

# “Completing Bankruptcy Schedules to Keep Your Client Out of Prison”

By

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# Prepare Schedules This Way - Not That Way!

We all make mistakes - but mistakes in bankruptcy schedules can haunt you and your client! Your client may even be denied a discharge due to mistakes in the schedules. Bankruptcy, even what seems to be a simple case, can be complicated. Consumer bankruptcy practitioners need to know a lot about so many areas of law - credit cards and personal loans, divorce and family law, taxes, means testing, house and car loans, exemptions, fraud, discharge and dischargeability, criminal law, litigation, ethics, and a whole host of other things.

Add to this mix, clients' sloppy records and the need to file an emergency filing due to a pending foreclosure or repossession. Hasty filings often lead to sloppy schedules and statements being filed with the court.

Remember, the court looks to us as attorneys to ensure that what the court is seeing is the truth. We are the first line of defense against dishonest clients - and no one is in a better position to determine whether the schedules are truthful or not than the bankruptcy attorney. The 341 Meeting of Creditors is not the place to have someone proof read your schedules.

Non-filing spouses. You must list assets of non-filing spouses. As Charles Chestnutt, an attorney in Dallas said, "One does not choose not to disclose because that property is not property of the estate, because whether it is property of the estate is not up to the lawyer; it is up to the judge. And it stands to reason that if any issue is up to the judge, it should be disclosed." A debtor in Houston was recently sentenced for failing to disclose the non-filing spouse's assets.

Where do you begin? Read the Bankruptcy Code, Bankruptcy Rules and your Local Bankruptcy Court Rules.

## Petition

First, you need to understand venue and residency requirements. Venue is governed by 28 U.S.C. § 1408. Where has the debtor resided for the last 91 of the 180 days? Venue for filing a case is a different issue than the issue of which state's exemptions will apply.

Use the debtor(s) full legal name - not nicknames. People tend to want to use whatever they go by - BJ when it is really William James. Don't forget Juniors and IIIs.

If a married couple with different last names, verify they are married. Finding out at the creditors meeting is not the time to discover they are not married.

If the client is female, ask if she has had a different last name in the last six years. (Maiden or prior married.)

If the debtor has had a dba in the last six years, list it - even if the debtor has never used the name.

Make sure the social security numbers are correct. It is a good idea to double check them when they are typed in and then make the clients check again when they sign their documents. Also, ask your client if he/she has used another Social Security number or Tax ID number. If so, they should also be disclosed.

Make sure your client understands that their mailing address is where the mail on their bankruptcy case is going to be sent. I have had several clients who used their office address as their mailing address because they didn't want their kids to know they were filing and then got upset when their secretary opened their bankruptcy notice.

Verify if your client has filed a bankruptcy case in the last eight years. If so, make sure to list all of the cases even if you have to type in "See addendum" and attach an addendum listing the previous cases. This is a common omission in Chapter 13 cases and the trustee needs to know because some courts limit the time in a second Chapter 13 by the time spent in a prior Chapter 13. It may also make the debtor(s) ineligible for a Chapter 7. It is not uncommon to get a couple who were married in the last few years and one of them filed less than eight years so they can't file a joint Chapter 7 yet.

If there has been a previous case, you may want to use the **Prior Case Filing** checklist to determine that the case can be filed and, if so, which chapter.

## Schedules

The debtor has the clothes he or she is wearing to your office; if they have jewelry on - it goes on the schedules (if he owns it -Schedule B or if the jewelry belongs to someone else, the jewelry should be listed on SOFA # 14).

### Schedule A - Real Property

*Every debtor has some real and personal property - even if he or she is living in a car! The description should include the legal description, then the street address. Also, be clear about the ownership interest. For example, is it jointly owned, life estate, etc.*

If the debtor is owner financing property, the note and deed of trust should be listed on Schedule A. Include the payoff amount of the note, and the present value of the note.

See Sections 301, 302 - Order for Relief, Rule 1003, Official Forms 1

### Schedule B- Personal Property

*Remember, if the client doesn't list the property, the client doesn't get to exempt it. Also, make sure the values you list on Schedule B match the values you list on Schedule D.*

#### B.1. Cash

Everybody has cash, even if it is only 13 cents in loose change floating around in the bottom of the sofa.

### *B.2. Bank Accounts & PayPal Accounts*

Very few clients have no bank account. If they don't put one down, ask. If the client has a car loan or a credit card or signature loan through a credit union, they at least have a "share" account. This is just a savings account, but it is an account that needs to be listed. A lot of clients will list an account on SOFA # 11 with no date. When you ask when they closed the account, they will say "Well, I haven't really closed it yet." If they really haven't closed it yet, but they are going to, and they haven't gotten around to it yet, then they really haven't closed it and it goes on Schedule B. If they really did close it, it goes on SOFA # 11. Don't put \$100.00 on Schedule B - it is very rare for the amount in the account to be a round number. Check online to see what the balance is in the account.

Ask if your client has a PayPal account. If so, ask if they have any funds in that account. If yes, then it should also be listed here.

### *B.3. Security Deposits*

If they lease a house or apartment, they probably have a deposit. Clients frequently omit lease deposits. Ask. Also ask if they have security deposits with any of the utility companies. Clients forget. Michael Baumer, a bankruptcy attorney in Austin, Texas had a client who put down a \$5,000 deposit on a house lease. It was really a lease with a purchase option and the \$5,000 was the option down payment. None of this came out until he asked if they had a deposit with their landlord because they left it blank of his form.

### *B.4. Household Goods*

Itemize. You don't get to put "household goods - \$5,000.00". The issue here is federal exemptions which not only have a cap on the category, but a per item limit as well. If you don't itemize, you deserve an objection to exemptions.

Make sure your clients understand that they are supposed to use the current market value of the property. The actual definition in the Code is the price a retail merchant would charge taking into consideration the age and condition of the property. For most household stuff, the only retail merchant would be Goodwill or the Salvation Army. Frequently, debtor attorneys tell their clients to use "garage sale values". This is not a fair market value if it is not the type of property you would sell through a garage sale (i.e., art or antiques).

You may want to include a "miscellaneous household goods" at the end and put in a dollar amount based upon how much other stuff the client has. The more stuff, the more miscellaneous. This is kind of a catch all - cover your bottom line.

### *B.5. Books, Art, Collections*

I have a list under this category in my homework package (books, CDs, DVDs, videotapes.) It is amazing how many clients put “none” or skip over these items. When I ask, they usually say “I think I have a Bible somewhere.” A Bible is a book! My homework package also has a place for clients to put CD player, VCR, DVD player, etc. - but no CDs, videotapes, DVDs and so on. When I ask, they usually say something like “oh, yeah - we have at least 100 CDs.” Most people leave art blank. It may be from WalMart, but it is “art”.

### *B.6. Wearing Apparel*

I list: “Men’s clothing consisting of suits, slacks, jackets, shirts, shorts, jeans, belts, shoes, ties, t-shirts, robes, coats, and undergarments” and a value the client gives me.

“Women’s clothing consisting of suits, skirts, dresses, blouses, shirts, pants, shorts, coats, handbags, hosiery, socks, shoes, lingerie, hats, jeans, belts, and scarves” and a value the client gives me.

“Children’s clothing” and a value the client gives me.

If the client gives me an exorbitant value, i.e., \$500.00 for clothes- I inquire further and ask about the brands they buy. Used clothes are truly worthless, but if you put \$100 per month for clothing on the budget (Schedule J) and total clothing valued at \$25.00 per person, the UST may complain at the 707(b) hearing.

Also, clients like to leave wearing apparel blank. Don’t fall for it. Chapter 7 trustees have been known to ask debtors whose clothes they are wearing at the 341 meeting when the schedules say “none”.

### *B.7. Furs and Jewelry*

Itemize jewelry if you have big ticket items, i.e., the wife’s wedding ring is valued at \$5000.00. A lot of debtors (men in particular) tend to have a cheap watch and a cheap wedding ring. You can lump the little stuff. Even if your female clients itemize, it is a good idea to throw in “misc. costume jewelry” and an amount to cover all the \$10 earrings. Make sure your clients are realistic about jewelry values. Clients always want to tell you that the wedding ring they paid \$3000 for is worth twice that much because “that’s what it appraised at”. The appraisal came from, surprise, surprise, the guy who sold them the ring and told them what an incredible deal he was giving them. That ring that “appraised” for \$6000.00 that they bought for \$3,000 is now probably worth \$1500. Clients tend to leave this blank, too. I often will suggest to my clients to go to a pawn shop to find out the value.

### *B.8. Firearms, Sports, and Photography Equipment*

If the clients have guns, make them itemize (list by make and model), and I mean

“Remington 30.06”, not “rifle”. Make sure your clients are realistic about values. I have seen Chapter 7 trustees tell debtors “\$250 for a Whosawhatsit 30.30? I’ll give you \$250 for it right now.” Also, don’t forget to ask about ammunition.

If the debtor has kids and they don’t list anything, ask. For instance, the debtor has a high school student who plays lacrosse - that equipment can be very expensive. And, that equipment should be listed on the schedules.

If the clients have a horse, they probably have a saddle and tack and feed.

#### *B.9. Insurance*

Many people have term life through their employers. List it. It may not have any value, but it is property. I list the name of the insurance company, the face amount of the policy, and the name of the beneficiary of the policy.

If the client has a policy with cash value, ask if they have loans against it. If so, the insurer goes on Schedule D. Again, I list the name of the insurance company, the face amount of the policy, and the name of the beneficiary of the policy.

#### *B.10. Annuities*

We occasionally get a retirement annuity. I have had a few cases where the client’s only source of income was listed as disability and I figured out that it was an insurance settlement. If the client says they are getting “disability”, make sure that they mean social security or disability payments through their employer’s insurance, not a personal injury settlement.

I also ask how long ago the annuity was set up. If it was recent, the trustee is going to inquire further. So ask your client for documentation regarding the annuity.

#### *B.11. Education IRAs*

Not only are you suppose to disclose the Education IRA, you are supposed to file a “record” of the account with the court. (Section 521c)

#### *B.12. Retirement Plans*

Always ask about this. This is one of the most common omissions on our homework package. It is not uncommon to ask a client if they have retirement to have the client say “Not through my job now, but I have a little IRA from a job from ten years ago” or “Just my state retirement. I don’t have a 401k or anything.”

If the client works for a governmental agency, they have retirement. [Employee Retirement System for state or city employees. County and district employees retirement for county employees. Teacher Retirement for anybody who works for a school district. (Not just teachers.)] It is not

uncommon to hear in a 341 meeting where the trustee says to other lawyer's clients, "I see you work for the state and your budget shows a payroll deduction for retirement, but you don't list a retirement plan" and the debtor says "well, yeah, I have state retirement, but I thought you couldn't take that."

Inherited IRAs are generally not exempt. You need to look at the case law for your state. Always ask your client if the IRA was inherited or if the debtor created the IRA.

Ask client for copies of the documents.

### *B. 13. Stocks*

This isn't just IBM stock. I get a lot of clients who formed a corporation and then never did anything with it. They still own the stock in ABC Cattails, Inc., however, so you need to list it. Same for d.b.a.'s. If they "had" a corporation but shut it down, they still own the stock unless they formally dissolved the corporation.

Ask about ESOPs. Most ESOPs purchase stock at the end of each quarter, so even if the client sells all of their stock as soon as they get it, they do have the last two months of payroll deductions.

Ask about options. Provide as much detail as you can, i.e., DrKoop.com options, 250 shares at \$24/share exercisable 1/1/13; 250 shares at \$26.50/share exercisable 1/1/14, 250 shares at \$25/share exercisable 1/1/15; current market price \$3/share.

If the client has a business or corporation, he owns stock in that business and it must be listed.

### *B.14 Partnerships and Joint Ventures*

Same as corporations. Just because it is inactive now (or never was active) doesn't mean you don't have to list it.

### *B.15. Government and Corporate Bonds*

I get clients who are payroll deducting Series EE bonds for their kids. Ask about it. Use the current redemption value, not the face amount.

### *B.16. Accounts Receivable*

Itemize. Indicate whether they are collectable or not. If the amounts are more than nominal or the list is long, bring the billing info to the creditors meeting to give to the trustee. (The trustee will need copies of invoices and contact info.)

*B.17. Alimony, Maintenance and Support*

If the debtor is receiving child support, you should list it here. If the payments are current, I list the value as \$0. If there is an arrearage, disclose the amount of the arrears, but I rarely use that as the value. If there is a large arrears and the obligor is not paying, it is probably uncollectible until the AG gets involved.

*B.18. Other Liquidated Debts Owed to the Debtor*

Towards the end of the year, (around October 1), I start listing tax refunds. For the amount, I use the amount of the prior year's refund unless there has been a significant change which would effect the amount of the refund (i.e., marriage or divorce, sale or purchase of a home). Obviously, if they have actually filed the return but haven't received the refund, I use the actual amount from the return.

We get a lot of clients who have loaned money to friends or family members. They need to disclose this as an asset, even if brother is a crack head and will never pay the money back.

I have actually had clients who are owed money on notes receivable. I usually find these on the tax returns.

*B.19. Equitable or Future Interests, Life Estates and Powers of Appointment*

While it is rare to see a power of appointment- they do exist - and usually with a ton of restrictions. Typically, the debtor's parents or grandparents established a testamentary spendthrift trust and the debtor is entitled to receive income (subject to the spendthrift provision) during their lifetime and is entitled to make a testamentary appointment of who gets the money after they die, but it has to be their lineal descendants or a charity. Good luck with coming up with a value.

*B.20. Interest in Estates and Life Insurance of Decedents*

Ask about this - and good luck getting a straight answer. Either the clients really don't know or they really don't want to tell. ("I inherited my parent's house with my sisters, but we never transferred the title so I don't really own it and I can't do anything to screw this up for them.") I really do understand, but you still have to list it.

Look at the documents. A colleague of mine had a client come in who was the residuary beneficiary under his father's will. Mom had a life estate, but was only entitled to receive the income during her life. She was not entitled to deplete the principal. Sonny boy was the sole heir after Mom. Current value of the estate assets: slightly in excess of \$2,000,000. He really didn't understand that this was an "asset". (Another lawyer had told him that his creditors "couldn't get at it". I am sure that other lawyer's malpractice insurance was not going to pay the current lawyer's malpractice claim if he took the first attorney's word for it.)

This is one area where you seem to get the really weird stuff. A colleague had a client whose

father died intestate and left him a 1/4th interest in 10 acres on a lake in Minnesota that isn't even on a road and has no utilities, a house on leased U.S. Forest Service land in New Mexico where you lease the land and can make whatever improvements you want but you don't own them and can't transfer them, and Mom and Dad's house in El Paso that they sold on a contract for deed years ago and the buyer paid it off but Dad never signed it over. Any guesses for "current market value"?

### *B.21. Other Contingent and Unliquidated Claims*

This includes tax refunds. If they know how much the refund is, it should go on B.18 because it is liquidated.

If the debtor is suing somebody or has been sued and filed a counterclaim, it goes here. If the debtor was in a car wreck and was injured, but "hasn't done anything about it", it goes here. If the client has an attorney, I give the name, address, and phone number. I disclose the amount of actual damages as of the date of filing (i.e., \$4000 medical, \$500 lost wages). For value for personal injury claims I usually use two times actual damages for car wrecks and three time actuals for other P.I. claims. (That's what P.I. attorneys tell me.)

If the client has other claims (breach of contract, tortious interference, wrongful termination, sexual harassment), ask the state court attorney for a value and indicate in ( ) that the amount is only an estimate.

**\*\* Major disclaimer - I am not giving legal advice, but you need to be careful about what value you list and about disclosing the existence of the claim. Both can be construed as a judicial admission. If you fail to list the claim, your client may be barred from pursuing it later. (And, he could lose his discharge.) If you low ball the value so it fits under the federal exemption amount, the defense lawyer may get to waive it in front of the state court jury to limit damages. Remember, the schedules are signed under penalty of perjury.**

### *B.22. Patents, Copyrights, and Other IP*

Occasionally a songwriter or screenwriter comes through the door. Ask if they have ever sold anything. If so, do they have an agent? What is the current status of marketing? What does he think its worth? If not, ask them to guess.

### *B.23. Licenses, Franchises, and Other Intangibles*

A lot of people have licenses for their professions. This includes plumbers, barbers, hairdressers, real estate agents - so we aren't special. Our licenses are just bigger and more expensive. List these even though they have no market value.

If you are filing for a small restaurant franchise, list the franchise even if the restaurant is closed. (Closing doesn't terminate the franchise although it is probably an event of default.) Make sure to list the franchisor on Schedule F.

Find out if there are license requirements to run the business. If so, they should also be listed here.

#### *B.24. Customer Lists*

If the debtor has/had a business, list “customer list”, but don’t provide any personal info. Inquire as to whether the customer list has a value. Pool route customer lists can be quite valuable.

#### *B.25. Automobiles, Trucks and Trailers*

Check NADA and/or Kelly Blue Book. I have also had clients go to CarMax and get a written offer to buy the vehicle to get an estimate of value.

If the client owns a mobile home and it is financed separately from the land, list it here. If it is financed with the land, I list both on Schedule A.

Include VIN numbers on Schedule B.

A surprising number of clients own small utility trailers. If the client owns a place in the country and/or livestock, ask if they have a utility or stock trailer.

#### *B.26. Boats*

This is another area where the client doesn’t want to list the asset because “It’s not in my name so nobody can prove I have it.” The practical reality is that in most of these cases they either have no equity or they can wildcard it under the federal exemptions, so it doesn’t matter anyway. (Advise the client it is a felony not listing it. It is also a felony for the attorney if he knows about it and doesn’t list it, in case you are interested.)

#### *B.27. Aircraft*

Not an everyday problem. I have had one client in all the years I have practiced that had an airplane - luckily, it was owned by his corporation.

#### *B.28. Office Furniture, Equipment and Supplies*

Itemize. If the client has a home office, I usually list this stuff as household goods. If the debtor actually has an office, this stuff would not be exempt under Texas law, but could be wildcarded under federal.

If the client has a dba, make sure you list the items in this section.

#### *B.29. Machinery and Equipment Used in Business*

We get a lot of construction workers and small contractors. I make them itemize the big stuff and let them lump the little stuff. For a carpenter, I would list the table saws or radial arm saws or

nail guns individually, but lump all the hand tools.

Auto mechanics tend to have ungodly amounts of tools. Make sure to ask if they are financed. Snap On Tools and Mac Tools finance and they retain a pmsi.

### *B.30. Inventory*

I usually do not itemize inventory, but ask my client to provide a list (this is usually just a printout from their computer) and provide it to the Trustee. These printouts are also helpful because they frequently show cost and retail.

### *B.31. Animals*

Ask. Look at the budget. I get clients who put \$300 on their budgets for pet expense but do not list any pets. \$300 per month usually means horses or cows. If your client lists horses, make sure to list tack on Schedule B.8.

### *B.32. Crops - Growing or Harvested*

This is rarely an issue unless the client is really a farmer.

### *B.33. Farming Equipment and Supplies*

If the client owns 15 or 20 acres, there is a good chance they have a tractor and implements. If they just list a tractor, ask about implements.

### *B.34. Farm Supplies, Chemicals and Feed*

If the client lists livestock, ask if they have hay. A lot of people buy it as they need it, but you get a discount if you buy a bunch at one time. If the client has several head of livestock they may have a bunch of feed sitting in a barn as well. Not a big deal, but list it.

### *B.35. Other Personal Property*

List websites, domain names, frequent flyer miles, and gift cards here.

Anything else. There really shouldn't be a lot of anything else as all of the other questions should cover most of your clients possessions.

## **Schedule C - Exemptions**

See Section 522. Your software should automatically calculate the exemptions. Make sure and explain to your clients what "not exempt" means. I regularly hear other lawyers' clients learn at their creditor's meeting that their tax refund is not exempt. This is not a good time for them to be finding that out. You do have to be careful about your software, however. For instance,

BankruptcyPro doesn't limit you to two guns under state (Texas) exemptions, so you will happily type in your list of ten guns only to have the program tell you they are all exempt as sporting goods.

### **Schedule D - Secured Creditors**

Fill in all the blanks. Name, address, account number, date incurred, value. Clients don't put the date incurred, but you need to ask. (What if they charged up just before coming to see you?!) The trustees commonly ask. This can be a significant issue in Chapter 13 cases especially with the 910 day rule on cars. Clients who just bought a used car and haven't made a single payment want to cram it down to NADA trade in. Debtors are invariably amazed to learn they don't get to do so (especially when their neighbor got to).

If the IRS has filed tax liens, list them here. If they owe taxes from more than a year or two ago, ask. (You may want to include a paragraph in your fee agreement that specifically excludes tax lien searches as your responsibility. But you should do a search to make sure it was filed in the correct county/parish.) If the IRS has filed a tax lien, they are secured (at least in part.)

If you are going to dispute the validity of a lien, check the disputed column. This is especially important if you intend to dispute the validity of the lien in another court after the bankruptcy case is over. You also don't want the Chapter 13 trustee to make distributions on a "secured" claim which is about to become an unsecured claim. If the debtor has been a party to a lawsuit, ask if they have any judgments against them. I usually list abstracts and non-purchase money security interests on Schedule F and put "MTAL" (Motion to Avoid Lien) under remarks.

If the client is going to surrender the collateral, I put "surrender" under remarks. This is intended to make it easier for the trustee (and to make the creditor's meeting go faster.) The Trustee will see a car on Schedule B, a secured debt on Schedule D and a list of expenses on Schedule J. If it's a Chapter 7, there will be a Statement of Intentions. If it's a Chapter 13, there will be a plan. If the debtor is going to surrender the vehicle and you put it on Schedules B and D, the trustee doesn't have to flip back and forth to figure out why it isn't on the budget.

If the debtor bought a car in the last two years, ask if there was a down payment or a trade in. If so, it should be listed on SOFA #10. If the debtor returned a car at the end of the lease, it should be listed on SOFA #5.

If the debtor has a car loan through a credit union, and they also have a signature loan or a credit card through the same credit union, the debts are almost always cross-collateralized so I list both debts on Schedule D and put "cross-collateralized with auto loan" under remarks.

### **Schedule E - Priority Creditors**

If the debtor owes past due child support or taxes which are not only priority but nondischargeable, I put "nondischargeable" under remarks. The debtor will be hard pressed to say

you never told them the debt would not be discharged if it says it on the schedules.

Be careful about the three year limit on dischargeability of income taxes. Clients commonly forget that they filed for an extension. (The time runs from when the return was last due, not the date of filing.)

Be careful about the one year limit on priority and dischargeability of property taxes, especially on personal property. If the client lets the house go back, the lender will end up paying the taxes because the foreclosure doesn't cut them off. Mobile homes are different. You probably have two years of taxes that fit in the priority category. (The year of surrender and the prior year.) Most of the taxing authorities are fairly inconsistent about the allowance of a claim in a Chapter 13 and they will pursue collection of the not discharged claim after the Chapter 7 discharge is entered.

### **Schedule F - Unsecured Creditors**

If there is a collection agency and/or an attorney pursuing the claim, I list all of them. Under "consideration" put "collecting for MBNA" and "Notice" for the amount. If the debt has been sold, list the original creditor with a zero dollar amount and under remarks put "assigned to LVNV Funding" and also list LVNV Funding with a dollar amount and under remarks put "assignee of Discover." If suit has been filed, list the clerk of the court and under account number put the cause number.

If the debtor has a nondischargeable student loan, I put "nondischargeable" under remarks. If they are going to pay the loan directly in a Chapter 13 (which you can't do in the Southern District of Texas), make sure to provide for it on Schedule J and in the plan in a Chapter 13.

If they owe money to Mom and Dad, Mom and Dad should be listed. The trustees commonly ask. ("Did you list everyone you owe money to, including family members?" It's a felony if not disclosed.)

### **Schedule G - Executory Contracts & Leases**

If the debtor has an apartment pursuant to a lease, list it here. If the lease has expired and not been renewed, do not list it here. (It is now a tenancy at will.)

If the debtor has an auto lease, list it here. If there is a purchase option, (and for most of them there is a purchase option), list the car on B.25 and for the amount of the claim add up the remaining payments plus the option price.

If the debtor is leasing equipment of some sort (especially for a business), read the lease documents. A lot of these leases are disguised financing arrangements. If the debtor has the option to purchase the goods at the end of the lease for a nominal consideration (\$1 is common), it is not a true lease. This makes a huge difference in a Chapter 13 because the debtor can only assume or reject a lease, but they can cram down a secured claim. If it appears from the documents that it is a security agreement rather than a lease, list it on Schedule D, not as an executory contract. (Be

careful though, Texas state law protects some of these “lessors.”)

If the debtor is buying property under a contract for deed, list it here. List the property on Schedule A, also. I have heard a lot of debtor’s and their attorneys argue at their creditor’s meetings that “they don’t have any interest in the property.” (Seriously?)

Don’t forget to assume or reject the lease(s).

### **Schedules H - Co-Debtors**

Clients don’t want to list Mom and Dad because they don’t want them to know they are filing. However, they still need to be listed.

Make sure if you have a non-filing spouse who may be liable on *any* of the debt that is included in the bankruptcy, that you list him or her here. Also, make sure you explain that the non-filing spouse’s liability will not be discharged and the creditor has the right to pursue the non-filing spouse for that particular debt(s). I have my clients sign a “Non-Filing Disclosure Statement” that I have informed him or her of this possibility.

### **Schedule I - Income**

For income we use the six month average from B22 assuming they had the same job for the entire six months. I have clients fill in a budget, but they frequently underestimate the amount of overtime they get.

Check the pay stubs for overtime, bonuses and commissions. Clients typically don’t think they should “count” because they are not guaranteed.

For the deductions, make sure the client added them up correctly. (Clients always want to add medicare tax in with insurance.) If the client has a voluntary 401k deduction, that is not an allowable expense on B22A.

If no additional increase in income is anticipated, put in “None Anticipated”. Don’t leave this blank.

Look at the last six months of bank statements for deposits that may be income your Debtor has not told you about.

Make sure the information on Schedule I correlates with the information on (A) the Statement of Financial Affairs 1 and 2, and (B) the tax returns.

(Don’t forget to count withdrawals from IRAs and 401ks when calculating Means Test Income.)

## Schedule J - Expenses

As a general proposition, use what the debtor is going to be paying for the foreseeable future, which may not be the current amount. For instance, if the client is surrendering the house they can't afford anymore, use the rent on the place they are about to move to, not the mortgage payment on the house they are not going to have anymore.

Ask if taxes and insurance and HOA dues are included in the mortgage payment. If not, make sure to list them separately on the budget. (Also, emphasize to your client that they really do need to set this money aside so they will have it available to pay in the next year when it comes due.) Some Chapter 13 Trustees will allow the debtor to pay future non-escrowed taxes and insurance through the Chapter 13 plan.

For utilities, use an average, not the most recent month (which is what most clients will give you). (Electricity will be higher in summer and lower in winter. Gas will be the opposite.) Include cell phones in telephone. I don't know how much this is any of my business, but some clients need to hear that they probably really can't afford cell phones for every family member, and DSL and 950 cable channels and an \$897 car payment.

Unless they live in their car, everybody has some home maintenance cost, even if it is only \$20 per month for cleaning supplies.

People typically underestimate their food costs. Unless they live at Mom's house, nobody only spends \$100 per month on food.

Unless they are a committed nudist who works out of their house and has their groceries delivered, everybody has some clothing and laundry costs.

Everybody has some medical expense, even it is just aspirin. And, what about eyeglasses or contacts? What about co-pays?

People underestimate transportation costs. The form we are stuck with does not break this down into its component parts. It not only includes gasoline, but oil changes, tires, batteries, license plates, inspection stickers and repairs. The farther they drive to work, the higher all these costs will be because they are putting more miles on the vehicle at a faster rate. The older the car, the higher repair costs will be. Some cars are more expensive to repair and maintain than others.

Everybody should have some amount for recreation, but the higher the number, the more likely you will be facing a 707(b) motion or an objection to confirmation. Netflix and movie rentals are entertainment.

If they have a budget item for charity, they should have an entry on SOFA #7. In a Chapter 13, they will need to show that they have done this historically if they are going to claim it as an expense during the Chapter 13. A deduction on their prior year's tax return(s) would be nice, too. Ask. If they have kids, they are probably donating something for school stuff, even if they don't

bother to deduct it on their taxes.

If your client has a payroll deduction for health insurance and a budget item for health insurance, the trustee's will ask. Ask your client. Sometimes they will duplicate entries. If your client has a budget for life insurance, there needs to be an entry on B.9.

If the client is paying for auto insurance for adult children, the Chapter 13 trustee may make an issue out of it. (And, the UST may care.)

If the client is surrendering an auto or a house, or ..., don't put the payment on the budget.

If the client is going to pay an installment debt after the bankruptcy (a car loan or a student loan or furniture) or directly in a Chapter 13, put it under installment agreements.

If the client's mortgage does not escrow taxes, put it on the budget. (If your client's mortgage does not escrow taxes, you might want to suggest that they make monthly payments if they are in a county that lets you make partial payments.)

If the client pays child support that is not deducted from their paycheck, put it on the budget.

There is a space for regular business expenses. Itemize. If the client operates a business, be prepared to bring an income and expense statement for the last year and a year to date expense statement and the tax returns for any business (including corporations) for the last two years. Apparently, this is a common problem area. Debtors list the amount they take out of the business as their income. They need to list the gross revenue on Schedule I under "regular income from operation of business", and the expenses on Schedule J under "regular expenses from operation of business".

There is a space for other personal expenses. Itemize. (Haircuts, school activities and school lunches if they have kids, pet expenses. If they list pet expenses, list pets on Schedule B).

Several Chapter 13 trustees have said people need to be more careful about Amended I and J when they send over their application to incur debt. They say it is not unusual for people to show thousands of dollars of disposable income.) Also, they have commented it is not unusual to get Amended I and J where the disposable income is substantially different (higher and lower) than the plan payment. You either have a disposable income problem or a feasibility problem!

Be careful about duplication of expenses on I and J or within J. Clients typically enter child support both as a payroll deduction on I and as a payment on J. Same thing for health insurance. If they have a mortgage and they list property taxes and insurance as expenses, make sure to confirm that they are not escrowed. (This little mistake can quickly add up to several hundred dollars of disposable income.)

# Statement of Financial Affairs

## 1. Income from employment or operation of business

If the debtor receives wage income, list the gross amount received this year and for the last two years. If both husband and wife work, split out the amount of income by each by year. It is difficult for the Trustee/Court to analyze when the amounts are lumped together and one spouse loses their income.

If the debtor is self-employed, list gross revenue and net income as separate items. (The form only calls for gross, but the trustee will want to know what the net was.) If the client can generate them, bring copies of balance sheets and income statements for the same periods to the 341 meeting.

Make sure the information you provide here is consistent with the information on Schedule I and with the tax returns.

## 2. Income other than from employment or operation of business

Disclose income other than from employment or the operation of a business. Typical other sources are unemployment compensation, child support, disability payments, social security, retirement distributions, and retirement payments. Less common are royalty payments and rental income and stock sales. This is one area where looking at the tax returns helps.

Make sure the information you provide here is consistent with the information on Schedule I and with the tax returns.

## 3. Payments to creditors

- a. This seems straightforward, but it always seems to confuse clients. They commonly fail to list house and car payments. Some general blurb like “regular monthly payments” is not sufficient because it fails to adequately identify the recipients of the payments. If the client rents, list payments to the landlord. If the client has paid off some of their credit cards, you not only need to list it, you need to explain to your client what a preference is and what the consequences are.
- b. Insider preferences are a real problem since the look back time is one year instead of 90 days. If your client lists a debt to a family member, confirm whether or not payments have been made on the debt. (The trustee will ask. You don’t want to hear the wrong answer for the first time at the 341 meeting.) This is where you really need to explain what a preference is and what the consequences are. Christmas ain’t gonna be real fun if Dad just got sued by the trustee to recover the payments the debtor child has been paying back on the loan that Dad

never really wanted to make in the first place.)

#### **4. Suits and administrative proceedings, executions, garnishments and attachments**

- a. Ask. If your client tells you that there was a lawsuit several years ago and they don't know whatever happened, you might want to confirm whether there are any abstracts of judgment recorded. If you don't and there is one and you don't get it avoided, you may be hearing about it somewhere down the road. (You may want to have a paragraph in your engagement letter that excludes this responsibility.)

If your client has a support modification or collection action, list it.

- b. If your client has had a wage garnishment for child support or student loans, list it. If the sheriff has seized property to satisfy a judgment, list it.

#### **5. Repossessions, foreclosures and returns**

If your client has had a car or boat repossessed or a house foreclosed upon, list it. If the foreclosure deficiency is what prompted the bankruptcy filing, I would list it even it was more than a year ago. If your client lists an unsecured debt to a car lender, but no repo, ask when it happened. A lot of clients will tell you that they didn't have a repo, they "turned it in." Clients seem convinced there is some legal distinction.

#### **6. Assignments and receiverships**

- a. and b. State court receiverships. You may see this with a small business, but I have never seen one in a consumer case.

#### **7. Gifts**

If your client puts charitable contributions on their budget, there should be an entry here. There should also be an entry on their tax returns if they are going to try to justify in a Chapter 13.

If your client has been giving money to help out a family member, it should be listed here.

#### **8. Losses**

This is fairly self-explanatory, but you should ask. If the client has an insurance claim which hasn't been resolved yet, it is an asset. If it is a property damage claim and the insurance company cuts the check directly to the client (which is not unheard of where the insurance is not escrowed with the mortgage payment), it will not be exempt (unless you are able to use the wildcard under federal exemptions.)

## **9. Payments related to debt counseling or bankruptcy**

If this is a second, or third, or fourth filing, list the attorneys fees from the prior case paid within the last year. It is not unusual for our clients to have seen another lawyer a year ago and paid a consultation fee.

If your client tried a debt consolidation service, list it here. It also lets everybody know that your client made some effort to repay their debts before they filed. I would also list on Schedule B a potential claim against the debt consolidation service - especially if payments were recently made (preference action) and bankruptcy disclosures were not given to the debtor. (The same disclosures we are required to give our clients are required to be given to a consumer if that company advised them not to file bankruptcy, or something along those lines.)

*Don't forget to list the credit counseling company fee if your debtor pays it directly.*

## **10. Other transfers**

This is a question which frequently contains material omissions. If the debtor sold a house in the last year, the information goes here. You should list the sale price and what happened to the proceeds (i.e., \$124,000 net sale price, \$117,000 paid to first lien holder.) If the debtor transferred any substantial asset, it needs to be disclosed. Clients who thought they were being smart and creative by transferring assets aren't going to want to admit that they did this. You, as the attorney, don't want to aid and abet. I usually list transfers of houses in the last two years, because although the form asks for one year, the trustees usually ask about two.

If the debtor bought a car within the last year, did they trade something in or make a down payment? If so, it is a transfer.

## **11. Closed financial accounts**

Clients always put accounts they *intend* to close here. Ask. If you list it as closed and they bring the bank statement that shows it isn't, you are inviting more questions.

I list IRAs and 401k's here also.

## **12. Safe deposit boxes**

If they have one, put it down and ask what's in it. (It's usually wills. Explain that probably isn't a great idea.)

## **13. Setoffs**

Landlord offsets are not uncommon. Occasionally, we see a bank offset. This is more common with business accounts.

**14. Property held for another person**

We see a lot of young couples who have furniture or a car that belongs to a parent. List it.

We also see a lot people who have a computer that belongs to their employer. List it.

Also, cable box receivers belong to the cable company; therefore, they should be listed here.

**15. Prior address of debtor**

Don't put the current address here. Check the dates. I get clients who give me their address history since kindergarten. We really don't care where they lived in 1990.

**16. Spouses and Former Spouses**

Current (if the debtor is married but the spouse is not filing) AND former. Although the question does not call for it, I usually put the year of marriage and the year of divorce. Recently, I have seen a lot of widows and widowers, so I also include the date of death of the deceased spouse.

**17. Environmental Information**

Your tax dollars hard at work. I have never seen this issue on a consumer case.

**18. Nature, location and name of business**

If the debtor had a business - even if it was just a corporation or a dba and they never did anything with it, it needs to be disclosed. If it is a dba, it also needs to go on the petition. For a corporation or a d.b.a., it probably needs to also go on B.12, unless the corporation was actually dissolved. (The fact they shut the corporation down does not mean it stopped existing as a legal entity.)

**Questions 19 - 23** must be answered if the debtor has a business or corporation.

**Question 24 is for Tax Consolidation Group.** (I have never had to complete this section.)

**Question 25 is for Pension Funds.** (Again, I have never had to complete this section.)

## **Rule 2016(b) Statement**

See Section 329 and Rule 2016(b)

I have heard Trustees say they routinely get cases without a 2016 disclosure. If so, you aren't

going to get paid your attorneys fees through the Chapter 13 plan. Another common mistake is for the amount in the fee disclosure not to match the amount in the plan and/or Schedule E and/or SOFA #9.

For the sake of uniformity, DO NOT include the filing fee in your fee disclosure. We all know how much the filing fee is. What the trustee needs to know is what YOU are getting paid, not what the Clerk's office is getting paid. Please don't confuse the issue. On SOFA #9, I put the amount of the fee I was paid up-front and add the following language "+ filing fee + credit report".

## **Statement of Intent**

This is filed in a Chapter 7 case.

## **Chapter 13 Plan**

This doesn't seem to be as big of a problem area but there are a few things that keep cropping up.

If you have a secured claim, make sure to list an interest rate (unless it is a home loan incurred after 1994 - then it is 0 interest). Preferably, the correct interest rate. For instance, in Texas, property taxing authorities are statutorily entitled to 12% interest. Why fight the inevitable?

If you are paying a student loan directly, provide for that in the plan.

## **Conversion Schedules from Chapter 13 to 7**

(See U.S.C. § 1307, Bankruptcy Rules 1017 and 1019)

Conversion schedules must be filed not later than 14 days after conversion of the case unless the court orders otherwise.

The UST's office in Houston has advised us that they are reviewing cases converting from Chapter 13 to 7 for 707(b)(3) issues and for bad faith conversions. Remember, a new time period for filing a motion under § 707(b) or ©), a claim, a complaint objecting to discharge, or a complaint to obtain a determination of dischargeability of any new debt shall commence under Rules 1017, 3002, 4004, or 4007.

When a case is converted from Chapter 13 to 7, you should file a new Schedule I, Schedule J, and new Schedules A, B and C if Debtor acquired or gave away, sold or transferred any property during the Chapter 13.

If a Statement of Intention is required, it must be filed within 30 days after entry of the order of conversion or before the first date set for the meeting of creditors, whichever is earlier.

If the Debtor has entered into or assumed any leases after the filing of the petition but before

the conversion, you will need to file an amended Schedule G.

Don't forget you can discharge any debt the debtor incurred during the Chapter 13 (such as medical bills). If the Debtor has incurred new debt, you will want to file amended Schedules D, E and/or F.

Our UST stated it would be very helpful if we attach a statement to the conversion schedules or in the Notice of Conversion why the Debtor's Chapter 13 failed or why the case is being converted.

## **PRACTICE POINTERS**

It is very important to proof your schedules before filing them with the court.

**ALWAYS** cross check your schedules. For example, if the client has a pet expense on Schedule J, make sure pets are listed on Schedule B.

Look at tax returns. Is the debtor receiving rental income? Does the debtor have stock?

Look at divorce decrees for assets that have not been disclosed to you.

Look at homeowner policies for "riders".

Ask if the client has ever used another Social Security number or tax ID number.

If client has large medical bills, inquire as to whether they were incurred due to an accident.

Ask about tax refunds. If they have one coming, ask how much. Debtors may need to change their withholdings. Around October of each year I double check with the Debtors to see if they expect a tax refund for that year. If they do and they use the money to pay property taxes or for some other large item, you may need to delay the filing so that they get their tax refund and are able to spend it before the case is filed and they lose the money to the Trustee.

Ask if their vehicles are financed. I have found many debtors believe their car is not financed even though they have used it as collateral for a loan. They will tell me it is paid off - even though it has a loan against it.

Ask if the client is a signatory on someone else's bank account. If so, they may want to have their name taken off the account.

Ask where the client banks. If he or she has an account with Wells Fargo, you should advise them they should open a bank account with another bank as Wells Fargo runs a report every night to see which of their customers have filed for bankruptcy. Wells Fargo will then freeze the bank account until the Trustee or Court authorizes the release of the funds.

Also advise clients that if they owe the bank they bank with money, they should close that bank account.

Ask client if he or she is holding anything that really belongs to someone else.

Ask client if anyone has died and left him or her an inheritance that he or she has not yet collected.

Ask if anyone is holding assets for him or her in their name.

Ask if they have taken a loan or cosigned a loan for someone who was unable to get credit themselves.

If a client has a business or businesses, remember the business should be listed in at least five places (six if you include Schedule C). It should be listed on the Petition, Schedules B & I, SOFA, and B22c. Also, look at the corporate tax return to determine the amount of capital stock. This is the value that must be on Schedule B. Trustees look for this!

If a client states they have no books, ask if they have a Bible. This is a book!

If the client owes taxes to the IRS or state agency, advise your client you are not a CPA and that you recommend he or she to consult with their accountant.

If the client is upside in their home, or if the client has little or no equity, ask about the need for home repairs. I often find when I go in more detail with the client about the cost of keeping the home versus surrendering it, many decide to surrender the home.

If the client has acreage, ask about farm equipment such as tractors.

If client has livestock, ask about feed.

If a client tells you he or she has no personal property - ask what they sleep on? Who owns the bed or sofa?

If debtor lists an amount in expenses for charitable and /or tithes, make sure there is a matching item on SOFA.

If debtor has pet expenses on Schedule J, make sure a pet(s) is listed on Schedule B.

Failure to list claims such as personal injury claims, DTPA, FDCPA, FCRA, etc. may *BAR* client from pursuing the claim(s).

When questioning client about inheritances, ask if parents, spouse, etc. are in good health. If not, they may want to advise the other party to change their will for the duration + 6 months from date of filing to keep the inheritance from coming into the estate. The person can always add the debtor to the will after the time expiration.

If debtor is self-employed, he or she should have an item on Schedule J for 1040 taxes.

If the client has an IRA, ask if it was inherited. There is case law which says inherited IRA's are not exempt.

When listing student loans, child support, and other non-dischargeable debt, add "non-dischargeable" in the remarks. The client can't tell you later that he was not told the debt was non-dischargeable.

Always double check the Social Security number before it is filed with the Court. Then check it again when you receive the 341 notice to verify the Court has used the correct Social Security number. I have had several instances at 341 meetings when the SS did not match what was on the 341 notice. If the SS on the 341 notice is wrong, please let the court and the Trustee know. It is important to clear this up and that the credit bureaus are notified to correct the information on the non-filing person's credit report.

Make sure the information on Schedule I is consistent with the information on the Statement of Financial Affairs (number 1 and 2) and with the tax returns.

Make sure your schedules are internally consistent - i.e., values on Schedule B match values on Schedule D.

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**\* Following these recommendations means only that you will probably stay out of serious trouble. No warranties are expressed or implied.**