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Bankruptcy 101

Chapter 7 – The Basics

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SECTION 341(a) MEETING OF CREDITORS

REQUIRED STATEMENTS/QUESTIONS¹

1. State your name for the record. Is the address on the petition your current address?
2. Please provide your picture ID and social security number card for review.
 - a. If the documents are in agreement with the § 341(a) meeting notice, a suggested statement for the record is:

"I have viewed the original state of _____ drivers license (or other type of original photo ID) and original social security card (or other original document used for proof) and they match the name and social security number on the § 341(a) meeting notice."
 - b. If the documents are not in agreement with the 341(a) meeting notice, a suggested statement for the record is:

"I have viewed the original social security card (or other original document used for proof) and the number does not match the number on the § 341(a) meeting notice. I have instructed the debtor (or debtor's counsel) to submit to the court an amended verified statement by [date], with notice of the correct number to all creditors, the United States Trustee, and the trustee; and to file with the court a redacted copy of the notice, showing only the last four digits of the social security number, and a certificate of service."
 - c. When the documents do not match the petition, the trustee shall attempt to ascertain why and shall report the matter to the United States Trustee.
 - d. If the debtor did not bring proof of identity and social security number, the trustee shall determine why.
3. Did you sign the petition, schedules, statements, and related documents and is the signature your own? Did you read the petition, schedules, statements, and related documents before you signed them?
4. Are you personally familiar with the information contained in the petition, schedules, statements and related documents? To the best of your knowledge, is the information contained in the petition, schedules, statements, and related documents true and correct? Are there any errors or omissions to bring to my attention at this time?
5. Are all of your assets identified on the schedules? Have you listed all of your creditors on the schedules?
6. Have you previously filed bankruptcy? (If so, the trustee must obtain the case number and the discharge information to determine the debtor(s) discharge eligibility.)
7. What is the address of your current employer?
8. Is the copy of the tax return you provided a true copy of the most recent tax return you filed?
9. Do you have a domestic support obligation? To whom? Please provide to me the claimant's address and telephone number, but do not state it on the record.
10. Have you read the Bankruptcy Information Sheet provided by the United States Trustee?

SAMPLE GENERAL QUESTIONS

(To be asked when deemed appropriate.)

1. Do you own or have any interest whatsoever in any real estate?

If owned: When did you purchase the property? How much did the property cost? What are the mortgages encumbering it? What do you estimate the present value of the property to be? Is that the whole value or your share? How did you arrive at that value? If renting: Have you ever owned the property in which you live and/or is its owner in any way related to you?
 2. Have you made any transfers of any property or given any property away within the last one year period (or such longer
- ¹ These statements/questions are required. The trustee shall ensure the debtor answers the substance of each of the questions on the record. The trustee may exercise discretion and judgment in varying the wording of the statements/questions, if the substance of the questions is covered.

period as applicable under state law)?

If yes: What did you transfer? To whom was it transferred? What did you receive in exchange? What did you do with the funds?

3. Does anyone hold property belonging to you?
If yes: Who holds the property and what is it? What is its value?
4. Do you have a claim against anyone or any business?
If there are large medical debts, are the medical bills from injury?
Are you the plaintiff in any lawsuit?
What is the status of each case and who is representing you?
5. Are you entitled to life insurance proceeds or an inheritance as a result of someone's death?
If yes: Please explain the details.

If you become a beneficiary of anyone's estate within six months of the date your bankruptcy petition was filed, the trustee must be advised within ten days through your counsel of the nature and extent of the property you will receive. FRBP 1007(h)

6. Does anyone owe you money?
If yes: Is the money collectible? Why haven't you collected it? Who owes the money and where are they?
7. Have you made any large payments, over \$600, to anyone in the past year?
8. Were federal income tax returns filed on a timely basis? When was the last return filed?
Do you have copies of the federal income tax returns? At the time of the filing of your petition, were you entitled to a tax refund from the federal or state government ?
If yes: Inquire as to amounts.
9. Do you have a bank account, either checking or savings?
If yes: In what banks and what were the balances as of the date you filed your petition?
10. When you filed your petition, did you have:
 - a. any cash on hand?
 - b. any U.S. Savings Bonds?
 - c. any other stocks or bonds?
 - d. any Certificates of Deposit?
 - e. a safe deposit box in your name or in anyone else's name?
11. Do you own an automobile?
If yes: What is the year, make, and value? Do you owe any money on it? Is it insured?
12. Are you the owner of any cash value life insurance policies?
If yes: State the name of the company, face amount of the policy, cash surrender value, if any, and the beneficiaries.
13. Do you have any winning lottery tickets?
14. Do you anticipate that you might realize any property, cash or otherwise, as a result of a divorce or separation proceeding?
15. Regarding any consumer debts secured by your property, have you filed the required Statement of Intention with respect to the exemption, retention, or surrender of that secured property? Please provide a copy of the statement to the trustee. Have you performed that intention?
16. Have you been engaged in any business during the last six years?
If yes: Where and when? What happened to the assets of the business?

In cases where debtors are engaged in business, the following questions should be considered:

1. Who was responsible for maintaining financial records?

2. Which of the following records were maintained?
 - a. Cash receipts journal
 - b. Cash disbursements journal
 - c. General journal
 - d. Accounts receivable ledger
 - e. Accounts payable ledger
 - f. Payroll ledger
 - g. Fixed asset ledger
 - h. Inventory ledger
 - i. General ledger
 - j. Balance sheet, income statement, and cash flow statements
3. Where are each of the foregoing records now located?
4. Who was responsible for preparing financial statements?
5. How often were financial statements prepared?
6. For what periods are financial statements available?
7. Where are such financial statements now located?
8. Was the business on a calendar year or a fiscal year?
9. Were federal income tax returns filed on a timely basis? When was the last return filed?
10. Do you have copies of the federal income tax returns? Who does have the copies?
11. What outside accountants were employed within the last three years?
12. Do you have copies of the reports of such accountants? Who does have copies?
13. What bank accounts were maintained within the last three years?
14. Where are the bank statements and canceled checks now located?
15. What insurance policies were in effect within the last year? What kind, and why?
16. From whom can copies of such insurance policies be obtained?
17. If the business is incorporated, where are the corporate minutes?
18. Is the debtor owed any outstanding accounts receivable? From whom? Are they collectible?
19. Is there any inventory, property, or equipment remaining?

SIMPLE SUGGESTIONS FROM YOUR FRIENDLY TRUSTEE

Simple things that you can do will make life easier for your Trustee, you and your bankruptcy clients. **For example:**

- Before filing the original bankruptcy petition, ensure that you have, correctly, listed the debtors' Social Security Numbers.
- Do a complete job on the bankruptcy schedules and statements of affairs.
- If you messed up, or if your client erred, and we ask at the bankruptcy hearing that you amend, don't make us wait three, four, five or more weeks for that amendment to your bankruptcy schedules. Make it promptly.
- **DISCLOSURE, DISCLOSURE, DISCLOSURE.** There cannot be enough during the bankruptcy process. Emphasize this to your clients. **Trustees' get it!!!! Sometimes there are bad clients.**
- Disclose prior bankruptcy filings, and review the pleadings in those prior filings, for inconsistencies and then have your client explain those inconsistencies (and disclose the reasons for those in the bankruptcy schedules and statements of financial affairs you are about to file!)
- Proofread: make sure the bankruptcy schedules and statements of financial affairs are correct.
- **CHECK, CHECK, CHECK.** Do a professional job.
- **Chapter 7 bankruptcy does not equal no asset.** However for equity issues – chapter 7 can be a better option – as you can usually resolve equity issues with a lump sum payment or payments over 12 months with the case trustee as opposed to being in a chapter 13 for 3-5 years and subject to the ongoing scrutiny and budget constraints of chapter 13 trustees.
- Do not tell your client to call the Trustee for advice that you should be giving. They paid you for your advice, and **WE ARE NOT THE DEBTOR'S FRIENDS!!**
Your relationship with the Case Trustee is equally important. You should provide assistance and prompt responses to inquiries.

Tax returns and bank statements MUST be in the hands of the Trustee not less than one week prior to the bankruptcy hearing, or the Case COULD be dismissed or the 341 meetings continued.

- When providing Tax return, be sure to include all schedules to those returns, attached to the returns. Returns, without the supporting schedules, are worthless.
- Provide the Trustee, by separate e-mail, with copies of Alimony/Support certification & property settlement agreements at least provide a copy of the divorce decree, and any documents setting such rights in a third party.
- Respond to the Trustees requests in writing. Find out where the Trustee wants that e-mail to be directed. Each Trustee has a system by which they operate their office.
- Do not wait until the night before the bankruptcy hearing to send information. Send information requested promptly to the Trustee, and ensure that it is the Trustee's offices at least five (5) working days BEFORE the hearing.
- If there are going to be problems with the Case, let the Trustee know immediately. If we know of problems ahead of time, it will all go easier. This applies equally as well to Creditors' Attorneys. The sooner you let us know of problems, the better we'll be prepared for the bankruptcy hearing

Schedule B

Schedule B is where some fall short. Think of it as of it as a complete inventory of your clients assets – any equitable or title interest they have in any property, contingent claim etc.,

- In this age of electronics, it is possible for almost anyone to go on-line, and get a balance in their checking or savings accounts as of their date of bankruptcy. It is very good form for you, at the time your clients come to sign their bankruptcy schedules and statements of financial affairs, to have them go on-line at your office, and update #2 of their Schedule B, with a balance as of that moment. Also **Paypal accounts are bank accounts and should be listed along with pre-paid credit cards.**
1. It is amazing that, in Ohio, whether your clients live in a 30-year old single-wide manufactured house on a rented lot, or a 5,600 square foot mansion in Bath, Ohio, they always seem to have exactly \$1,000.00 worth of household goods per person. Know your client – if they live in a house worth more then \$200,000 – they likely have stuff – and stuff with value.
 2. Of course, those clients that forget they own much of value have other problems and that could lead to problems for you.
 3. An inventory of household goods, attached as an exhibit to the bankruptcy schedules and statement of financial affairs, is very helpful: it also ensures you have a basis, in

Consumer cases, to justify your certification (by signing) that the bankruptcy schedules and statements of financial affairs are correct.

4. Remember also that, by definition, when they walked out of Levin Furniture with the \$15,000 entertainment center, it lost about 75% of its value. Please be realistic in your guiding your clients towards valuations of these items of personal property.
 - Books, pictures, and art objects, and collections as far as the Official Bankruptcy Forms are concerned are not household goods. List them separately.
1. Everyone has a book, a picture, computers, CD's, or audio and/or video equipment. Even if it is, merely an I-Pod, I-Pad or tablet they have that; and they all have at least one book, even if it is Cat in the Hat.
1. Be sure to have them include clothing in their list of assets in Schedule B. I love going to Cleveland and sitting in on hearings – one trustee told the Debtors “ he thought they would show up in “barrels” since they did not list any clothing on Schedule “B”.
 - Everyone, but for very few exemptions, has some jewelry.
1. If they claim not, ask your client (while interviewing her) what time it is. Look at her watch, and ask her is that not jewelry?
2. List the jewelry, even if it is more than simple costume jewelry.
3. Ask your client, at the interview stage, if they have a rider on their household insurance for their jewelry: if they do, it is worth something. Get a copy of it, and give the copy to the Trustee.
4. If your client has jewelry of substantial value a Rolex, a Vacheron Constantin or a Patek Phillippe watch, for example have it independently appraised prior to filing the Original Petition.
 - Sporting goods: Please list general categories of these, unless there is anything of special value.
1. Most sports paraphernalia may not have value –they should still be listed (even Cleveland Browns stuff). But, if you list them, then both you and the Trustee have some idea of the worth.
 - Firearms generally have value \$100 GENERALLY is a misstatement.
1. Please list the name of the manufacturer of the firearm, its caliber or gauge, its model name and/or number, the grade, and its condition.
2. Old does not equate lack of worth: a 1900-manufacture Smith & Wesson M&P can be worth from \$300 to \$3,500. A 108 year-old Lugar just sold for \$875,000. Pre-1964 manufactured Winchester rifles are worth from 10 to 15% more than currently-manufactured rifles of the same nomenclature.

- List insurance policies, even if they do not have cash surrender value. Even if they do have cash surrender value, they are in all likelihood exempt, or the wild card should cover them; their exclusion is more than a simple error.
- Educational IRAs for the Debtors' children should be listed separately, for each IRA. Your client will be asked the amount of, and dates of, contributions to those. It will save your client time, effort and trouble if you have that information prior to the Case filing, and e-mail it to the Case trustee immediately after the filing.
- You will be asked for the same information for IRAs, SEP IRAs, and self-funded 401(k)s. Please list the number of shares/bonds/instruments for any publically-registered instruments, and (if practical) the stock symbol. It would be nice to have the value for each of these as of the date of filing, especially if your client has substantial numbers of these.
- For partnerships, joint ventures, incorporated or unincorporated businesses in which your client holds an interest, please provide the Trustee, as soon as practical after the Original Petition has been filed, with the name(s) and address(es) of the co-owners. Your client will be asked for the formation documents, for the tax returns for at least three fiscal years prior to the Original Petition date, and for the financial statements for those entities. If you have them in your possession as of the filing date, you can, upon the request, provide these copies electronically to the Trustee.
- List separately all accounts receivable owed the Debtor, and state what supports the debt (*e.g.*, moneys had and received, conversion, note receivable, judgment, *etc.*). State the name of the account debtor, and provide the Trustee with the address, and back-up, for each account receivable.
- If the debtor has an interest in a lawsuit, please provide the name of the attorney representing the Debtor, and that attorney's address and telephone number, a copy of the pleadings filed to date, and a summary of the current status of that litigation.
- Remember: Failure to list litigation is grounds (i) grounds for an opposing party to have the litigation dismissed, with prejudice, (ii) grounds for a 727 revocation of discharge, (iii) a criminal act, (iv) a loss of any exemption that the Debtor might have had in that litigation.
- If the debtor has an interest in a probate estate, provide (at the minimum) the name of the deceased, the name and address of the personal representative for that estate, the County (and State, if applicable) in which the probate estate is filed, a copy of the Inventory filed with probate court, a copy of the will, any trusts that were created under the will, any deeds of distribution already made in the estate, and a statement as to the current status of the estate.

- Provide any and all information you possibly can on any unique assets that are listed and be sure to ask your clients about these, so you can list them. Explain in your client's Schedules and Statements of Financial Affairs the methodology used to value the asset.
- Most used personal property now has a web-page associated with its value. Some Debtor Counsel now attach a copy of the current web page utilized to value the assets -that is a very good practice. Check E-bay, check craigslist.
- Be Specific and Complete in Asset Descriptions. A 1959 Chevrolet can mean anything from a 1959 Cherry Corvette, or a 1959 Buick, or a 1959 C-1500 pick-up. Each is worth something; that something varies drastically. Use the NADA Book, or the Kelley Blue Book, for vehicles, boats, motorcycles, and mobile homes for Chapter 7 bankruptcy cases, use the **private party values**. Give mileage, and any special issues that either increase or decrease the value of the vehicle. A useful webpage for valuing automobiles is www.kbb.com. Also have your client take pictures to provide to the case the trustee.

Schedule C

Schedule C should mirror Schedules A & B: and Schedules A&B should tie to Schedule C. Common errors in Schedule C include:

- If your clients have lived in Ohio for less than 730 days, then they are not entitled to claim Ohio exemptions. Be sure to ask your clients about their residences for the preceding two years, and be sure to look at your client's Statement of Affairs: it asks the same question. You will need to look at §523(b)(3)(A), and utilize the applicable Exemptions.
- A good webpage for your starting your independent determination of the proper exemptions for your client (can the client use state as opposed to federal bankruptcy exemptions) is www.exemptionexpress.com.
- Specify the exemption being claimed for each item claimed as being exempt; and specify the Dollar amount of exemption utilized for that particular piece of property.
- Try not use "100" exempt – for exemptions that require a specific dollar amount. This will always likely raise an objection by the case trustee.

Statement of Financial Affairs

Yes – these statements need filled out and should be accurately prepared and reviewed.

Statements of Financial Affairs should list all transfers of property. Be sure that your clients provide full and complete information. If there is a transfer to a family member, have your clients provide full information, giving the date of the transfer, the description of the property, and the value of the property transferred, the method of the transfer, and the disposition of the proceeds of the transfer. Debtors should turn over to the Trustee the original or a clear copy of canceled check at the First Meeting, and the original documents (if the Debtors have them) of transfer.

Payments to creditors either to general unsecured –over 600- should be listed along with payments to insiders within the past year. Garnishments and lawsuits within the past year should be accurately listed.