

Typical Chapter 7 Bankruptcy Case Timetable

By

Pam Stewart

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Paper prepared by:

Pamela L. Stewart
Attorney at Law
4635 Southwest Freeway, Suite 610
Houston, Texas 77027
713-622-3893
Fax: 713-622-7908
Pam@plstewart.com

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Typical Chapter 7 Bankruptcy Case Timetable

A Chapter 7 case is typically commenced by the debtor filing a voluntary petition. Individuals filing a voluntary petition must complete a credit counseling course approved by the U.S. Trustee's Office within 180 days before the voluntary petition is filed with the Court. A certificate showing that the course was completed is usually filed by the debtor's attorney with the voluntary petition. If the case is filed before the credit counseling course is completed, most courts will dismiss the case.

Fourteen (14) days after the voluntary petition is filed, the debtor must file Schedules and Statement of Financial Affairs.. These documents are typically prepared and filed with the petition. It is highly recommended that these documents are completed prior to the filing of the voluntary petition because then the debtor's attorney should be completely familiar with the financial circumstances of the debtor before the case is filed. If the debtor is an individual, the debtor must file a Form 22 statement which is commonly referred to as the "Means Test". If additional time is needed to complete and file these documents, a motion requesting additional time should be filed on or before the expiration of this fourteen (14) day time limit. A sample motion and order seeking court approval to extend the time to file these documents is attached as Exhibit A.

Previous Case or Cases Pending Within the Last Year

If the debtor has had a prior bankruptcy case that was dismissed within the year preceding the date of the filing of the new bankruptcy case, the automatic stay in the second case expires thirty (30) days after the second case is filed unless the Court extends the automatic stay in the second case. The hearing should be held before the thirty (30) days expire. A sample motion to extend the stay and order are attached as Exhibit B. It is also advisable to file an expedited motion for consideration of the motion to extend the stay. A sample motion and order are attached as Exhibit C. You may want to see what your Local Rules require and what the custom is in your district.

If the debtor has had two prior bankruptcy cases that were dismissed within the year preceding the date of the filing of the new case, there is no automatic stay in the third case and you will be required to file a motion to impose the stay. A sample motion and order are attached as Exhibit D. You will certainly want to file a motion for expedited consideration of your motion to impose the stay.

Documents Required for Trustee

Seven (7) days prior to the Section 341 meeting, the debtor's attorney must provide to the Chapter 7 Trustee the last income tax return that was filed by the debtor with the Internal Revenue Service and the two (2) months of pay stubs for the two months preceding the filing of the case or the bankruptcy case is subject to "automatic dismissal". Be sure you redact the social security numbers on the tax returns as well as the children's names and social security numbers

before giving them to the Trustee. The best practice is to file a certificate of service in the Chapter 7 case stating that these documents have been delivered to the Chapter 7 Trustee. It is also recommended that you deliver these documents to the Chapter 7 Trustee when the case is filed with the Court. The case can therefore never be subject to “automatic dismissal”. The income tax return and pay stubs are not filed in the case since, only the certificate of service is filed in the case. A sample Certificate of Service is attached as Exhibit E. If the Chapter 7 Trustee has other documentation which the Trustee requires to be delivered to him/her in all cases prior to the Section 341 meeting, those documents can be included and served as the Certificate of Service is being filed. Many Chapter 7 Trustees want a “snapshot” of the exact balances in all of the debtor’s savings and checking accounts dated the same day as the case is filed. The amounts listed in the debtor’s bank accounts on Schedule B and C should match the “snapshot” delivered to the Chapter 7 Trustee.

Meeting of Creditors

Immediately upon filing the Chapter 7 case, a Chapter 7 Trustee is appointed and a Section 341 meeting is scheduled. The Chapter 7 Trustee is not the Bankruptcy Judge. The Chapter 7 Trustees are appointed by the Office of the U.S. Trustee and are generally attorneys or accountants with considerable bankruptcy experience. The Section 341 meeting (which is commonly referred to as the “Creditors’ Meeting”) is automatically scheduled by the Court when the voluntary petition is filed. The Chapter 7 Trustee presides over the Section 341 meeting and places the debtor under oath. The debtor must bring his/her driver’s license and Social Security card to the Section 341 meeting in order to prove his/her identity to the Trustee. The Trustee then questions the debtor. The Trustee has reviewed the Schedules and other documents filed by the debtor in the case and at the meeting can ask the debtor questions concerning those documents. A sample list of questions typically asked by a Chapter 7 Trustee is attached as Exhibit F.

Any creditor can attend the meeting and may also ask the debtor questions. Creditors can ask questions at the Section 341 meeting even if they are not represented by an attorney. The Bankruptcy Judge is not allowed to attend the Section 341 meeting. Attendance at the Section 341 meeting by the debtor is mandatory. If husband and wife have filed a joint petition, both spouses must attend the Section 341 meeting. The Chapter 7 Trustee can waive the appearance of one debtor if the debtor is married, his spouse attends the meeting, the spouse has been given a power of attorney and the debtor is on active duty with the U.S. military and is deployed. Any other absence must be approved by the Bankruptcy Judge on motion, after notice and hearing. If a debtor does not attend the Section 341 meeting and that attendance is not waived by the Chapter 7 Trustee or the Bankruptcy Judge, he/she will not be issued a discharge in the case.

Debt Management Class Requirement

Individual debtors must also take a debt management class within 45 days from the date of the Section 341 meeting. A best practice is for the debtor’s attorney to advise the debtor to take this second course prior to the Section 341 meeting. Debtors can take the class over the internet or over the telephone. A certificate of completion of this course must be filed by the

debtor's attorney in the case in order for the debtor to receive a discharge. If the certificate is not filed timely, the case will be dismissed without entry of a discharge. You don't want this to happen as the court charges a fee to re-open the case for entry of a discharge order. A sample motion and order to re-open a case for entry of a discharge order is attached as Exhibit G.

At the creditors' meeting, the debtor will be asked by the Chapter 7 Trustee if he has read the "Bankruptcy Information Sheet". The Bankruptcy Information Sheet should be given to the debtor by the attorney prior to the filing of the voluntary petition. The "Bankruptcy Information Sheet" explains the different types of bankruptcy relief (Chapter 7, 11, 12 and 13), explains briefly what debts will not be discharged in the bankruptcy case and briefly explains a Reaffirmation Agreement. A Bankruptcy Information Sheet is attached as Exhibit H.

Discharge of Debts and Objections to Discharge

Chapter 7 debtors are discharged from all of their debts except for the following debts:

1. Most taxes
2. Child support
3. Alimony and other domestic support obligations (may be dischargeable in Chap. 13)
4. Student loans
5. Court fines and criminal restitution, and
6. Personal injury caused by driving under the influence of drugs or alcohol

If a creditor believes that it has a reason to object to the debtor's discharge of a particular debt or of the discharge of all of the debtor's debts, that creditor must file an adversary proceeding within sixty (60) days of the first date scheduled for a Section 341 meeting. (If the creditors' meeting is rescheduled for some reason, the sixty days is counted from the date of the first scheduled meeting.) An adversary proceeding is a "mini-lawsuit" commenced by filing a Complaint. A creditor can object to the debtor's discharge by filing an adversary proceeding because the debt was incurred by fraud against the creditor. The grounds for objecting to a debtor's discharge of a particular debt are contained in Section 523(a) of the Bankruptcy Code. The grounds for objection to the discharge of all of the debtor's debts are contained in Section 727(a) of the Bankruptcy Code.

Reaffirmation Agreements

Creditors may ask the debtor to sign a Reaffirmation Agreement. A Reaffirmation Agreement reinstates the debt between the debtor and that particular creditor as if the bankruptcy was never filed. Reaffirmation Agreements are frequently signed on debts secured by cars and debts secured by the debtor's primary residence. (Many attorneys will not sign Reaffirmation Agreements on a debtor's home.) Portions of the Reaffirmation Agreement must be filled out by the debtor's attorney's office because they contain representations concerning the debtor's budget. This information should match the information contained in Schedule I and J filed in the case. The debtor's attorney must also sign the Reaffirmation Agreement and attest that the

attorney has fully informed the debtor of the consequences of signing a Reaffirmation Agreement and that the Reaffirmation Agreement does not impose an undue hardship on the debtor or the debtor's dependents. If the debtor's attorney does not sign the Reaffirmation Agreement and the Agreement is filed with the Court without the debtor's attorney's signature, the Bankruptcy Court will hold a hearing on the Reaffirmation Agreement and question the debtor about it. If the debtor does not attend that hearing, the Reaffirmation Agreement will be denied by the Bankruptcy Judge. Signing a Reaffirmation Agreement has serious consequences. If a Reaffirmation Agreement is signed and then the debtor does not pay the debt, the creditor can repossess any collateral that secured the debt, sell the collateral and sue or pursue the debtor for any deficiency. Again, signing a Reaffirmation Agreement re-instates the debt that is the subject of the Reaffirmation Agreement as if there was no bankruptcy and must be signed by the debtor's attorney. Therefore, the debtor's attorney should carefully advise the debtor of these facts. Unsecured debt is rarely reaffirmed in a Reaffirmation Agreement. The debtor has a limited time period within which to rescind a Reaffirmation Agreement. A Reaffirmation Agreement can be rescinded anytime before the Court issues the discharge or within 60 days after the Reaffirmation Agreement is filed with the Court, whichever is later. If the debtor decides to rescind the Reaffirmation Agreement, the debtor's attorney should assist with that cancellation and file that rescinding document in the bankruptcy case.

Discharge of Debtor

If no creditor objects to the debtor's discharge, the debtor has attended the creditors' meeting, and a certificate of completion of the financial debt management class has been filed in the case, the bankruptcy clerk's office issues the debtor a discharge approximately 65 days after the Section 341 meeting is concluded. The discharge is sent to the debtor, the debtor's attorney, and all creditors in the case. The discharge serves as a permanent injunction prohibiting any creditor from attempting to collect as a personal liability any of the debt that was discharged in the bankruptcy. However, even though the creditor cannot pursue the debtor personally, a secured creditor can foreclose on a lien it has on any of the debtor's assets if it so chooses. In other words, if a debtor files a Chapter 7 case and receives a discharge and does not reaffirm the debt on his/her house or car, the debtor is discharged from the debt to the creditors holding the liens on his/her house or car. However, that creditor can foreclose on the debtor's home or repossess the car which serves as collateral for those debts if the debtor does not pay that creditor.

Lawsuits and Judgments Prior to Filing of Bankruptcy Case

Chapter 7 cases stay the continuance of any lawsuits against the debtor. Many credit card companies or their debt collectors are filing lawsuits against debtors in an attempt to obtain judgments against debtors. It is vitally important to insure that the lawyer suing the debtor and the creditor that lawyer is representing be included in the bankruptcy schedules and matrix in order to insure that the debtor receives a discharge from that debt. In order to inform the court in which the lawsuit is pending of the bankruptcy filing, a Suggestion of Bankruptcy or a Notice of Stay can be filed in that court. A sample Suggestion of Bankruptcy and a Notice of Stay along with a sample cover letter for filing that document with that court are attached as Exhibit I.

Another option is to list the Court on Schedule F for Notice Only using the case number as the account number. If that lawsuit is still pending at the time of the debtor's discharge, a motion to dismiss that lawsuit should be filed by the debtor's attorney. A sample motion to dismiss, order and cover letter for filing those documents with the court are attached as Exhibit J. If a judgment has already been entered in that lawsuit and the debtor owns real property which constitutes his/her homestead, the debtor's attorney should check with the local deed records department in the county where the homestead is located. If an abstract of judgment has been filed by that creditor, a motion to avoid that judgment lien should be filed in the bankruptcy case. A sample motion and order to avoid judgment lien is attached as Exhibit K. After the Order Avoiding Judgment Lien has been signed by the Bankruptcy Judge, a certified copy of that order should be filed in the same local deed records as the Abstract of Judgment was filed in. This removes the Abstract of Judgment lien from the debtor's home and in the future if the debtor attempts to sell or refinance his/her home, the Judgment lien will be released by Bankruptcy Court Order and a certified copy of that releasing Court Order will appear in the local deed records.

Closing of Case and Credit Bureaus

After the discharge is entered, the bankruptcy case is closed by a separate Order. This usually happens when the Discharge Order is signed - but not always. The debtor or the debtor's attorney should then forward to the three credit reporting agencies a copy of the discharge order and request that these credit reporting agencies change the debtor's credit report to reflect that the debts have been discharged in the Chapter 7 bankruptcy case. Make sure and enclose the "BNC" copy of the Discharge Order so that the credit bureaus can see exactly which debts were discharged in the bankruptcy case. A sample letter to the credit bureaus is attached as Exhibit L. A good practice would be to have the debtor sign this letter as the bankruptcy Schedules are being signed when the case is filed and then send the letter when the discharge order is entered at the conclusion of the case.

The attorney should also send a letter to the debtor stating the Discharge Order has been entered and his/her representation of the debtor has concluded. You may also want to explain to your debtor to be on the look-out for discharge violations and to contact your office immediately should that happen. It is not uncommon for discharged debt to be sold to another debt collector who will try to collect the debt. Also, hospitals and medical providers are notorious for violating the discharge injunction.