

Keeping Your Chapter 7 Trustee Happy

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- I. After Filing But Prior to the §341 Hearing.
 - A. What are you **required** to provide and **when** are you to provide it.
 1. Pursuant to Local Rule 1007.4, you are to provide the following documents to the trustee **at least 7 days prior** to the first scheduled meeting of creditors:
 - a. Titles to all vehicles;
 - b. Recorded deeds and land contracts for all real estate;
 - c. Recorded mortgages for all real estate;
 - d. Most recent real estate tax bill for all real estate;
 - e. The preceding two years signed state and federal income tax returns (or transcripts) with all schedules;
 - Note that independent of this requirement, §521(e)(2)(A) requires that the debtor provide the trustee with a copy of the most recently filed return. So if the debtor has not filed returns the last couple of years, provide a copy of the last return filed.
 - f. Pay advices or other evidence of payment received within 60 days prior to the petition date from any employer of the debtor;
 - §521(a)(1)(B)(iv) requires that these be filed with the Clerk. This provision is supplanted by the local rules for Eastern District practitioners.
 - g. Name, address **and phone number** of any DSO claimant;
 - h. **Any other documents requested by the trustee.**

Comment: Please provide **all** required documents and please do it **timely**. Making a trustee chase you for documents is guaranteed to annoy him/her, and even more so if it becomes your normal method of operation.

- B. Additional documents that you **should** provide. The items listed in the local rules are the bare minimum that you are required to provide and they cover what the trustees will want in most cases. You know your case, however, and you know what types of documents/information would be helpful to the trustee. So, instead of waiting for the trustee to make the request, forward those items that you believe the trustee will want. For example:
 1. Any document that you are relying upon to show value.
 - a. Real estate appraisal or market analysis;

- b. Personal property appraisals or valuations;
- c. Internet sources for such things as motor vehicles or time shares;
- d. E-Bay or other internet searches;
- e. Buyer's guides;
- f. Letters from other attorneys (such as personal injury lawyers, relative to the value of personal injury claims, or trust lawyers) explaining how you have characterized or valued assets in the schedules.

Comment: Do not attempt to "hide" the existence of higher valuations. Instead, disclose them and provide documentation and/or explanation as to why the higher valuation is not accurate.

- 2. Any document that will impact the appropriateness of claimed exemptions or the extent to which the asset comes into the estate. For example:
 - a. The age of a life insurance policy or annuity if it needs to be at least 2 years old for state exemption purposes;
 - b. Funding of educational savings accounts within the two years preceding the filing. §541(b)(5), (6);
 - c. Trust documents. Highlight any spendthrift provision or language that you believe impacts whether or not the debtor's interest comes into the estate.
 - 3. Business interests. If your client has an ownership interest in a business, you should automatically provide the trustee with copies of:
 - a. The most recent income tax return (unless its income/expenses are reported on a Schedule C and attached to the debtor's personal return);
 - b. Year-to-date financial statements, including balance sheet and profit and loss statement;
 - c. "Real time" balance sheet. Essentially, this means a raw listing of assets with corresponding liquidation values, and a listing of liabilities, lumped into appropriate categories such as long term loans, landlord, trade creditors, officer loans and such. The trustee essentially wants to know whether or not the debts exceed the legitimate value of the assets;
 - d. If the business is no longer operating, provide an explanation as to the disposition of the assets. Also be prepared to provide documentation if requested to do so by the trustee;
 - e. If the schedules reflect that the business has been dissolved (as opposed to simply not operating), provide documentation.
 - 4. Marital Settlement Agreements.
- C. Besides providing documents, is there any reason to contact the trustee prior to the §341 hearing.
- 1. Requests for adjournments. Trustees have some latitude in granting adjournments.

- a. If you have a court conflict that you discover immediately upon filing the case, the trustee is likely to grant an adjournment where you contact the trustee well ahead of time and where you agree to re-notice the hearing to all creditors and parties in interest;
 - b. Trustee will be less inclined to adjourn the case if it's for a reason that should have been more predictable, such as where the debtor has a scheduled vacation;
 - c. Requests for adjournments based upon illness or hospitalization will generally be granted if you can document the medical condition and it is reasonable to assume that the debtor will be available for any adjourned hearing.
2. If you will be seeking to have your client appear by telephone, such as where the debtor is incarcerated;
 3. Your client will need an interpreter. While not truly necessary, it would be polite to give the trustee advance notice of the need for an interpreter;
 4. Your case has some level of complexity. The trustee might appreciate some background and, as debtor's counsel, you might appreciate an opportunity to explain your case to the trustee informally.
 5. If you have an assets case, there is nothing wrong with informing the trustee. It permits the trustee to focus on what is important about the case.

II. At the §341 Hearing.

A. Counsel should **BE PREPARED!**

1. Make sure that the trustee has already been provided with all required documents/information as well as anything additional that the trustee may have requested.
 - a. If you find that you failed to provide something, print it out and bring it to the hearing. Yes, the trustee will be annoyed that you did not provide it earlier, but not nearly as annoyed as if the trustee needs to adjourn the hearing just for the production of those documents.
2. Review your file and be familiar with the facts of the case and the information as it is reported in the schedules.
 - a. Know the basis for the various numbers that appear in the schedules; hopefully, you have something more than the debtor's self-serving comments.
 - b. If you are not the attorney who prepared the schedules, take extra pains to ensure that you are familiar with them.
3. Be sure that you have original schedules showing original signatures, or at least can represent that you have them in your possession.
 - a. If you intend to have substitute counsel at the hearing, provide them either with original schedules with original signatures, or scanned copies.

- B. Make sure the debtors are likewise prepared.
 - 1. Provide them, in advance, with a set of their bankruptcy schedules and instruct them to review them thoroughly prior to the hearing.
 - a. They should be reminded that these are THEIR schedules and that THEY signed them under penalty of perjury.
 - 2. Provide them with a list of the standard questions that the trustee will ask them and review how they intend to respond.
 - a. Know why the trustee is asking the questions that are being asked.
 - 3. Ensure debtors have original proof of their identity and social security number.
 - a. Photocopies are not acceptable;
 - b. Proof of identification and social security number should be government issued;
 - c. Tax returns are not evidence of the social security number.
- C. Be on time and ready to proceed when your case is called.
 - 1. Give debtors standard general instructions:
 - a. Answers must be audible, since we are recording;
 - b. If it is a joint filing, both parties must answer all the questions;
 - c. Keep answers concise and to the point.
- D. Have the debtor read the information sheet prior to the hearing.
- E. If the debtor's testimony is something other than what you expected, try not to scoff out loud, demean the debtor or otherwise show your exasperation. Simply let the trustee ask their questions and deal with your client's answers/inconsistencies privately after the hearing.
- F. Maintain professionalism by conducting yourselves as attorneys. For most debtors, this hearing is their only contact with the bankruptcy judicial system and we should all do our part to uphold the integrity of that system.
 - 1. Debtors and their counsel have a duty to cooperate with the trustee, so try to refrain from challenging the trustee on reasonable requests for documents/amendments;
 - 2. Attorneys and trustees alike should not engage in personal attacks;
 - 3. Dress as if you are going to a "real" courtroom.

Comment: Debtors, their counsel and the trustee generally all want the same thing – expected answers to anticipated questions. Nobody wants the hearing to be continued. Do your part to ensure an uneventful hearing.

- III. After the §341 Hearing.
 - A. Follow up **promptly** with any unresolved issues.

1. There is no good reason why the trustee should **still** be waiting for documents/information that was requested prior to the §341 hearing. If so, take care of it promptly.
2. If needed amendments came to light as a result of what took place at the §341 hearing, take care of that promptly.
 - a. Remember that all schedules, including amendments, require the debtor's signed declaration attesting to their truthfulness.
 - b. When filing amendments, they should be thought of as replacing the originally filed schedules. That is, they should reflect all the information that would otherwise appear.
 - Exception would be if you are just adding a creditor; there would be no reason to file an entirely "new" Schedule F for example.
 - Indicate on the amendment or in a communication to the trustee what is different about the amended schedule if it is not readily apparent.