

NYC Bankruptcy Assistance Project at LSNY

A Project of Legal Services for New York City



Guide to Preparing the Petition, Schedules and Statement of Financial Affairs

THE PETITION:

- If your client has lived in Brooklyn, Queens, or Staten Island for the greater part of the last 6 months, prepare a petition for the Eastern District; If they've lived in Manhattan or the Bronx, prepare a petition for the Southern District.
- **Change the filing fee response from "Fee Attached" to "Waiver Requested."**
- **Check the box for "Exhibit D attached."** If this is a joint petition, click both Exhibit D buttons (Best Case) or check both Exhibit D boxes (TopForm). In Exhibit D, be sure to indicate that the debtor (and joint debtor) have completed credit counseling, and that a Certificate of Completion is attached.

SCHEDULE B: Listing and valuation of Property.

In general, calculate the value of property based on what the debtors could get for it if they had to sell it, i.e., what would they get for it at a garage sale? Here are some typical listings. You needn't provide more detail on these items:

Schedule B Category	Typical amt. listed	Comments
1. Cash on hand:	\$50	
2. Checking accounts:	\$100	Give the bank's name and acct. #(s) The trustee will ask for the bank stmt that covers the date of filing, so try to get this number roughly correct
3. Security Deposits:		Whatever the amt. is for apartment, utilities, etc.
4. Hshld goods & furn:	\$1,500	describe as: "All furniture, carpets, drapes and kitchenwares"
6. Wearing apparel	\$200	
9. Insurance Policies	[cash surrender value]	Give the insurer and the policy number, and specify "whole" or "term" life. If it is term life, the surrender value will be zero.
18. Liquidated Debts		If the debtor is due a tax refund, list it here
21. Unliquidated claims		List suits the debtor could bring, but hasn't yet
25. Autos		Give the year, make and model, and if possible, the VIN number. Go to www.Carfax.com and enter the VIN number. This will give you a body configuration. Don't pay for the title history. Just take the body configuration info and go to http://www.kbb.com and get a trade-in value. If

you're not sure of the condition, say fair. There are cars in New York that are in better than fair condition, but I've never seen either of them.

SCHEDULES D, E, and F: Reporting Creditors

The heart of bankruptcy petition preparation is gathering and listing the creditors on the Schedules (the creditor listing on the Creditor Matrix is also derived from the work you do on these schedules). Since the passage of Bankruptcy Reform in 2005, it has become much more important that the information you enter on these Schedules be as accurate as possible. Do your best to gather all the creditor information you can.

The debtor is ultimately responsible if a creditor is excluded because we never knew about them. If you cannot find a creditor's address after a diligent effort, move on. But errors are another matter. Mis-entering a creditor's address (and sometimes, their name), mis-entering the account number, or failing to list a creditor which the debtor told us about is a serious matter that we'll need to correct. So make sure that you include every creditor the debtor either tells you about, or who is listed in the credit reports and in the bills the debtor gave us.

By directly inputting credit report data to these schedules, we drastically reduce the amount of work involved in petition preparation and improve the accuracy of the information. But do not rely on this data. Review it for errors and omissions, then send Schedules D, E, & F to the debtor to review prior to meeting with you to sign the petition. The debtor should check these schedules against their own bills and records. Let the debtor spend as much time as they need to on this.

1. Gather the Data:

A credit report is not a definitive list of all the debts. Once you have laid in the creditors in the credit reports (hopefully by having us download it directly from the 3 credit reporting agencies) add in missing creditors by reference to the debtors bills and other information. Note too that if the credit report shows a collection agent for a creditor who is not otherwise listed, we should add that original creditor, even though they're not on the credit report.

a. Reading Credit Reports

In addition to downloading credit report info via our credit report partner, OCR, we'll save to the case file a printable pdf copy of the report. This is a composite of information from the three main credit reporting agencies: Trans Union, Equifax and Experian. You should review this to confirm that the data is accurately reflected on the schedules. The report is broken into sections, such as "Mortgages," "Installment Loans," "Revolving Credit," "Negative Account History," "Accounts Currently Past due" and "Open Accounts" or "Closed Accounts." Some debts may be repeated, e.g., same debt could be listed in the "Negative Account History," "Accounts Currently Past due" and "Open Accounts" or "Closed Accounts."

- If an item "balance" is zero AND its status is "pays as promised" or "current," do not include. This is a zero-balance account, and not a debt.
- If a balance is zero and status is "charge off" include the debt.

If a creditor is listed as a collection account, try to determine who they are collecting for. That creditor should be listed as well, even if they don't otherwise appear on the credit report.

b. Creditors for whom you don't have an address and/or account number:

1. ASK THE DEBTOR for the missing info. If they don't know...
2. Check the Master Creditor list. If it isn't there...
3. Call the phone number (if you have one). Ask for the address for "Bankruptcy Notice." If that doesn't work (or you wind up in phone tree hell)...
4. use Google.

If, after doing the above 4 checks, you can't find the address, leave the creditor out—you were diligent. Tell the debtor (the one who is ultimately responsible for this info being listed) about the gap, but don't hold up filing.

d. Bills vs. Credit Reports

Bills are best if they are current, and should always be used where the credit report info is absent or insufficient. However, **beware the box of bills**. If the client is suffering debt collection meltdown and wants you to be the first person to look at their "scary pile," politely demur. Ask the debtor to do their part. They must:

- review Schedules D through F and their bills;
- identify all the creditors not listed;
- give us only the most recent bill they have from each creditor not in the Schedules.

If the balance stated due on the bill differs from the credit report, choose the bigger number.

Multiple addresses for one creditor—List every address for a single creditor, using the "additional notice" tab, unless one is known to be the address for bankruptcy notice. Treat attorneys for creditors as an additional address for the creditor the attorney is collecting for.

The Master Address List in Best Case—This is the list that pops down when you try to enter creditor info in the schedules. These addresses should all be correct for bankruptcy notice.

Multiple creditors for one debt—This occurs when a creditor either hires a collection agency or law firm to collect a debt, or they sell the debt to a third party. List every creditor separately. In the consideration box, link the listings by reference: e.g., "Collection agent for Capital One Acct. No. 1234****" Show the money with the original creditor; show all collector debts as zero, UNLESS you know the debt has been sold or "charged off" by the original creditor. Then list the balance as zero with that creditor, and show the balance with the collector.

Judgments-- Judgments should be listed on the "additional notice" tab of the debt in Schedule F. Use the following format:

Name of court
Case No. xxxxxxxx
Address of court
New York, NY 00000

If the judgment was within the last year, you should also list it on the Statement of Financial Affairs, Question 4.

Pending Court cases:

If the debtor is the defendant in a pending civil court case, you should prepare a “Suggestion of Bankruptcy” for the debtor to complete and file on their own with the court after the Petition has been filed.

In Best Case, at the bottom of the list of forms, open the “Supplemental Forms” folder. Scroll down to the form “Suggestion of bankruptcy,” and click it. Check the box for every creditor with whom the debtor has a pending case. If the plaintiff is not listed, add them. Then do the following to each form thereby generated:

1. Add the name of the Court at the top;
2. Add the civil court case number;
3. Remove the words “through his/her undersigned attorney,” and on the first signature line, remove the words “attorney for;”
4. On the second signature line, remove “attorney for defendant.”
6. Print the forms and have the debtor sign along with the other petition papers.
7. Mail the signed forms to NYC BAP. We will send them on once the case is filed.

2. Enter the data

a. Account Numbers:

Credit Reporting agencies redact account numbers from their reports to prevent identity theft. They will leave enough of the number (usually the last 4 digits) for the debtor to be able to figure out which account the report is referring to. Generally, these last 4 digits are enough for the creditor too. However, if the debtor has a more complete account number, list as much of the account number as you can. Two account number types should always remain redacted on the Schedules:

- accounts that will survive the bankruptcy discharge, such as auto loans;
- account numbers that are, or include the debtor’s Social Security Number, such as student loans.

Redact these account numbers, leaving just the last 4 digits of the number.

b. Account types:

- “Revolving,” “Charge Account” and “Credit Card” = unsecured
- “Auto loan” and “PMSI” or “Purchase Money Security Interest/Agreement = Secured (“Installment,” also usually means secured).
- “Factoring Company Account (debt purchaser)” = collection agent for another account.
- “Utility Company” or “Utility Account,” This is the gas, electric, telephone, water, garbage, cell phone, DSL, cable TV, etc. **ONLY INCLUDE ARREARAGES.** If the account says “pays as promised” but shows a balance, don’t include.

c. Consideration

“credit card” “student loan” “support arrearage”

meaning of

- **“contingent”** Payment is not yet due and will not become due unless a particular event occurs in the future
- **“unliquidated”** Debtor obligated to pay a debt, the amount of which is not yet fixed.
- **“disputed”** debtor denies owing the debt, or the amount stated
- **“subject to setoff”**

Date Incurred for credit cards, can be “various”

SCHEDULE G: Executory Contracts and Unexpired Leases: A lease is an agreement to rent property for a set period of time in excess of a month; an executory contract is any agreement which **binds the debtor for more than 30 days**. Some things that can be leases or executory contracts:

- An apartment rental lease
- An auto lease
- Timeshares
- Health club memberships
- Cell phone contracts
- DSL service contracts

SCHEDULE I: Current Income. Note that the monthly income here may vary from what you enter on Form 22A (the Means Test—see below). Here, you give the debtor’s estimated income for the month in which the petition was filed, NOT the average income from the last 6 months: “Estimate the average or projected monthly income at the time case filed.”

SCHEDULE J: Reasonable Expenses. In general, Schedule J isn’t as big a deal now that the Means test appears to create a “safe harbor.” A sub-median income petition won’t be dismissed just because the comparison of Schedules I and J seems to show disposable income. BUT such a discrepancy, or elevated expenses for things like entertainment, COULD undermine a fee waiver application. Finally, a Schedule J that shows too big a negative number, i.e., that the debtor’s monthly expenses are way above income, could make the trustee curious about how the debtor bridges that gap, or why they still have, e.g., a health club membership. Such questions are not desirable. The following guidelines should be used in assessing whether the debtor’s Schedule J could draw unwanted attention. These are reasonable:

Rent: This is New York. Rent is never reasonable. Therefore, there is no guideline for this question.

Gas/Electricity: \$300/ winter; 100 summer You should list what the utility costs are now, not an annualized average.

Home maintenance: \$50 only for homeowners.

Food: \$150/month/person

Clothing: \$30/month/person.

Laundry/dry cleaning: \$40

Transportation: \$76 to 200; more if there is more than 1 commuter

Recreation: \$50

Charity: \$10

The rest: These are what they are. Just be sure you have documentation of e.g., child support payments.

STATEMENT OF FINANCIAL AFFAIRS:

Question 1. You must list the debtors' income this year to date and the prior two years. There should be one line each for the debtor's employment income and business income. If there are two debtors, the income of each must be listed separately. Example:

Debtor's 2006 employment income to date: \$20,000
Debtor's 2006 self-employment income to date: \$500
Debtor's 2005 employment income: \$30,000
Debtor's 2004 employment income: \$30,000
Debtor spouse's 2006 employment income to date: \$15,000
Debtor spouse's 2005 employment income: \$20,000
Debtor spouse's 2004 employment income: \$20,000

If the debtor filed taxes, the numbers above should come from the tax returns.

Statement of Financial Affairs: Question 2. This is the place for non-employment, non-self-employment income. Primarily, this is government benefits. An example might be:

Debtor's 2006 unemployment insurance benefits to date: \$20,000.

Statement of Financial Affairs: Questions 3, 4, 5, 11, and 15. These are the questions most likely to need answers. You may run across facts elsewhere that respond to these questions.

FORM 22A—THE MEANS TEST:

If you are using Best Case:

1. Open the form, and check the appropriate marital status. You will see 2 tabs added to the top of the window: income and median.
2. Click on the income tab. Note the new "Enter CMI details" button on the right (CMI=Current Monthly Income).
3. Click on Enter CMI details
4. Click on Insert. A window opens up for info on an income source.
5. You will see a drop-down list of income categories (wages, business, rents, Social Security, etc.). Note that some of these income categories are designated "Non-CMI." That means you can, and should, enter the data for those income types, but it won't count toward the debtor's CMI. Select an income category
6. Enter a source (e.g., Joe's Pizza)
7. On each of the lines below, enter the total that debtor received from that source for that month. If its constant, click the "Copy amount down" button to save yourself some time
8. There's room to enter comments about a particular income source—just click on the "Remarks" tab at the top of the window.
9. After you finish entering the past 6 months data for one income source, click OK.
10. If the debtor had additional income sources, click Insert again, and repeat 5-8.
11. If the debtor is married and living with their spouse, repeat 4-10 for the spouse.
12. Click Close. At the bottom of the Form 22A window, you should see a green smiley face. If you do, you are done with Form 22A. Click OK. If you see a yellow & red frowny face, email or call Bill at NYC BAP.