

FORM CHANGES EFFECTIVE 12/1/15 OUTLINE

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Effective 12/1/15 all but 6 official forms were replaced. A complete explanation of the changes and instructions can be found at the website for the U.S. Courts @ <http://www.uscourts.gov/forms/bankruptcy-forms>. The forms were revised as part of the Forms Modernization Project, in theory, to make the forms easier to read and to generate complete and accurate responses.

The forms for individuals, including sole proprietors, are numbered in the 100 series. Forms for non-individuals (corp., partnership, LLC) are numbered in the 200 series. Answers to the questions on the forms must be complete and accurate.

Tips:

- Do not list a minor child's full name. List only the child's initials and full name and address of parent or guardian. [§112, B.R. 1007(m) and 9037]
- On Schedules D – F list date debt was incurred. If incurred on a single date list that date. If incurred over a period of time (i.e. credit card) list month and year of first and last transaction.

The following forms must be filed on the date the case is filed:

- Voluntary Petition [Form 101]
- Statement About Your Social Security #s [Form B121]
- Pay the filing fee or file Application for Individuals to Pay the Filing Fee in Installments [Form 103A]
- Creditor Matrix
- Credit Counseling Certificate (but not later than 14 days after filing)
- Initial Statement About an Eviction Judgment Against You [Form 101A] or Statement About Payment of an Eviction Judgment Against You [Form 101B]
- Bankruptcy Petition Preparer's Notice [Form 119]

The following forms must be filed when the case is filed or within 14 days:

- Schedules of Assets and Liabilities [Form 106]:
 1. Schedule A/B: Property [Form 106A/B]
 2. Schedule C: The Property You Can Claim as Exempt [Form 106C]
 3. Schedule D: Creditors Who Have Claims Secured by Your Property [Form 106D]
 4. Schedule E/F: Creditors Who Have Unsecured Claims [Form 106E/F]
 5. Schedule G: Executory Contracts and Unexpired Leases [Form 106G]
 6. Schedule H: Your Codebtors [Form 106H]

- 7. Schedule I: Your Income [Form 106I]
- 8. Schedule J: Your Expenses [Form 106J]
- Summary of Your Assets and Liabilities and Certain Statistical Information [Form 106Sum]
- Declaration About and Individual Debtor's Schedules [Form 106Dec]
- Statement of Financial Affairs for Individuals Filing for Bankruptcy [Form 107]
- Disclosure of Compensation to Debtor's Attorney [Form 2030]
- Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period [Form B122C-1]
- If necessary – Chapter 13 Calculation of Your Disposable Income [Form B122C-2]
- Chapter 13 Plan
- Copies of 60 days of pay advices [in San Antonio Division send to ch. 13 trustee]

VOLUNTARY PETITION [Form 101]

- Part 1 #1 - requires name as appears on gov't issued photo ID & requires debtor to produce ID at first meeting of creditors.
- Part 1 #2 - Include all names used in last 8 years.
- Part 1 #4 – very specific – include any business names and EIN in last 8 years.
- Part 1 #6 – why are you choosing this district to file?
- Part 3 #12 – more information for the sole proprietor.
- Part 4 #14 – must report if debtor owns or possesses hazardous materials. This incorporates what was Exhibit C.
- Part 5 #15 – incorporates what was Exhibit D into the Petition.

NOTICE REQUIRED BY §342(b) [Form 2010]

- Must be filed in individual cases & if debts are primarily consumer debts.
- Notice to debtor of available chapters.

INITIAL STATEMENT ABOUT AN EVICTION JUDGMENT [Form 101A]

- Use this form if the debtor rents a residence and the landlord has a judgment.

STATEMENT ABOUT PAYMENT OF AN EVICTION JUDGMENT [Form 101B]

- Use this form if you filed Form 101A; and you served Form 101A on the landlord; and you want to stay in the property for more than 30 days post petition.

STATEMENT ABOUT YOUR SOCIAL SECURITY NUMBERS [Form 121]

- Replaces Form 21 and is now divided into 3 parts.

SCHEDULE A/B: PROPERTY [Form 106A/B]

- The new form combines Schedule A (formerly “Real Property”) and Schedule B (formerly “Personal Property”). The Form divides property into 2 categories – real property and personal property. Part 1 is real property and Parts 2 – 7 are for personal property, including tangible and intangible assets. The categories are simplified for ease of use for non attorneys.
- One of the purposes is to allow debtors to provide for information about assets not less.
- Debtor must list all property, both legal or equitable, in which he has an interest.
- The form groups property by categories (real property, vehicles, recreational vehicles, household goods, jewelry, etc.)
- Debtor must provide current value (or fair market value) of the entire property.
- Debtor must provide current value (or fair market value) of the debtor’s interest. The debtor’s interest is based on a percentage of ownership. Multiple the current value by the percentage owned to determine the current value of the debtor’s interest.
- If the current value is difficult to determine you must estimate the value and be prepared to explain how value was determined.
- Be sure that the current value matches the value on Schedule D
- Debtor must describe the ownership interest (fee simple, life estate, tenants in common, etc.).
- Debtor must check the box if it is community property.
- Debtor must identify who else may have an interest in the property.
- Each category requires a description of the asset, if applicable, so be specific.
- Part 4 – Describe Your Financial Assets includes 2 new categories: “bonds, mutual funds, or publicly traded stocks” and “claims against 3rd parties, whether or not you have filed a lawsuit or made a demand for payment.” Also added to list of accounts are ABLE accounts.
- Part 7 – Describe All Property You Own or Have An Interest In That You Did Not List Above. This is the catch all provision.
- Part 8 requires that each the assets in Part 1 – 7 be totaled per category and then totaled as a whole.

SCHEDULE C: THE PROPERTY YOU CLAIM AS EXEMPT [Form 106C]

- The debtor must elect either state or federal exemptions but can elect only one. If a joint case the debtors must elect the same exemption scheme.
- The exemption scheme available will be dependent on where the debtor resided in the prior 730 days.
- The debtor now has the option to exempt a specific \$ amount or “100% of fair market value, up to any applicable statutory limit.” The “100%” exemption may be logical when there is an unlimited dollar amount, such as for health aids.
- The 100% exemption is in response to *Schwab v. Reilly*, 560 U.S. 770 (2010). Be careful when selecting the 100% exemption as it may trigger an objection to exemptions.
- Must use the property and values from Schedule A/B to select the property claimed as exempt.
- You must provide more information if the exempt amount of the homestead exceeds \$155,675. Now you must specifically state if it was acquired within 1215 days of filing.

SCHEDULE D: CREDITORS WHO HAVE CLAIMS SECURED BY PROPERTY [Form 106D]

- Include every secured creditor. Part 1 is where you list the debt / the actual creditor not the collection agency or servicer. Part 2 is where you list those parties to receive notice, such as creditor’s counsel, or a collection agency.
- Part 1 requires the inclusion of very specific information by checking a box. You must complete all of the portions that apply. You must include the date the debt was incurred and the last 4 #s of the account #.
- Part 1 requires the debtor to select the description for the nature of the lien: an agreement the debtor made (retail installment agreements, promissory note with a security agreement); statutory lien (tax lien, mechanic’s lien); judgment lien; and other.
- Part 2 is not a duplication of Part 1. You must tie the applicable creditor from Part 1 to the party to receive notice on Part 2.
- If the claim is partially secured and partially unsecured list the debt only on Schedule D and do not list it again on Schedule F.
- If there is no value to the collateral you still list the debt / creditor on Schedule D.

SCHEDULE E/F: CREDITORS WHO HAVE UNSECURED CLAIMS [Form 106E/F]

- The new form combines Schedule E (formerly “Creditors Holding Unsecured Priority Claims”) and Schedule F (formerly “Creditors Holding Unsecured Nonpriority Claims”).
- List all creditors, not listed on Schedule D, here.
- The Form eliminates the question “consideration for claim.”
- Part 1 – List All of Your Priority Unsecured Claims. This includes debts to taxing authorities (with no tax lien), You must identify if the claim is a DSO, taxes or government debt, claims for personal injury or death while intoxicated, or some other priority debt (such

as, deposits, wages, salaries, commissions, or contributions to retirement accounts). You must include the last 4 #s of the account # and the date the debt was incurred. You must state if the debt is subject to setoff. If the claim is both priority and general unsecured list it only in Part 1 identifying the amount that is priority and the amount that is nonpriority.

- Part 2 – List All of Your Nonpriority Unsecured Claims. You must identify if the debt is a student loan, as a result of a separation agreement or divorce, debts to pension or retirement plans, or other (specify the nature of the “other” debt). You must include the date the debt was incurred and the last 4#s of the account #.
- Part 3 – list those parties intended for notice purposes only such as, U.S. Attorney, State Attorney General, collections agency, attorneys, etc.
- Part 4 – total the amounts of the various classifications of creditors on Schedule E/F.

SCHEDULE G: EXECUTORY CONTRACTS AND UNEXPIRED LEASES [Form 106G]

- Executory contracts – contracts between the debtor and someone else in which neither party has performed all of the requirements of the contract at the time of filing. For example, a Contract for Deed, employment contract, and rent to own contracts.
- Unexpired leases – the lease is still in effect and the lease period has not expired. For example, a vehicle lease, residential lease, and a cell phone lease.
- You must state with specificity what the contract or lease is for.

SCHEDULE H: YOUR CODEBTORS [Form 106H]

- The new form requires more information than just the name and address of the codebtor and the name and address of the creditor.
- You must know identify on which Schedule the creditor is listed: Schedule D, E/F or G and line the creditor is listed on.
- Remember that if the codebtor is a non-filing spouse and even if the spouse did not sign for the debt her or she may be liable for certain debts per state law. Such as medical care if the state law assesses liability on the spouse.

SCHEDULE I: YOUR INCOME [Form 106I]

- Schedule I was previously amended and remains substantially the same.
- Be sure to complete all parts of Schedule I, including occupation, employer’s name, address and how long employed.
- Separate gross wages, salary and commissions from overtime.
- Be careful when calculating deductions.
- Line 8a – if the debtor has income from rental property or a business report net income but you must also include a statement showing gross income and the business expenses.
- If the debtor has a second job you must include on an additional page all of the information required on Part 1. Do not simply list net income as “other” income.

- If the debtor must file an amended or supplemental Schedule I be sure to check the box and state the postpetition income as of a specific date.

SCHEDULE J: YOUR EXPENSES [Form 106J]

- Schedule J was previously amended and remains substantially the same.
- If filing jointly but are separated the debtors will file Form 106J and Form 106J-2 – Expenses for Separate Household of Debtor 2. Form 106J-2 is new.
- Business expenses should not be included on Schedule J as such expenses are accounted for in the attachment to Schedule I.

SUMMARY OF YOUR ASSETS AND LIABILITIES AND CERTAIN STATISTICAL INFORMATION [Form 106Sum]

- This Form combines what was previously Summary of Schedules and Statistical Summary.
- If amended forms are filed you must file a new Form 106Sum.

DECLARATION ABOUT AN INDIVIDUAL DEBTOR'S SCHEDULES [Form 106Dec]

- This Form replaces the previous Declaration Concerning Debtor's Schedules.
- This Form deletes the declaration and signature of a bankruptcy petition preparer. Instead a debtor must complete Form 119 – Bankruptcy Petition Preparer's Notice, Declaration and Signature.
- It still contains a declaration of penalty of perjury.
- It now requires the disclosure of assistance by someone other than an attorney.

STATEMENT OF FINANCIAL AFFAIRS FOR INDIVIDUALS FILING FOR BANKRUPTCY [Form 107]

- The format and order of questions is substantially different.
- Part 1 – information about the debtor's marital status; prior addresses, and including residing in community property states within the last 8 years.
- Part 2 – information about the debtor's sources of income for the current year and prior 2 years; and income from other sources.
- Part 3 – information about pre petition payments.
- Part 4 – information about legal actions within 1 year; repossessions, foreclosures, seizures, levies, etc. within 1 year; setoffs within 90 days; and property held by a receiver, custodian or another official within 1 year.
- Part 5 – information about gifts over \$600 within 2 years to a person or any gifts or contributions to a charity within 2 years.
- Part 6 – information about losses within 1 year (gambling, theft, fire, etc.)

- Part 7 – information about payments or transfers with 1 year re: bankruptcy; payments or transfers within 1 year to credit counselor or anyone who promised to help the debtor; other transfers within 2 years other than in the ordinary course of business; and transfers to a trust within 10 years.
- Part 8 – information regarding financial accounts, instruments, safe deposit boxes and storage units.
- Part 9 – information regarding property the debtor holds or controls that is owned by someone else.
- Part 10 – information regarding environmental issues.
- Part 11 – information regarding the debtor’s interest in a business, including former business interest. The period of time is 4 years prior to filing. The debtor must also disclose whether or not he provided a financial statement within 2 years prior to filing regarding a business.
- SOFA is also signed under penalty of perjury.

CHAPTER 13 STATEMENT OF YOUR CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD [Form 122C-1]

- Is similar to the form as amended December 2014 except as to numbering.

CHAPTER 13 CALCULATION OF YOUR DISPOSABLE INCOME [Form 122C-2]

- Is similar to the form as amended December 2014 except as to numbering.
- Line 26 includes a statement that contributions to qualified ABLE accounts may be included in the deduction for contributions to the care of household or family members.
- What is an ABLE Account – The ABLE Act (“Achieving a Better Life Experience” Act) was signed into federal law on December 19, 2014 which amends §529 of the IRS Code to create tax free savings accounts for individuals with disabilities for certain qualified expenses – special education services, tutoring, health care, assistive technology, housing, funeral expenses. The contributions are protected in a bankruptcy proceeding if the contributions were made at least 2 years before filing; the debtor can have only 1 account not multiple accounts; the beneficiary must have been disabled before the age of 26 and meet other criteria to document a severe disability. The annual contribution may not exceed \$14,000 and a total asset cap of \$100,000. Each State must also adopt the ABLE Act. Texas adopted the ABLE Act on July 2, 2015 and to date 48 states have adopted the Act.
- If a debtor has a significantly disabled family member you must ask if prior to filing did they establish an ABLE account, the beneficiary, the value of the account and the amount contributed in the prior 2 years.

DIRECTOR'S FORMS – BR 3002.1

- Rule 3002.1 – Notice of Final Cure Payment and Response to Notice of Final Cure Payment
- Rule 3002.1(f) – Notice of Final Cure Payment pertains only to the notice of cure for the trustee and now requires the trustee to identify if the post petition mortgage payment is a conduit or a direct payment. If a conduit the trustee must include a history of payments. New form includes lines for post petition fees, expenses, charges and post petition arrearages paid by the trustee.
- Rule 3002.1(g) – Response to Notice of Final Cure Payment requires the creditor to separate the pre petition arrears from the post petition payments.
- If there is a post petition default the creditor must attach a payment history.

PROOF OF CLAIM [Form 410]

- This form replaces form 10. There have been substantial changes to both the appearance and content.
- The creditor must provide information as to transfers of the claim.
- The creditor must attach supporting documentation and the documents must redact PII.
- The creditor must attach evidence of perfection of a security interest.
- The creditor must state whether the claim is based on a lease.
- The creditor must state if the claim is subject to a right of setoff.

MORTGAGE PROOF OF CLAIM ATTACHMENT [Form 410A]

- Every attorney needs to understand the information contained in the mortgage proof of claim attachment.
- This form is for individual cases only.
- BR 3001(c)(2)(C) requires this form if the security interest is in property that is the debtor's residence.
- If there is an escrow account the creditor must attach an escrow statement.
- Part 2: Total Debt Calculation requires the creditor to provide as of petition date: principal balance due; interest due; fees and cost due; and any escrow deficiency. The creditor must also disclose funds on hand for a positive escrow balance, unapplied funds and funds held in suspense.
- Part 3: Arrearage as of the Date of Petition.
- Part 4: Monthly Mortgage Payment requires the creditor to provide the principal and interest due for the first post petition payment; the monthly escrow amount; and if applicable the monthly private mortgage insurance amount.
- Part 5: Loan Payment History from the First Date of Default (this is a new requirement).

NOTICE OF MORTGAGE PAYMENT CHANGE [Form 410S1]

- If there is a change in the monthly mortgage payment the creditor must file this notice at least 21 days before the new payment amount is due.

NOTICE OF POSTPETITION MORTGAGE FEES, EXPENSES, AND CHARGES [Form 410S2]

- If the creditor incurs post petition fees, expenses and charges that are recoverable the creditor must file this notice and must detail such fees, expenses and charges.