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Collier Consumer Bankruptcy Practice Guide

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CHAPTER 1 Overview of Chapter 7 Bankruptcy

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P 1.03 Initial Steps in Administration of a Chapter 7 Case

The debtor is required to file schedules and a statement of financial affairs either with the petition or within a short time after the case is commenced, giving all parties necessary information about the debtor's circumstances.ⁿ¹ Additionally, the 2005 amendments to the Bankruptcy Code,ⁿ² require debtors, in most cases, to file a statement of current monthly income with pertinent means test calculations,ⁿ³ a certificate regarding notice under section 342(b),ⁿ⁴ records of payment from employment,ⁿ⁵ a statement of monthly net income,ⁿ⁶ a statement of anticipated increase in income or expenditures,ⁿ⁷ and a certificate from the nonprofit budget and credit counseling agency that provided a briefing to the debtor describing the services the debtor received and a copy of a debt management plan, if such a plan was developed.ⁿ⁸ An individual debtor is permitted to claim certain property of the estate as exempt pursuant to section 522(b).ⁿ⁹ An individual debtor with secured consumer debts or personal property leases must also file a statement of intention with respect to such leases and the property securing those debts,ⁿ¹⁰ and the debtor's attorney must in every case file a disclosure of attorney's fees paid or promised.ⁿ¹¹

MORE INFORMATION

Chapter 6 *infra* provides a detailed step-by-step description of how to prepare forms used in a typical bankruptcy case. Chapter 13 *infra* outlines how to claim and object to exemptions. Chapter 5 *infra* examines attorney's fees.

Within 20 days after the petition is filed, the court sends notice of the case to all creditors, along with notice of the meeting of creditors under section 341(a), and notice of the deadline for objections to the debtor's discharge, objections to the exemptions claimed by the debtor, or complaints to determine the dischargeability of certain types of debts.^{n11a} If it appears that there are significant assets that will be distributed to creditors, the notice also informs creditors of the deadline for filing proofs of claim. Otherwise, it states that creditors should not file proofs of claim unless they receive a later notice to do so. The notice sent to creditors contains the debtor's full social security number. However, in order to somewhat protect the debtor's private information, the copy of the notice filed with the court does not.ⁿ¹²

FORMS

For sample notices of commencement of case *see* Official Form 9, *reprinted in Collier Consumer Bankruptcy Forms*, § CS10.32 (Matthew Bender).

The creditors' meeting under section 341(a) normally takes place within 40 to 60 days after the petition is filed and is

conducted by the interim trustee or the United States trustee. Section 521(e), added in 2005,ⁿ¹³ provides that at least 7 days prior to the meeting of creditors the debtor must provide the trustee, and any creditor so requesting, with a copy of the most recent year's federal tax return (or a transcript of the return). The debtor must ordinarily bring to the creditors' meeting evidence of current income, statements from deposit accounts covering the petition date, and evidence of the debtor's identity and social security number. At the meeting, creditors and the trustee have the opportunity to examine the debtor. In addition, increasingly, personnel from the United States trustees office have been appearing at meetings of creditors to propound questions in addition to those of the case trustee. The trustee is also required to assure that the debtor is aware of the consequences of a bankruptcy discharge, the effect of reaffirming a debt and certain other information. Creditors also may elect a trustee.ⁿ¹⁴ If the creditors do not elect a trustee, the interim trustee becomes the permanent trustee.ⁿ¹⁵ If there are assets in the estate to be liquidated or legal proceedings that are appropriate, the trustee may employ professionals if necessary to perform the trustee's duties, such as attorneys or auctioneers.ⁿ¹⁶

MORE INFORMATION

The meeting of creditors is discussed further in chapter 16 *infra* .

FOOTNOTES:

(n1)Footnote 1. *11 U.S.C. 521(a)(1)*, formerly § 521(1), as redesignated and amended by Pub. L. No. 109-8 (2005), effective with respect to cases filed on or after October 17, 2005. *Fed. R. Bankr. P. 1007*.

(n2)Footnote 2. Pub. L. No. 109-8 (2005), effective with respect to cases filed on or after October 17, 2005.

(n3)Footnote 3. Official Form 22A. An individual debtor whose debts are primarily business debts, or a disabled veteran debtor as described in *11 U.S.C. § 707(b)(2)(D)*, must file Official Form 22A, but need only check the box indicating such status and sign the form because the means test does not apply to such debtors.

(n4)Footnote 4. *11 U.S.C. 521(a)(1)(B)(iii)*. This certification is included in Official Form 1, the voluntary petition.

(n5)Footnote 5. *11 U.S.C. 521(a)(1)(B)(iv)*.

(n6)Footnote 6. *11 U.S.C. 521(a)(1)(B)(v)*. This statement is included in Official Form 6, Schedule J.

(n7)Footnote 7. *11 U.S.C. 521(a)(1)(B)(vi)*. Official Form 6, Schedules I and J provide spaces for debtors to state this information.

(n8)Footnote 8. *11 U.S.C. 521(b)*. The certificate and debt management plan, if any, are to be attached to Exhibit D of the voluntary petition unless the debtor states on that exhibit a valid reason why it cannot be attached.

(n9)Footnote 9. *11 U.S.C. § 522(b)*.

(n10)Footnote 10. *11 U.S.C. 521(a)(2)*, formerly § 521(2), as redesignated and amended by Pub. L. No. 109-8 (2005), effective with respect to cases filed on or after October 17, 2005.

(n11)Footnote 11. *Fed. R. Bankr. P. 2016(b)*.

(n12)Footnote 11a. Like all notices, this notice is emailed, rather than mailed, to attorneys who are enrolled in the courts electronic filing system.

(n13)Footnote 12. *Fed. R. Bankr. P. 2002(a)(1)*. See 2003 Advisory Committee Note to *Bankruptcy Rule 2002*.

(n14)Footnote 13. Pub. L. No. 109-8 (2005), effective with respect to cases filed on or after October 17, 2005.

(n15)Footnote 14. *11 U.S.C. § 702*.

(n16)Footnote 15. *11 U.S.C. § 703(d)*.

(n17)Footnote 16. *11 U.S.C. § 327*.