Tips on Production of Documents to the Trustee

Requests by Trustees in Consumer Bankruptcy Cases

Tips on Production of Documents to the Trustee

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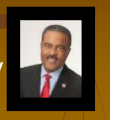

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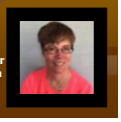


Keeping Consumer Bankruptcy Costs Down

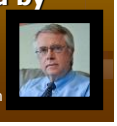
- Documentation not otherwise required by the Bankruptcy Code or Federal and Local Rules should only be requested:
  - On a case-by-case basis
  - When a specific need for additional information exists

Examples of Unreasonable/Burdensome Document Requests

- Requesting EVERY debtor supply:
  - Car titles
  - Property tax assessor's statements
  - Six months of bank statements
  - Three years of tax returns
  - Itemized inventory of all household goods
  - Copies of divorce decrees/settlement statements entered in the last three years
  - Copies of the Complaint and Answer in every legal proceeding to which the Debtor is a party

Examples of Unreasonable/Burdensome Document Requests

- Providing EVERY debtor with a uniform letter or questionnaire requiring them to submit documents and information that supplement and expand upon the detail required by the Code and Rules.



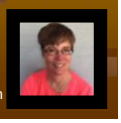
Rick Nelson

However, in some circumstances…

- A questionnaire that supplements the mandatory § 341 questions and is not a restatement of the Schedules and/or SOFA may be appropriate.
  - The Trustee should make it available to the debtor and his/her counsel prior to the meeting of creditors.

Immaterial or *de minimis* Errors and Omissions

- Trustees should weigh the cost to the debtor of preparing a new plan, schedules, means test form, etc. against the benefit to the creditors.



Mary Ida Townson

For Example…

- Does the mathematical error affect the ultimate distribution to creditors?
- Is the factual error or omission material to the case as a whole?

Scenarios that May Lead to Further Inquiry and Document Requests

- Inconsistency between the value of a debtor's home and the value of that debtor's household goods
  - *e.g.*, a house worth $500,000 and household goods worth $500

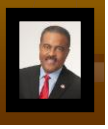
Scenarios that May Lead to Further Inquiry and Document Requests

- Incomplete Schedule I and SOFA
  - Schedule I lists monthly income but no deductions and does not identify the debtor's employer.

Ed Boltz

Scenarios that May Lead to Further Inquiry and Document Requests

- The Debtor lists a secured car loan that is owed to an interested person.
  - Proof the security interest is perfected, etc.



Dwayne Murray

Scenarios that May Lead to Further Inquiry and Document Requests

- The value listed for the debtor's residence is, in the Trustee's experience, significantly lower than homes in that area.
  - Trustees should not request proof of value if the asset is fully exempt or there is clearly no equity.

Scenarios that May Lead to Further Inquiry and Document Requests

- A particular attorney files a large number of cases in which the same information is incomplete.
  - Request documents to supplement the missing information only if that information has a material impact on the case.

Scenarios that May Lead to Further Inquiry and Document Requests

- Significant unsecured debts on Schedule E/F but minimal or no assets on Schedule A/B.
  - Additional documentation necessary to determine whether the debtor has dissipated or failed to disclose assets.

Scenarios that May Lead to Further Inquiry and Document Requests

- A debtor's vehicle appears to be a "classic" or vintage but has a nominal value on Schedule A/B.

Scenarios that May Lead to Further Inquiry and Document Requests

- A debtor appears to classify what are typically priority or general unsecured debts as secured debts.
  - Only request proof the debts are secured if material to the case (*e.g.*, if the secured debts are really unsecured debts, the debtor would be over the debt limit for Chapter 13).

Scenarios that May Lead to Further Inquiry and Document Requests

- A debtor works an hourly wage with differing hours each pay period, occasionally resulting in overtime but the debtor only provides a rough estimate of the debtor's earnings during the six months prior to filing.

Scenarios that May Lead to Further Inquiry and Document Requests

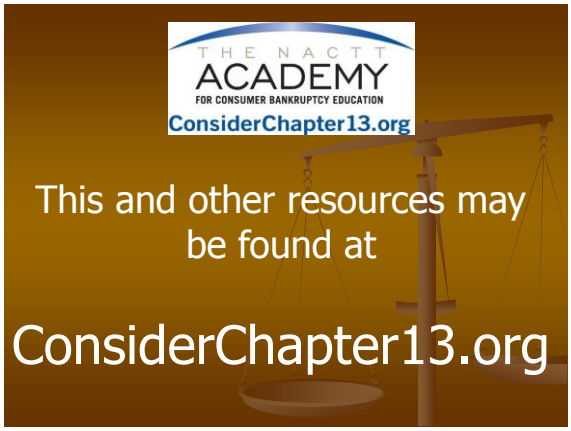
- A Trustee requests six months of bank statements and/or credit card statements based on a "hunch" or a "feeling" following a meeting of creditors.
  - The Trustee should be able to provide the debtor's counsel or an unrepresented debtor with a reasonable explanation for the "hunch" or "feeling".

Document Submission

- Need a uniform manner or process through which debtors and their attorneys may submit documents to Trustees.
  - Email
  - Central File-Transfer-Protocol Site
  - Third-Party Repository
  - Another method on a case-by-case basis to accommodate specific needs or requests.

A Final Thought

- These best practices are not intended to override the requirements of the Bankruptcy Code or Federal and Local Rules.
- Nor are they intended to interfere with the reasonable judgments made by Trustees in light of the specific facts and circumstances in any given case.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