



U. S. Department of Justice

Office of the United States Trustee

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WORKSHOP ON HOW TO PREPARE BANKRUPTCY SCHEDULES

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Lansing, Michigan

**“BEST PRACTICES” FOR THE COMPLETION OF
BANKRUPTCY PETITIONS, SCHEDULES, AND
STATEMENTS OF FINANCIAL AFFAIRS**

Voluntary Petitions (Official Form No. 1)

1. Use the **correct spelling** of names, including “Jr.”, “Sr.”, “II”, etc..
2. Include **all other names** used by the debtor *within the last six years*, including nick, maiden and business or trade names.
3. Include **correct social security numbers**(*last digit*).
4. Include the **complete street address and county**.
5. Regarding the **venue** choices, *verify* that the facts support the statement.
6. Check PACER to determine whether the debtor has filed a **prior bankruptcy proceeding** and include complete information. If the debtor has previously been granted a discharge, know the date *before* filing the subsequent case to ensure that the debtor is eligible to receive another discharge.
7. Where a debtor is married but separated, check PACER to determine whether the other spouse has a **pending bankruptcy case** and include complete information.
8. **Date every signature**. All information must be current when the case is filed.
9. **Exhibit B** should only be signed by the attorney *who actually advised* the debtor about its rights under the various chapters.
10. **Exhibit C** *must* be filed if the debtor owns or possesses property that poses a threat of imminent and identifiable harm to public health or safety.

Application to Pay Filing Fee in Installments (Official Form 3)

- This application requires the debtor to certify *inter alia* that it has not paid any money to its attorney for legal services in connection with the debtor’s case and that the debtor will not make any such payment until the filing fee has first been paid in full.

List of Creditors Holding 20 Largest Unsecured Claims (Official Form 4)

1. While this list need only be prepared when filing a Chapter 9 or 11 case, the list *must* be filed **simultaneously with the voluntary petition**.
2. The list should *not* include 1) persons who meet the definition of an “**insider**” under 11 U.S.C, Section 101; or 2) **secured creditors** unless the value of their collateral creates an unsecured deficiency that places that creditor among the 20 largest unsecured claims. Claims of **governmental units**, however, must be listed if they are among the creditors holding the 20 largest claims.

Schedules (Official Form 6)

Summary of Schedules

- Ensure that the totals listed on this form are internally consistent with the dollar and page number totals actually contained in the schedules.

Schedule A

1. A **physical description** and complete street address of the property, together with a **legal description** must be included.
2. List a reasonable *market* value—if in doubt, obtain an appraisal before filing the case.
3. The “**amount of the secured claim**” should include all mortgages and other non-avoidable liens on the real property, including tax liens.

Schedule B

1. Regarding **B-1**, virtually every debtor has *some* cash on hand.
2. **B-2** includes every kind of bank, credit union, co-op, and brokerage account.
3. **B-3** includes any kind of security deposit, including those for video rental, reserved parking, and equipment rental.

4. Regarding **B-4**, "household goods and furnishings" must be listed and valued separately, particularly in cases where the total dollar value exceeds the total exemption claimed. The value of "household goods and furnishings" should be realistic. "Current market value" does not mean replacement value. On the other hand, while these types of consumer products typically depreciate rapidly, they are usually not worthless.
5. Regarding **B-5**, virtually every debtor owns *something* that falls in this category. These should at least be identified by category. If anything has substantial value, be more specific.
6. Regarding **B-6**, *every* debtor has some wearing apparel, even if it is literally the clothes "on their back" worn to the Section 341 Meeting.
7. Regarding **B-7**, almost every debtor has a watch, an earring, or a necklace. The question does not ask only for valuable jewelry, and the debtor should not exercise its discretion here.
8. Regarding **B-8**, most debtors own a camera or sports equipment and have a hobby (if a physical inventory does not reveal these items, ask the debtor what it purchased with its credit cards).
9. Regarding **B-9**, all life insurance policies must be listed, even if the debtor claims an exemption in it or is simply designated as a beneficiary.
10. **B-10 and 11** require specific itemization and valuation, even if the property is claimed exempt or might not be part of the estate. Values should not be scheduled as "unknown" because a debtor receives a report annually.
11. Regarding **B-12**, if the debtor is engaged in business, itemize those interests here together with all other stock owned by the debtor. If the debtor owns a corporate business or has a membership interest in an LLC, the stock or membership should be included here together with a basis for determining its value.
12. **B-13** is similar to B-12 except that it applies to partnership interests, including LLPs. Be sure to include and itemize partnership arrangements even if the debtor has no formal written partnership agreement.
13. Regarding **B-15**, accounts receivable must be separately listed with dollar amounts owed for each account, together with complete names and addresses.
14. Regarding **B-17**, tax refunds due on a filed tax return must be listed and valued here.
15. **B-19** requires the debtor to list any interest in a probate estate.

16. **B-20** requires the debtor schedule any *anticipated* tax refunds for unfiled tax returns.
17. Regarding **B-23**, list every motor vehicle claimed by the debtor together with a description and a reasonable value. If the value is other than the NADA average, explain why and include the mileage and condition of the vehicle.
18. **B-24** requires all boats to be scheduled, even if they are presently out of the water or do not float or are at someone else's cottage or campground. Motors must be scheduled even if they presently do not run. Typically, if a debtor owns a boat, they also own boat accessories that need to be listed here.
19. If a debtor claims pet expenses in Schedule J, the animals should be listed in **B-29** as well.
20. Every item in Schedule B should be fully described and its **location** indicated. A general statement such as "all property is located at the debtor's residence," if applicable, located at the top of Schedule B should suffice so long as any exceptions are noted.
21. For every item in Schedule B, indicate whether the property is owned by "**H**", "**W**", "**J**", or "**C**".

Schedule C

- Market value of the property claimed as exempt must agree with the values listed in Schedules A and B.

Schedule D

1. Be sure to include the **account number**.
2. Preferably, use the **address** the creditor uses for "correspondence" or "inquiries" as opposed to the payment address.
3. Indicate when the claim was first incurred and all subsequent **dates** when the claim was re-signed.
4. The **nature of the lien** should be indicated (e.g., PMSI, non-PMSI, first mortgage, second mortgage, tax lien, judgment lien, etc.).

5. The property should be **reasonably described** (e.g., "automobile" is insufficient; rather, provide the make, model, and model year).
6. The market value of the property should be the same as that listed in Schedules A and B.
7. For each claim, indicate whether a co-debtor exists, whether the claim is against "**H**", "**W**", "**J**", or "**C**", and whether the claim is "**contingent**", "**unliquidated**", or "**disputed**."
8. List the **amount** of the claim. Preferably, this should be a payoff total as opposed to the sum of all the remaining payments.
9. The "**unsecured portion**" of the claim equals the amount of the claim minus the value of the property.

Schedule E

- See 11 U.S.C. Section 507(a) for a detailed schedule of priority claims. **Student loans** are *not* priority claims and should not be listed in Schedule E.

Schedule F

1. Be sure to include the **account number** (last 4 digits).
2. Preferably, use the **address** the creditor uses for "correspondence" or "inquiries" (found on most credit card statements) as opposed to the payment address.
3. List the **date** the claim was incurred. If the claim is for the use of a credit card, list the date the credit card was first used and the date the credit card was last used.
4. List the **consideration** for the loan.

Schedule G

1. Include all executory contracts here, including vehicle, real estate, or apartment leases, and land contracts.
2. Indicate whether a real estate lease is for residential or non-residential real estate.

3. Complete addresses are required here and these creditors must be included on the mailing matrix.

Schedule H

1. All co-debtors and their complete addresses must be listed here together with the name and address of the claim holder.
2. If a married debtor is filing with its spouse, *every* debt also owed by the non-filing spouse must be listed here. Consult state law to determine whether credit cards in the name of one spouse that is used by the other spouse is a debt of that first spouse.

Schedule I

1. List the correct **marital status** of the debtor(s). Someone who has never been married is "single." If married, so indicate. If separated, indicate "married but separated." Someone who was married is either "divorced" or "widowed," not single and not unmarried.
2. A debtor's **dependents**, their ages, and relationship must be listed. If the dependents are not minor children, the debtor should explain why they are dependents of the debtor. If both husband and wife file a joint bankruptcy, both are debtors and neither should be listed as a dependent. However, if only one spouse files bankruptcy, the other spouse maybe listed here.
3. Every line of the employment information must be completed. If only one spouse files bankruptcy, the **income of the non-filing spouse** must still be included.
4. Current monthly gross income should relate to the YTD information on the debtor's pay stubs and to the income reported on the debtor's tax return. Accordingly, several pay stubs should be reviewed before calculating monthly income since an isolated pay stub might not accurately reflect the debtor's average monthly income.
5. List all **child support and alimony payments** being deducted from payroll.
6. Do not lump deductions together. For example, 401(k) plan contributions and 401(k) plan loan repayments should be separate line items.
7. If the debtor **operates a business**, list the gross income where indicated and attach a detailed statement of that income for the past 12 months.

8. At the bottom of Schedule I is space to describe any **changes in income expected** during the upcoming year.

Schedule J

1. Expenses for **property that is being surrendered** should not be included.
2. The debtor's estimate of average monthly expenses should be reasonable and based upon the debtor's own circumstances, not assumed standard allowances.
3. Regular expenses from the **operation of a business** should be included as a total together with an attached *detailed* statement of those expenses for the past year.

Statement of Financial Affairs (SOFA)

1. **Question 1** requires the debtor to list its income for the past two full years *and* the year of filing.
2. **Question 2** requires the debtor to list all *other* income received during this same time period, regardless of what the debtor included in its tax return.
3. **Question 3** requires the debtor to list *all* payments that meet the parameters., including vehicle instalment and mortgage payments. The debtor should not attempt to independently determine whether any such payments were preferential.
4. If a debtor lists charitable contributions in Schedule J or in its tax return, those gifts need to be listed in **Question 7** if they meet the parameters.
5. Be sure to include all gambling losses in the answer to **Question 8** together with the detail requested. If gambling losses were offset by gambling winnings, that fact should be indicated here as well.
6. Include in **Question 9** all payments you and others have received from the debtor related to debt counseling or the bankruptcy, including the date and the amount of the payment. If the payment was made by someone other than the debtor, please indicate by whom. If this is a converted case, include all payments received in the Chapter 13 case. The amounts listed here must be consistent with "Disclosure of Compensation of Attorney for the Debtor."
7. **Question 18** must be answered if the debtor operated a business during the past *six years*.

8. If the debtor listed "self-employed" on Schedule I or operated a business during the past *two years*, the debtor must also complete **Questions 19 - 25**.

Disclosure of Compensation of Attorney for the Debtor

1. The amounts listed on debtor counsel's F.R.B.P. 2016(b) statement should be the same as that listed on SOFA Question 9.
2. If someone other than the debtor has paid attorney fees, disclose that information.
3. If debtor's attorney has agreed to share your fee with someone who is not a member of debtor counsel's law firm, for any reason including attending the Section 341 Meeting, a **copy of the agreement** together with a list of names of the attorneys sharing the compensation must be attached. If you do not have an agreement, the amount of the shared fees must be listed.

[UST/5-03]

BEST PRACTICE TIPS
MARY K. VIEGELAHN HAMLIN,
CHAPTER 13 TRUSTEE

I PRE FILING PRACTICE

Review, at a minimum, the following documents carefully before filing a Petition:

- Recent pay stubs (ask about seasonal overtime or seasonal layoffs).
- Federal, State & City Tax Returns for prior 2 years (including all Schedules).
- Titles to vehicles, mobile home, boats, trailers, Rvs, quads, motorcycles, etc.
- Recorded Deeds, Mortgages, Land Contracts, Assignments of Mortgages, etc.
- Retirement Plans.
- Verify unusually high expenses (12 months of utility expenses, etc.).
- Etc.

If the debtor has an interest in a business entity, at a minimum, review the following documents:

- Articles Of Incorporation, By-Laws, LCC, Partnership Documents, Registered D/B/A, Etc.
- Review Stock Certificates.
- Year to Date Financial Statement & Balance Sheet.
- Tax Returns for prior 2 years (including schedules).
- Financial Statements & Balance Sheets for prior 2 years.
- Personal Guarantees signed by the debtor.

Review the Petition, Statement of Financial Affairs, Schedules & Plan with the debtor for accuracy before filing.

Ask the debtor if he / she has filed bankruptcy before. If yes, be sure to list all prior cases on the Petition. Obtain copies of the debtor's prior Petition, Schedules, Statement of Financial Affairs, etc.

II. PETITION

Independently verify the debtor's social security number for accuracy. If the social security number is not accurate the 341 Meeting may be adjourned to allow the debtor to amend the Petition. You must submit a notice to the credit report agencies notifying the agencies of the error. An incorrect social security number may seriously affect someone else.

Disclose all prior cases.

III. STATEMENT OF FINANCIAL AFFAIRS

- Use the Official Forms.
- Answer all the questions. Most computer programs have a default answer of "none." Do not simply allow the default answer of "none" to be used for the Statement of Financial Affairs. The Statement of Financial Affairs provides vital information and should be accurate.
- If the Statement of Financial Affairs is not complete or accurate the 341 Meeting may be adjourned to amend the Statement of Financial Affairs.
- If the debtor is engaged in a business or has an ownership interest in a business you must answer the applicable questions contained within the Statement of Financial Affairs.
- Question #9 as to debtor's counsel should match the plan and the Attorney Disclosure.

IV. SCHEDULES

When in doubt full disclosure is the best option.

Schedule A - Real Estate

- Accurately identify the debtor's interest in all real estate (including a legal description and ownership interest).
- Valuation - ask questions. (1) When did the debtor purchase the property? (2) What was the purchase price? (3) Was it an arms length transaction? (Did the debtor buy it from a relative?) (4) Has the debtor made any substantial improvements? (5) Has there been deferred maintenance? (6) Has the property been listed for sale in the prior 2

years? (7) Has there been an appraisal within the last few years?

- Valuation - review the most recent State Equalized Value. Is 2X the SEV reasonable? Provide this information on Schedule A.
- Valuation - ask the debtor what he or she believes the property is worth and the basis for that belief?
- Valuation - Use the higher of the values presented to you based on the information provided.
- Valuation - when in doubt have the debtor obtain an appraisal or market analysis from a reputable realtor.
- If a family member has added the debtor to a deed (i.e. for inheritance purposes) disclose it.
- Make sure the value of the liens is accurate. Often the information on Schedule D is not accurate on Schedule A.

Schedule B - Personal Property

- List cash - most people have even a few dollars in their pockets. Ask the debtor if he/she has any cash at home, safety deposit box, etc.
- List household goods at a reasonable value. Ask the debtor if he/she has any item worth more than \$500. Use common sense. If the home is worth \$200,000 it is unlikely that the household goods are worth only a \$1000. There is a generous exemption for household goods - use it.
- List collectable items, antiques, art work, etc. with a detailed description and value. Be prepared to explain the basis for the value. If in doubt obtain an appraisal.
- List jewelry with a detailed description and value. If in doubt obtain an appraisal. Ask the debtor if they paid more than \$500 for any one jewelry item or if he/she has ever received a gift of jewelry worth more than \$500. (i.e. the Rolex received at graduation).
- List all possible cause of actions. If the debtor has filed a suit or consulted an attorney provide the details.
- List all retirement plans, even if ERISA qualified. The debtor's interest must be disclosed even if it is fully exempt or not property of the Estate. Review the Pension Plan or the IRS qualification letter to if you are going to claim the debtor's interest is not property of the Estate.
- List all vehicles regardless of value. To determine the value of a vehicle ask questions (i.e. mileage, body damage, mechanical problems, etc.) Use the NADA or Bluebook. This information is now available online.

Schedule C - Exemptions

- Carefully review the Exemptions before filing the document with the Court for accuracy. (Have you exceeded the maximum allowable amount of each exemption?)
- Do not take both State & Federal Exemptions.
- Do not exceed the maximum statutory amounts.

Schedule D - Secured Creditors

- Identify the collateral with specificity (parcel #, legal description & street address).
- State the rank of the creditor's lien (i.e. 1st mortgage, 2nd mortgage)
- State the type of lien (i.e. mortgage, PMSI, Non-PMSI, etc.)
- State the value of the collateral securing the lien.
- State the amount of the debt.

Schedule E - Priority Creditors

- Student loans are not priority claims.
- List the IRS & State of Michigan even if only for notice purposes.
- For tax liabilities state the type of tax due & the tax period(s).
- Child support - state the amount of the arrearage & correct address & name for Friend of the Court. Include the assigned State Court Case # or Friend of the Court account #.
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Schedule F - Unsecured Creditors

- Student Loans should be placed in Schedule F.
- For each date state the nature of the debt (i.e. credit card, line of credit, repossession deficiency claim, etc.).
- State when the debt was incurred. (Date of the promissory note, date the credit was opened and last used, etc.)
- State who is responsible for the debt (joint, husband, wife, etc.)
- Do not list the P.O. Box where payments are sent. Instead list the mailing address for correspondence on the back of the billing statement.
- If you do not have an address for a creditor do not use the address of debtor's counsel.

Notice to all creditors is crucial. All creditors listed on the matrix should also appear in Schedules D - F.

Schedule G - Executory Contracts & Leases

- Describe in detail the executory contract or lease (property subject to the executory contract or lease, lease terms, etc.)
- Provide a complete mailing address for the creditor.
- Complete name & address of any cosigner.

Schedule H - Codebtors

- Complete mailing address for creditor.
- Nature of the debt.
- Name & address of codebtor.

Schedule I - Income

- You must include the income of a non-filing spouse unless separated.
- Review pay stubs and pay attention to overtime, bonuses, vacation pay, 401K contributions, 401K loan repayments, other deductions, etc.
- The debtor must be able to respond to all questions regarding wages & deductions.
- Review prior year tax returns to see if current income is consistent with the prior year. If there are substantial increases or decreases inquire as to why the change.
- List all sources of additional income & obtain data to verify (i.e. rent, business incomes, social security, pension, annuity, etc.)
- If there will be a substantial increase or decrease in income within the next 12 months - explain in detail.
- Disclose gross pay not net pay.

Schedule J - Expenses

- Spend time with the debtor discussing his/her monthly expenses. If an expense seems high - ask for supporting data.
- Do not prepare the expenses for the debtor. Often when asked how he/she derived an expense a debtor will say "my attorney said to use that amount."

- When there is a non-filing spouse provide detail as his/her expenses. Do not simply say "expenses of non-filing spouse are \$500." You must have supporting data for all expenses of the household.
- Do not include monthly expenses that will be paid through the plan (i.e. car payments, mortgage payments, etc.)
- A 401K contribution or loan repayment is not an allowable expense.
- Disposable income is set forth on Schedule J. Often the amount available on Schedule J is different from the plan payment. These amounts should match. If these amounts are different either the plan is not feasible (the debtor does not have sufficient disposable income to make the payment) or the debtor is not paying all disposable income to the plan.

Rule 4002. Duties of Debtor

1 (a) GENERAL DUTIES. In addition to performing other
2 duties prescribed by the Code and rules, the debtor shall:

3 (1) attend and submit to an examination at the times
4 ordered by the court;

5 (2) attend the hearing on a complaint objecting to
6 discharge and testify, if called as a witness;

7 (3) inform the trustee immediately in writing as to the
8 location of real property in which the debtor has an interest and
9 the name and address of every person holding money or property
10 subject to the debtor's withdrawal or order if a schedule of
11 property has not yet been filed pursuant to Rule 1007;

12 (4) cooperate with the trustee in the preparation of an
13 inventory, the examination of proofs of claim, and the
14 administration of the estate; and

16 (5) file a statement of any change of the debtor's address.

17 (b) INDIVIDUAL DEBTOR'S DUTY TO PROVIDE
18 DOCUMENTATION.

19 (1) Personal Identification. Every individual debtor
20 shall bring to the meeting of creditors under § 341 a picture
21 identification issued by a governmental unit and evidence of social
22 security number(s), or provide a written statement that such
23 documentation does not exist or is not in the debtor's possession;

24 (2) Financial Information. Unless the trustee, the
25 United States trustee, or the bankruptcy administrator instructs
26 otherwise, every individual debtor shall bring to the meeting of
27 creditors under § 341 and make available to the trustee the
28 following documents or copies of them, or provide a written

29 statement that the documentation does not exist or is not in the

30 debtor's possession:

31 (A) evidence of current income, such as the most

32 recent pay stub;

33 (B) the debtor's most recently filed federal income tax

34 return, including any attachments; and

35 (C) statements for each of the debtor's depository

36 and investment accounts, including checking, savings, and money

37 market accounts, mutual funds and brokerage accounts for the

38 time period that includes the date of the filing of the petition.

COMMITTEE NOTE

The rule is amended to implement the directives of § 521 (3) and (4) of the Code that the debtor cooperate with the trustee to permit the trustee to perform the trustee's duties and to provide the trustee with materials and documents as necessary to the administration of the estate or to determine if the debtor is entitled to a discharge. Nothing in the rule, however, is intended to limit or restrict the debtor's duties under § 521.

The rule does not require that the debtor create documents or obtain documents from third parties; rather, the debtor's obligation is to bring to the meeting of creditors under § 341 the documents which the debtor

possesses. Any written statement that the debtor provides indicating either that documents do not exist or are not in the debtor's possession must be verified or contain an unsworn declaration as required under Rule 1008.

Because the amendment implements the debtor's duty to cooperate with the trustee, the materials would not be made available to any other party in interest at the § 341 meeting of creditors. Some of the documents may contain otherwise private information that should not be disseminated. For example, the debtor's tax return may include social security numbers of the debtor and the debtor's spouse and dependents, as well as the names of the debtor's children. This type of information would not usually be needed by creditors and others who may be attending the meeting. If a creditor perceives a need to review specific documents or other evidence, the creditor may proceed under Rule 2004.