

## CHAPTER 7 TRUSTEE'S INSTRUCTIONS TO CHAPTER 7 DEBTORS

Subject: Conduct of 341 Meetings

Welcome to the United States Bankruptcy Court § 341 Creditors' Meetings. For most of you, this will be your only direct contact with the Bankruptcy Court. This meeting is an opportunity for the bankruptcy trustee and creditors, if any, to examine you briefly under oath concerning your petition, schedules, and statement of affairs. The bankruptcy trustee will conduct the examination of the Debtor(s).

### General Instructions

1. You will note that there is no bankruptcy judge presiding over today's hearings. However, these are official proceedings of the United States Bankruptcy Court and you are to conduct yourself as if there were a bankruptcy judge in the courtroom. This means conducting conversations out of the courtroom in one of the adjoining conference rooms; turning off cell phones; and otherwise being respectful of the hearings being conducted today.
2. Debtors are required to keep the court, the trustee, and their attorney informed of their current mailing address at all times until their case is closed. A failure to keep the court informed of current mailing addresses could result in a dismissal of the case or the denial of a discharge.
3. **Debtors should not transfer, release or dispose of any property without an order from the court or permission of the trustee.** All of each debtor's property is now a part of the bankruptcy estate which is to be administered by the trustee.
4. If no objections are filed to the claim for exemptions within 30 days after the § 341 meeting or within 30 days of any amendment thereto, the exemptions will be allowed as claimed. Property subject to an allowed exemption may sometimes be sold by the Trustee – **even if you have an allowed exemption in a certain item, you should consult with your attorney before transferring it or disposing of it.**
5. If any papers are served on you which you do not understand or about which you need advice or instructions, consult with your attorney. The trustee is appointed to administer the estate and is not in a position to offer you advice or counsel.
6. You will be expected to assist the trustee in locating and identifying any property to be liquidated by the trustee. This is a continuing obligation. **Simply because you have completed your examination at the First Creditor's Meeting and may have received your discharge does not relieve you of a continuing obligation to cooperate with the bankruptcy trustee.** You must cooperate until all assets, if any, are liquidated and the case is closed. Failure to continually cooperate with the bankruptcy trustee could result in a denial or later revocation of your discharge.
7. If anyone should die within 180 days of the date you filed your petition in bankruptcy and you receive or become entitled to receive anything from that person's estate or life insurance policy, you must notify the trustee immediately, even if your case has been closed.
8. If you should enter into any sort of property settlement with your spouse, whether or not a divorce is involved, within 180 days of that date you filled your petition, you must notify the trustee immediately, even if your case has been closed.
9. Included in your examination will be verification by the bankruptcy trustee of your identification. Two forms of identification are required, picture identification and verification of social security number. Picture identification can be provided by the following:

Driver's License	US Passport
Government ID	Military ID
State Picture ID	Resident Alien Card
Student ID	
- Social Security verification can be proved by the following:

Social Security Card	Pay Stub
W-2 Form	IRS Service Form 1099
Medical Insurance Card (if complete social security number)	
Social Security Administration Report (with complete social security number)	
10. If the Trustee requests, you are also required to provide to the bankruptcy trustee paycheck stubs or other evidence of income for the previous 6 months and evidence that you have filed all prior tax returns. The trustee may also want to see copies of your last 2 years federal and state income tax returns.
11. If you are paying domestic support obligations (DSO) such as alimony or child support pursuant to a valid separation agreement or court decree, whether direct or through a child support enforcement agency, the trustee will need for you to provide the name and address of the child support enforcement agency; the name and address of the actual recipient of the domestic support obligation; and the name and address of the debtor's last place of employment.
12. The Federal Bankruptcy Law requires that you disclose all transfers of property within 2 years of the filing of the bankruptcy petition. However, the bankruptcy trustee, located in the State of North Carolina, can also implement state law. Accordingly, the bankruptcy trustee may ask about transfers of property within 4 years of the date you filed bankruptcy. Therefore, please give some thought to transfers of property within 4 years prior to bankruptcy while you are waiting for your case to be called so that you can accurately answer the question, if asked by the bankruptcy trustee, during your examination.
13. If you are entitled to any state or federal income tax refunds, these must be disclosed to the bankruptcy trustee at the time of your examination.

14. Creditors have 90 days from the date first set for the § 341 meeting of creditors in each case within which to file a claim. HOWEVER, it is not necessary to file a proof of claim in a case in which the notice to creditors states the debtor's schedules indicate no assets exist from which to receive a dividend. If assets are eventually recovered which would generate funds for creditors, the clerk will notify creditors in writing of that fact and send a proof of claim form for completion and filing. In the event a creditor needs a proof of claim, such claims re available from the clerk's office or web site ([www.nceb.uscourts.gov](http://www.nceb.uscourts.gov)).

### **Interim Statement of Information Required by 11 U.S.C. § 341**

#### **Introduction**

Pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, the trustee has prepared this portion of the information sheet to help you understand your options, rights and the possible consequences of filing for relief under Chapter 7 of the Bankruptcy Code:

#### **What is a Discharge?**

The filing of a Chapter 7 petition is designed to result in a discharge of most of the debts you listed on your bankruptcy schedules. A discharge is a court order that says you do not have to repay your debts, but there are a number of exceptions:

Debts that cannot be discharged in a Chapter 7 include, for example, most tax obligations; domestic support obligations such as child support and alimony; student loans; court ordered fines and restitution; and certain debts that may have been obtained through fraud or deception.

Creditors cannot collect on discharged debts but can continue to pursue you on debts excluded from bankruptcy as set forth above. Debtors can only receive a discharge under Chapter 7 every 8 years. (A Chapter 7 debtor may be eligible to file a later Chapter 13 and receive a Chapter 13 discharge 4 years after a Chapter 7 discharge).

#### **What are the Potential Effects of a Discharge?**

The fact that you filed bankruptcy can appear on your credit reports for as long as 10 years. Thus, filing a bankruptcy petition may affect your ability to obtain credit in the future. Just because bankruptcy is on your credit report does not mean that you cannot obtain credit. The ability to obtain credit after bankruptcy will depend upon your income; equity in property; stability of job; and regularity of payment on secured debt such as homes and cars after filing of a bankruptcy petition. Most debtors find that they are able to obtain home and car loans as soon as one to two years after a Chapter 7 discharge. Again, the ability to obtain future credit and the interest rates you will have to pay, will depend upon your individual circumstances. Often, people who file a Chapter 7 have less than pristine credit with mortgage delinquencies; judgments; foreclosures; tax lien; or other negative data on their credit reports. These negative and uncertain circumstances are, in most cases, an absolute bar to obtaining future credit. In many ways, the filing of a bankruptcy case will enhance the ability to obtain future credit in that the appearance of a bankruptcy discharge on their credit report may render the previous credit information irrelevant. Also, the bankruptcy discharge will often add certainty to your credit and give creditors a level of comfort in extending new credit to you as they no longer to worry about earlier bad credit events.

#### **Surrender, Redemption or Reaffirmation of Debt?**

Generally, the bankruptcy law requires that you either surrender, reaffirm, or redeem personal property that is secured to a particular creditor. "Redemption" of property is a method of retaining property for its fair market value rather than having to pay full price. For example, you may have purchased a television set from a merchant and you still owe \$3,000.00 on the television. However, the television today is only worth \$500.00. Your lawyer may be able to file a Motion to Redeem property pursuant to your statement of intention requesting permission to allow you to redeem the television for a cash payment of \$500.00 and a discharge of the balance of the debt. Please note that redemption requires "cash on the barrel head".

Surrender of property means exactly what it says. As part of your bankruptcy proceeding, you can agree to surrender a house, car, computer, etc. as part of your bankruptcy proceeding and owe nothing on the debt. You will not have the property after the bankruptcy, but you will also not have to worry about being sued for any deficiency after foreclosure or sale of the property.

The Bankruptcy Abuse, Prevention and Consumer Act of 2005 now requires that you "reaffirm" a debt on personal property such as an automobile if you desire to keep the car after bankruptcy, whether or not you are current in your payment. A reaffirmation agreement must be signed and approved by the bankruptcy court. The agreement has the legal effect of totally excluding the debt from the bankruptcy and totally re-obligating you on the entire debt, just as if a bankruptcy had not been filed as t the particular creditor. For example, if you owe \$20,000.00 on an automobile with a value of \$16,000.00 and wish to keep the automobile, the creditor can require that you sign a reaffirmation agreement and continue to make the regular automobile payment. **Should you later default in payments on the automobile, the lender would be able to repossess the automobile, sell it at an auto auction for a fraction of its value, and still sue you for any deficiency balance that remains unpaid, even though you filed a bankruptcy proceeding and obtained a discharge as to your other debts.**

Reaffirmation agreements must not impose an undue burden on you or your dependents and must be in your best interest. If your budget filed with the court shows that you do not have the ability to repay a reaffirmation agreement, the court may schedule a hearing on the reaffirmation agreement in order that the judge can determine that the reaffirmation agreement will not be burdensome and that you can, in fact, afford to make the payments.

You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (cancelled).

### **Other Bankruptcy Options**

Under the Bankruptcy Abuse, Prevention and Consumer Protection Act of 2005, you no longer have the automatic choice which chapter of the Bankruptcy Code will best suit your needs. If you chose to file Chapter 7, you must first meet the "means test" to show that you do not make too much money to qualify for Chapter 7. Additionally, your case may be subject to review for "substantial abuse: to be sure that you are not a debtor trying to file Chapter 7 who could afford to repay creditors a dividend under Chapter 13.

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Under Chapter 7, a trustee is appointed to collect and "liquidate" (sell) all non-exempt property that you own. In most consumer cases, all property is either mortgaged with little or no equity or it is exempt under the appropriate state or federal exemption law.

Chapter 13 permits individuals to repay creditors out of their future income through a plan approved by the Bankruptcy Court. The debtors pay the Chapter 13 trustee the amounts that are set forth in the plan. Debtors receive a discharge after they have completed their Chapter 13 repayment plans that usually last from 3 to 5 years, depending upon the income of the debtor. Chapter 13 is designed for individuals with regular income whose debt does not exceed \$1,000,000 (\$250,000.00 in unsecured debts and \$750,000.00 in secured debts).

Although individuals can file a Chapter 11, Chapter 11 is typically used for business reorganizations. Much like a Chapter 13, the Chapter 11 debtor is given an opportunity to file a disclosure statement and formulate a plan of reorganization which is submitted to creditors for their vote and approval. The debtor usually remains in control of assets and the reorganization while a plan is being negotiated. In some cases, the court can appoint a trustee to take over the business. Chapter 11 proceedings are complex and typically quite expensive, compared with Chapter 7 and Chapter 13.

Finally, Chapter 12 offers bankruptcy relief for those who qualify as family farmers. Family farmers must propose to repay their creditors over a 3 to 5-year period and it must be confirmed by the court. Payments under Chapter 12 are typically made through a Chapter 12 or Chapter 13 trustee who also monitors the debtor's farming operations during the pendency of the plan.

The above minimum information is provided in order to comply with federal law and is not intended a legal advice. IF YOU NEED FURTHER INFORMATION, INCLUDING HOW THE BANKRUPTCY LAWS RELATE TO YOUR SPECIFIC CASE, PLEASE CONTACT YOUR LAWYER OR ANOTHER LAWYER OF YOUR CHOICE. NEITHER THE BANKRUPTCY TRUSTEE NOR HIS OFFICE CAN GIVE YOU LEGAL ADVICE.