

To: Prospective clients

From: James H Cossitt

Re: **Notice required by Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”) of 2005 / § 527(c) of the Bankruptcy Code**

## **1. How to place a value on your property**

11 U.S.C. § 506(a): Fair Valuation of Collateral.

The value of your personal property that is collateral for debt (a debt where the creditor could repossess the item if you stop making payments, such as a car, furniture or computer equipment being purchased on installment) is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs.

If the item was acquired for personal, family, or household purposes, replacement value is the price a retail merchant would charge for an item of that kind, considering the age and condition of the property at the time its value is determined. So, the value of the car, the furniture, the computer or anything else that you won't own until it's paid off, is not what you paid for it, and it is not what you could sell it for at the flea-market. The value is what you would have to pay a retail store selling similar items in a similar age and condition.

Most retail stores do not sell used items. However, there are usually stores in the are selling used furniture, musical instruments, cars, and similar products. You might be able to provide a good estimate of the value of one or your items by inquiring at such a store. If you can't find a store that sells similar items in similar condition, the next best source for an objective appraisal is probably eBay or a similar online market.

## **2. How to determine current monthly income**

To arrive at your current monthly income, you do the following:

a. Total up all of your income for the last 6 months (and if your spouse is filing bankruptcy, his or her income as well). Include the contributions from any member of the household who is contributing regularly to the household expenses.

### **Income includes:**

1. Wages and salaries

2. Money earned from side jobs
3. Investment income
4. Interest income
5. Income for self-employed individuals

**Income does not include:**

1. Benefits received under the Social Security Act;
2. Payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes; and
3. Payments to victims of international terrorism (as defined in section 2331 of Title 18) or domestic terrorism (as defined in section 2331 of Title 18) on account of their status as victims of such terrorism.

b. Divide this figure by 6 to arrive at an average monthly income.

**3. How to figure your necessary living expenses**

Go through the same exercise for your expenses. Total up all expenses for the last 6 months, then divide by 6 to obtain a monthly average. Expenses include all of your reasonably necessary costs of living, such as rent or mortgage, utilities, food, transportation, etc. Do not include in your expenses payments for credit cards, repayments of personal loans, delinquent medical bills, taxes, store charge accounts, business debts, or other non-regular expenses not included as necessary living expenses.

Use the worksheet below as a guide.

Rent or home mortgage payment (include lot rented for mobile home) \$ \_\_\_\_\_

Are real estate taxes included? Yes \_\_\_\_\_ No \_\_\_\_\_

Is property insurance included? Yes \_\_\_\_\_ No \_\_\_\_\_

Utilities Electricity and heating fuel \$ \_\_\_\_\_

Water and sewer \$ \_\_\_\_\_

Telephone \$ \_\_\_\_\_

Other \$ \_\_\_\_\_

Home maintenance (repairs and upkeep) \$ \_\_\_\_\_

Food \$ \_\_\_\_\_

Clothing \$ \_\_\_\_\_

Laundry and dry cleaning \$ \_\_\_\_\_

Medical and dental expenses \$ \_\_\_\_\_

Transportation (not including car payments) \$ \_\_\_\_\_

Recreation, clubs and entertainment, newspapers, magazines, etc. \$ \_\_\_\_\_

Charitable contributions \$ \_\_\_\_\_

Insurance (not deducted from wages or included in home mortgage payments)

Homeowner's or renter's \$ \_\_\_\_\_

Life \$ \_\_\_\_\_

Health \$ \_\_\_\_\_

Auto \$ \_\_\_\_\_

Other \_\_\_\_\_ \$ \_\_\_\_\_

Taxes (not deducted from wages or included in home mortgage payments)  
(Specify) \_\_\_\_\_ \$ \_\_\_\_\_

Installment payments: (In chapter 12 and 13 cases, do not list payments to be included in the plan)

Auto \$ \_\_\_\_\_

Other \_\_\_\_\_ \$ \_\_\_\_\_

Other \_\_\_\_\_ \$ \_\_\_\_\_

Alimony, maintenance, and support paid to others \$ \_\_\_\_\_

Payments for support of additional dependents not living at your home  
\$ \_\_\_\_\_

Regular expenses from operation of business, profession,  
or farm (attach detailed statement) \$ \_\_\_\_\_

Other \_\_\_\_\_ \$ \_\_\_\_\_

TOTAL MONTHLY EXPENSES \$ \_\_\_\_\_

Divide the total by 6, which gives you your average monthly living expenses.

#### **4. How to calculate your disposable income, if any.**

If your average monthly income exceeds your reasonably necessary living expenses, subtract expenses from income; the surplus is your disposable income.

#### **5. How to list your creditors (your debts)**

For each person or entity (such as credit card, store, medical bill, IRS, mortgage, and etc.) for which you owe money, provide the following information:

1. Name and address of the creditor
2. The account number (if any)
3. The amount currently owed
4. The amount of the regular monthly payment (if any)
5. When was the debt created (if a credit card, give a range)?
6. Was the debt -
  - financing of a purchase (such as a home, car, furniture, etc.), or
  - a loan or debt for which you put up an item as collateral
7. If either part of question 6 is yes, describe the item purchased
8. What was the original retail price of the item?

9. What is it's current value?
10. Are you current with the monthly payments?
11. If the answer to 10 is no, has the claim been turned over to a collection agency or lawyer?
12. If 11 is yes, provide the name and address of the collection agency or lawyer.
13. Has the creditor sued you or obtained a judgment against you?
14. If 13 is yes, provide the name of the plaintiff, the case number, the court and court location, and the amount of the judgment.

## **6. How to determine which of your assets are exempt**

Exempt assets are assets that the bankruptcy trustee is not allowed to take away from you to pay debts. Most kinds of property owned by typical people who file bankruptcy are exempt, meaning you don't lose them if you file bankruptcy. But whether an item is exempt or not depends not only on what category of property it is, but also the value of your equity in the property (how much of the item do you own, over and above any balance owed on it). The permissible exemptions usually have dollar limits to the amount of equity you can claim as exempt. In order to identify which of your assets are exempt, you must know the exemptions allowed in your particular state, or whether your state uses the federal exemptions.