

The current fees for filing petitions under all chapters of the Bankruptcy Code are included in Appendix 2, *Required Documents and Fees (Form EDC 2-035)*. If you cannot afford to pay the full fee at the time of filing and you are an individual filing a voluntary petition, you may ask for permission to pay the fees in up to four installments over a period of one hundred twenty (120) days. To do so, you must complete the *Application to Pay Filing Fee In Installments (Form EDC 2-020)* located in SECTION V, and submit the original and one copy with your completed petition. If you are granted permission to pay the fee in installments, you can not make any additional payment or transfer any additional property to an attorney or any other person for services in connection with your case until the filing fee has been paid in full. If you fail to pay any installment when due, your case may be dismissed and you may be denied a discharge of your debts.

If you are filing a chapter 7 petition and you can not afford to pay the fee either in full or in installments at the time of filing, you may request a waiver of the filing fee by completing the *Debtor's Application for Waiver of the Chapter 7 Filing Fee or other Fee (Form B3B)* located in SECTION V, and submitting the original and one copy with your completed chapter 7 petition. A judge will decide whether you have to pay the fee. By law, the judge may waive the fee only if your income is 150 percent of the official poverty guideline applicable to your family size and you are unable to pay the fee in installments. The poverty guidelines are included in Appendix 3.

¹ Section 110(a) of the Bankruptcy Code (11 U.S.C. §110(a)) defines "bankruptcy petition preparer" as a person, other than an attorney or an employee of an attorney, who prepares for compensation a petition or other document for filing by a debtor in a U.S. bankruptcy court or a U.S. district court in connection with a bankruptcy case. See SECTION III, *Instructions For Completing Bankruptcy Forms*, item 11.

Filing fee payments can be made in person or mailed to the Bankruptcy Clerk's Office where the petition is filed. When making payments, remember that **the Clerk's Office does not accept personal checks or make change**. Cash payments must therefore equal the amount due. For your protection, do not send cash through the mail. Cashier's checks, certified checks and money orders payable to Clerk, U.S. Bankruptcy Court, and written for the amount due or on a Not to Exceed basis will be accepted.

Identify The Forms You Must File

A complete list of the documents you may need to start a bankruptcy case under chapter 7, chapter 11, chapter 12 or chapter 13 of the Bankruptcy Code and the time you have to file them is set forth in Appendix 2, *Required Documents and Fees (Form EDC 2-035)*. Together, the documents listed in Appendix 2 are commonly referred to as your "bankruptcy petition," although technically the petition is only Form B1.

The particular documents required will depend upon the chapter you are filing as well as your individual circumstances. For example, if you are not represented by an attorney and did not have any documents prepared by a bankruptcy petition preparer, you will not be required to file either of the disclosure of compensation forms (Forms B203 and B280), the *Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer (Form B19)*, or a Master Address List on diskette. Every individual debtor must file *Exhibit D, Individual Debtor's Statement of Compliance with Credit Counseling Requirement (Form B1, Exh. D)*, but if you are filing a joint petition, you and your spouse must each complete a separate Exhibit D to file with your petition.

Individual chapter 7, chapter 11, and chapter 13 debtors must all file a *Statement of Current Monthly Income*, but the information provided and complexity of the forms (*Forms B22A, B22B, and B22C*) varies greatly depending upon chapter. Likewise, only individual debtors are required to submit a completed *Statement of Social Security Number or Individual Taxpayer Identification Number (ITIN) (Form B21)*,² only individual debtors with primarily consumer debts are required to file a completed *Notice to Individual Debtor with Primarily Consumer Debts under 11 U.S.C. §342 (Form B201)*, and only individual, chapter 7 debtors whose schedules of assets and liabilities include consumer debt secured by property of the estate are required to file a *Chapter 7 Individual Debtor's Statement of Intention (Form B8)*. On the other hand, corporate debtors, regardless of chapter, must complete and file a completed *Statement Regarding Ownership of Corporate Debtor/Party (Form EDC 3-500)*

Similarly, a *List of 20 Largest Unsecured Creditors (Form B4)* is required in chapter 11 cases only, and *Exhibit A* should be completed and attached to the voluntary petition only if the debtor is filing a chapter 11 case and is required to file periodic reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities

² All individual debtors, regardless of chapter, are required to submit a *Statement of Social Security Number or Individual Taxpayer Identification Number (ITIN) (Form B21)* with their voluntary petition. In joint cases, information for both spouses must be included on the submitted form.

Exchange Act of 1934. Finally, *Exhibit C* should be completed and attached to the voluntary petition regardless of chapter only if, to the best of the debtor's knowledge, the debtor owns or has possession of property that poses or is alleged to pose a threat of imminent and identifiable harm to the public health or safety.

Some locally required forms are intended for use in specific divisions of the court only. Any form which contains the name of a specific division, or divisions, in the heading is intended for use in that division, or those divisions, only.

If you need to start your case quickly, you can file only those documents designated in Appendix 2 as the "*Minimum Documents Required For Incomplete (Skeleton) Filing.*" All additional documents must be filed within the times indicated in Appendix 2. If you file an incomplete (skeleton) case, your failure to timely file required documents or to seek an extension of time to do so may result in dismissal of your case, denial of your discharge, or the imposition of sanctions against you.