

PUBLICATION UPDATE

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Collier Consumer Bankruptcy Practice Guide

Publication 294 Release 10A

December 2007

HIGHLIGHTS

Updated Coverage of the 2005 Act and Subsequent Case Law

- This release contains case updates and revisions to twenty-five chapters.

Determining Debtors' Expenses.

Especially for debtors with higher incomes, it is important to fully explore not only what the debtor is spending but also the needs that are not being met so that Schedules I and J of Official Form 6, the debtor's statements of income and expenses, do not show a large surplus of income over expenses. An updated section 3.03[3] discusses expenses that are often overlooked or underestimated.

Dismissal.

Under section 521(i), enacted by the 2005 amendments to the Bankruptcy Code, the failure to file the documents required by section 521(a)(1), but not the other subsections of section 521, may lead to dismissal. A new subsection 23.02[2][b][iii], "Auto-

matic Dismissal for Failure to File Required Information; § 521(i)," discusses this provision.

Updated Case Law.

Cases covered in this release include: *Marrama v. Citizens Bank*, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (the right of a debtor to convert from chapter 7 to chapter 13 is not absolute, and can be denied for bad faith); *In re Pyatt*, 2007 U.S. App. LEXIS 12019 (8th Cir. 2007) (rejecting holdings of some other courts that debtor had to turn over such funds after payees on checks had already cashed them); *In re Brannon*, 476 F.3d 170 (3d Cir. 2007) (entireties co-tenant had interest in full value of property under Pennsylvania law and could exempt full value, not just one half of value); *In re Murphy*, 474 F.3d 143 (4th Cir. 2007) (refinancing that exchanged debt for cash by debtors with reduced income not a substantial change, but sale of property for amount in excess of what could be anticipated at confirmation was a substantial change).

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