

Consumer Track

This Isn't Hide and Go Seek: Disclosure Issues in Consumer Bankruptcy Cases

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**MWBI CONSUMER TRACK: THIS ISN'T HIDE & GO SEEK:
DISCLOSURE ISSUES IN CONSUMER BANKRUPTCY CASES.**

Disclaimer: This Handout is an aggregation of contributions from among the panelists and does not express the consensus view of all the panelists.

Ten Disclosure Oversights/Traps and Practice Tips to Avoid Them

1. W.I.T.S.

- **“Walk In Their Shoes” as you are working with your clients to gather the information needed for the bankruptcy papers.**
 - Keep the discussion on their terms;
 - Keep the discussion and questions on their level;
 - Keep the discussion and questions simple and in terms the debtor will understand.
- **Ask the clients the right questions.** Most debtors have no experience in filling out bankruptcy paperwork. They do not understand the terms being used and find the process overwhelming. Counsel needs to ask the right questions in order to prompt the debtors to make full disclosure.

In re Barrows, 399 B.R. 506 (Bankr. D.Minn 2009) (Attorney’s worksheet asked for the approximate average daily balance in bank accounts. After filling out the worksheet, debtors borrowed \$17,000 from 401(k) and deposited into account prior to filing. Schedules failed to disclose the \$17,000).

- **Consumers do not understand some of the terminology on the petition, schedules and SOFA or on the attorney intake sheets used by some practitioners and as a result fail to disclose important information.** Not only could this deny the debtor their discharge but this could result in a referral to the U.S. Attorney if the omission is material. Counsel should take the time to meet with their clients and explain what is needed in terms the clients understand.
- **Explain what is considered a “transfer.”** Question 10 of the Statement of Financial Affairs may seem simple, but it is confusing for debtors. Explain to debtors what is included in the term “transfer” and give examples. Ask follow-up questions. Suggest they review bank records or other documents for the past two years. Talk to the debtors about “gifts” and “sales” and “spending” rather than “transfers.” Ask again at a different time in a different way to see if the debtor remembers anything else.

- **Are bankruptcy petitions an act of advocacy or sacred truth?** See D. Kan. 83.6 1a – “the Kansas Rules of Professional Conduct are adopted by this court as the applicable standards of professional conduct, except as otherwise provided by a specific rule of this court.”
 - KRPC 3.3(a)(1) – “a lawyer shall not knowingly:... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;”
 - Comment [3]: “an advocate is responsible for pleadings and other documents prepared for litigation....”
 - Comment [3.1]: “... an assertion purporting to be on the lawyer’s own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where the failure to make a disclosure is the equivalent of an affirmative misrepresentation.”
 - 11 U.S.C. § 707(b)(4)(C) and 11 U.S.C. § 707(b)(4)(D):
 - “(C) The signature of an attorney on a petition pleading, or written motion shall constitute a certification that the lawyer has ---
 - (i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and
 - (ii) determined that the petition, pleading, or written motion
 -
 - (I) is well grounded in fact; and
 - (II) is warranted by existing law or good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under (1).
 - (D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.”

- Pillars of Professionalism Memorandum and Order by Kansas District Court.

U.S. Trustee v. Garland (In re Garland), 417 B.R. 805, 815 (10th Cir. B.A.P. 2009) (emphasizing “the importance to the bankruptcy system of full and honest disclosure of information by the parties seeking its protections” . . . and noting that “A Chapter 7 proceeding is not, nor should it be, an arena in which the players engage in obfuscation of the facts Competitive gamesmanship is inappropriate to the bankruptcy system.”)

In re Riley, Case No. 09-60629 at *13 (Bankr. W.D. Mo. September 22, 2009) (Federman, J.) (noting that “trustees must rely on information provided by debtors in their schedules, on trustee questionnaires, and at the § 341 meeting of creditors. Debtors have a duty to accurately and completely disclose information on their schedules.”)

2. Effective Communication About “Assets,” “Liabilities,” and “Property of the Estate” is Key.

- **Explain that a “property interest” can include being added to property you consider being owned by someone else.** If debtor’s name is on a third party’s land, bank account, certificate of deposit, automobile, or other asset it must be disclosed. Debtors may consider the asset to belong to someone else and either do not think of the asset or are reluctant to disclose the asset.

Doeling v. Berger (In re Berger), 497 B.R. 47 (Bankr. D.N.D. 2013) (Debtor testified that he failed to realize that he owned a remainder interest in mineral rights).

- **Consumers fail to understand that property inherited from family members, whether a parent, grandparent, sibling, aunt, uncle, or cousin, is property that they must disclose in their bankruptcy – even when the inheritance occurs after their case is filed if within 180 days.** The tie to the sentimental value of the item or unwillingness to accept that creditors may be entitled to a personal item that has so much meaning for the debtor often leads to debtors not telling their attorney or the case trustee about the inheritance. It is important that debtors counsel address this matter with their client in terms the client will understand.

U.S. Trustee v. Pokrivnak (In re Pokrivnak), 2013 Bankr. LEXIS 3699 (Bankr. W.D. Ark. Sept. 6, 2013) (United States Trustee was successful in seeking the revocation of debtor’s discharge due to the debtor’s failure to turnover an inheritance received within 180 days of filing).

- **Explain that consumers who have been injured at work (Worker's Compensation) or who have suffered a personal injury must disclose their cause of action and/or claim for damages in their bankruptcy case.** While some of the funds the consumers are entitled to receive may be claimed as exempt, in the minds of the injured consumers, these funds belong to them to make them whole, compensate them for their pain and suffering, and cover their medical bills. You should explain that the claims and funds must be disclosed in their bankruptcy and turned over to the trustee to pay other creditors.

3. "The Devil is in the Details"

- **When consumers are under the stress of financial difficulties they often do not have records or keep records to fully explain their financial affairs.** This, in and of itself, could deny the debtor their discharge and fresh start in certain bankruptcy cases. Unless there is an imminent foreclosure sale or wage garnishment, have your clients keep all of their mail/bills for a month and turn it over to you, as their attorney, so that their creditors can be properly listed in the schedules and liens identified.

Rosen's, Inc. v. Ghere (In re Ghere), 393 BR 209 (Bankr. W.D. Mo. 2008) (denying the debtor's discharge due to, among other reasons, the debtor's failure to maintain a general ledger or accounts receivable or accounts payable journal, especially in light of the fact that the debtor engaged in transactions involving millions of dollars as an operator of a farm and cattle ranch and as a reseller of agricultural chemicals debtor).

Strauss v. Austin (In re Austin), 2005 WL 741936 (Bankr. W.D. Mo. Mar. 28, 2005) (denying the debtor's discharge for failing to maintain adequate records, turn over business records to the trustee, and adequately explain the dissipation of over \$99,000 in gross income earned in the 12-month period prior to the petition filing date).

- **Don't hide behind the *pro se* debtor; ghost writing is not condoned in bankruptcy.**

See Kansas Bankruptcy Standing Order 14-1; D Kan. Rule 83.5.8(b).

Duran v. Carris, 238 F.3d 1268 (10th Cir. 2001) (Attorney must refuse to provide ghostwriting assistance unless purported *pro se* client specifically commits herself to disclose attorney's assistance to the court upon filing).

Wesley v. John Stein Buick, Inc., 987 F. Supp. 884 (D. Kan. 1997)
(Ghostwriting has been condemned as a deliberate evasion of the responsibilities imposed by counsel—Evasion of the obligations imposed by counsel by statute, code and rule is ipso facto lacking in candor).

Kear v. Kohls Dept. Stores, Inc., 2012 WL 5417321 (D. Kan. 2012)
(Ghostwriting not condoned, but attorney not barred from subsequently entering appearance in case after discovery of ghostwriting).

- **File the bankruptcy documents timely and update the schedules if there is a delay between consultation and filing.** After the debtor provides the information to counsel there is often a delay in getting the bankruptcy filed. Whether the delay is a couple of days or months, it is likely that some circumstances have changed. Therefore counsel must make sure that all schedules have been updated to the date of filing.

In re McKain, 325 B.R. 842 (Bankr. D. Neb. 2005) (Counsel intentionally delayed filing bankruptcy case for eight months after the debtor provided information in order to resolve child support issues but failed to update the information).

In re Barrows, 399 B.R. 506 (Bankr. D. Minn. 2009) (Attorney's worksheet asked for the approximate average daily balance in bank accounts. After filling out the worksheet, debtors borrowed \$17,000 from 401(k) and deposited into account prior to filing. Schedules failed to disclose the \$17,000).

- **Review deeds, titles, and deeds of trust.** The client may remember signing a deed of trust to a bank or family member, but was it properly recorded? Do not trust the client's memory of who is on the deed or whether it was recorded. See the document before you file.

Olsen v. Chase Bank USA, N.A. (In re Gilmore), 468 B.R. 896 (Bankr. W.D. Mo. 2012) (Bank failed to record deed of trust prior to filing and trustee was able to avoid the lien under § 544(a)(1)).

4. Make Certain the Information Provided by Your Clients and Information in the Bankruptcy Papers Passes "The Smell Test."

- **"Enough is enough, and too much is plenty."** Juan Ramon Jiminez
 - Develop a checklist for production of documents and stick to it;
 - Develop a questionnaire in 6th grade English for your client to fill out;

- Read what is produced by the debtor before you file or produce it;
- Don't kiss the paper. Don't rely upon your paraprofessional or petition preparer to get all the facts. Analyze it yourself. (EN)

McKay v. Phouminh (In re Phouminh), 339 B.R. 231 (Bankr. D. Colo. 2005):

- a. Mere tardiness by Chapter 7 debtor in producing financial documents and information did not amount to failure to keep recorded financial information.
- b. Numerous inaccuracies on Chapter 7 bankruptcy schedules and statements were insufficient to permit inference of fraudulent intent and to support denial of the debtor's discharge based under false oaths; but
- c. The debtor's failure to account for more than \$260,000 of the nearly \$700,000 earned in the 32 months prior to the bankruptcy filing was sufficient to warrant denial of the debtor's discharge based a failure to satisfactorily explain the loss of assets.

Gullickson v. Brown (In re Brown), 108 F.3d 1290 (10th Cir. 1997) (reversing the bankruptcy court's findings and holding that debtor's inaccuracies in the bankruptcy schedules were not knowing and fraudulent where the debtor rectified the omission of antique cars early in the bankruptcy case and of his own accord and that the failure to keep records was justified where debtor's ownership of two antique cars was hobby not business).

In re Calder, 907 F.2d 953 (10th Cir. 1990) (denying the debtor's discharge for a false oath or account where debtor failed to disclose ownership interest in mineral rights, two bank accounts, and monthly income paid by debtor's partnership and deposited in his wife's bank account and holding that each of the omissions was a material matter that could support denial of discharge).

Garland v. IRS (In re Garland), 385 B.R. 280 (Bankr. E.D. Okla. 2008), the court utilizes "badges of fraud" to deny discharge under § 727(a)(4)(A), including:

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- a. debtor's concealment of pre-bankruptcy conversions;
- b. debtor's conversion of assets immediately before petition date;
- c. gratuitous transfers of property by debtor; and
- d. debtor's continued use of transferred property.

The debtor was a retired class action attorney. The debtor represented that he had minimal personal property and income, no interest in real property and owed over \$1.7 million to his creditors. He also represented he was neither an officer or director nor had an ownership interest in any businesses within the six years preceding his bankruptcy filing and that the only property held by him for another consisted of his two older vehicles owned by his law partnership. Based upon this the trustee filed a no-asset report. The false statements included the debtor's failure to refinance his interest in a 90 acre tract of property, the debtor's ownership and control of undisclosed business interests and the debtor's signatory authority on several bank accounts. (Action brought by United States Trustee and Internal Revenue Service)

Cadle, Co. v. Stewart (In re Stewart), 263 B.R. 608 (10th Cir. BAP 2001), *aff'd*, 35 Fed. Appx. 811 (10th Cir. 2002) (a Kansas case). (holding that debtor did not act with fraudulent intent when, with knowledge that he could not afford to pay mounting legal expenses associated with a lawsuit, he assigned his interest therein to other plaintiff in return for a release of any liability for past or future legal fees; that the debtor's failure to keep financial records for rental property after his sole tenant had vacated premises was justified under the circumstances; and failure to include corporate assets on individual bankruptcy schedules did not warrant denial of discharge for false oath).

Micro Connections, Inc. v. Shah (In re Shah), 388 B.R. 23 (Bankr. E.D. N.Y. 2008): (holding that the debtor's failure to keep a general ledger to file tax returns for two corporations that he had formed, a subchapter S insurance business and a subchapter C technology and software consulting firm, did not warrant denial of discharge based on a failure to keep financial records; however, numerous misstatements and omissions in the debtor's bankruptcy schedules and statements, including failure to disclose interest in a corporation, failure to disclose certain joint obligations with his

wife, failure to accurately disclose the expenses associated with vehicle he was surrendering, failure to disclose a recent money market account, and failure to disclose numerous payments in excess of \$600 made to creditors within ninety days of the petition date warranted the denial discharge based on false oaths).

Factors to consider in assessing the adequacy of the debtor's financial records in view of §§ 727(a)(3) [record keeping] and (5) [unexplained loss of assets] are the following:

- a. Whether the debtor was engaged in business, and if so, the complexity and volume of that business;
 - b. The amount of the debtor's obligations;
 - c. Whether the debtor's failure to keep or preserve books and records was due to the fault of the debtor;
 - d. The debtor's education, business experience, and sophistication;
 - e. Customary business practices for record keeping in the debtor's types of business;
 - f. Degree of accuracy disclosed by the debtor's existing books and records;
 - g. Extent of any egregious conduct on the debtor's part; and
 - h. The debtor's courtroom decorum.
- **Look for inconsistencies and ask the right follow-up questions.** Once a preliminary set of schedules is prepared, or preliminary information obtained, counsel needs to review and ask follow-up questions. Relying on an untrained paralegal to ask the follow-up questions will not produce the full information.

In re Stone, 504 B.R. 908 (Bankr. C.D. Ill. 2014) (Counsel failed to ask follow-up questions and assumed mower was worth less than \$400. Mower was riding mower worth thousands).

In re Armwood, 175 B.R. 779 (Bankr. N.D. Ga. 1994) (Rule 11 and status as officer of the court require attorney to: (1) explain the requirement of full, complete, accurate, and honest disclosure of all information required of a debtor; (2) ask probing and pertinent questions designed to elicit full, complete, accurate, and honest disclosure of all information required of a debtor; (3) check the debtor's responses in the petition and schedules to assure they are internally and externally consistent; (4) demand of the debtor full, complete, accurate, and honest disclosure of all information required before the attorney signs and files the petition; and (5) seek relief from the court in the event that the attorney learns that he or she may have been misled by a debtor).

- **Consumers who are under financial distress, who do not have adequate records and who need bankruptcy relief often “guesstimate” or “approximate” dates, amounts, and other information needed for their petition, schedules and SOFA.** Counsel should make certain the information makes sense, “passes the smell test” and, to the extent possible, verify the income, assets, and past transactions. The U.S. Trustee and the case trustee will do this whether debtor's counsel does or not.

In re Brock, 2009 WL 4575073 (Bankr. W.D. Mo. Dec. 3, 2009) (denying the debtor's discharge for committing fraud in a related bankruptcy case after the debtor, who was a tax preparer, admitted that he opened a bank account under his own tax identification number using his son-in-law's business name and money to assist his son-in-law in concealing his assets from the IRS and the trustee).

- **A consumer whose financial situation does not make sense as disclosed on the Petition, Schedules, Statement of Financial Affairs, and the Means Test Form, among other filings, will have their bankruptcy case closely scrutinized by the U.S. Trustee and the case trustee.** As debtor's counsel, make certain you are diligent in your inquiries into financial matters that don't make sense or your client's discharge may be in jeopardy, at a minimum. (NG)

U.S. Trustee v. Gregg (In re Gregg), 510 BR 614 (Bankr. W.D. Mo. 2014) (denying the debtor's discharge for, among other reasons, concealing almost \$3 million in pre-petition income, the transfer of 6.39 acres of real property, and his interests in a variety of businesses, which were discovered through an array of sources including public records and an audit of tax returns and corporate records).

5. Make Certain Your Clients Understand the Privilege of a Fresh Start and the Obligations That Go Along With Obtaining That Fresh Start.

- **Demand more than a cavalier attitude from the debtor on filling out schedules.** Do not let the client dump the responsibility for accurately preparing the schedules solely in your lap. Make sure the client understands that the client is ultimately responsible for the content of the schedules.

Kaler v. Duong (In re Huynh), 392 B.R. 802, 812 (Bankr. D.N.D. 2008) (holding that “multiple inaccuracies or falsehoods may rise to the level of reckless indifference to the truth, which is the functional equivalent of intent to deceive.”).

In re Stone, 504 B.R. 908 (Bankr. C.D. Ill. 2014) (Debtors have personal responsibility for accurate schedules. Attorney’s attempt to assume responsibility does not relieve Debtor where inaccuracy is obvious in schedules. Disclosure should not be a tug of war.)

Mosley v. Sims (In re Sims), 148 B.R. 553 (Bankr. E.D. Ark 1992) (holding that debtors’ mere “glance over” schedules constituted a cavalier and reckless disregard for truth and is inconsistent with relief to be afforded an honest debtor).

- **Package it up, tie it with a bow, and deliver it to the trustee.**
 - Seek to comply with the trustee’s due diligence requirements;
 - Act in a cost effective manner for yourself and the trustee;
 - Provide such information as necessary for the parties in interest to reach a swift and effective determination as to administration of the case.

Best Practices for Document Production Requests By Trustees in Consumer Bankruptcy Cases

6. Remember, There’s No Place to Hide Anymore.

- **Consumers who are in financial distress fail to appreciate that information contained on: a tax return, insurance policy, financial disclosure, posted to their Facebook page, provided to an insurance adjuster, property transferred or held by a relative, observed by their neighbors, acquaintances, or family, pictured on Facebook, pledged as collateral, or reported to police as stolen will very likely be discovered by the case trustee and/or the U.S. Trustee.** As debtor’s counsel, make certain it is also disclosed in the bankruptcy filing.

U.S. Trustee v. Lombard (In re Lombard), 446 BR 344 (Bankr. W.D. Mo. 2010) (revoking the debtor’s discharge for concealment of a Harley Davidson motorcycle, Harley Davidson clothing, jewelry, and other collectibles, which were discovered when the trustee saw the motorcycle for sale on the debtor’s front lawn).

O’Neal v. DePriest (In re DePriest), 414 B.R. 518 (Bankr. W.D. Mo. 2009) (revoking the debtor’s discharge for concealing his interest in an LLC which had \$33,000 on hand as of the date of filing and due to his failure to disclose monthly income of \$7,500 per month from the LLC).

7. Be Mindful that Bankruptcy Fraud Will Jeopardize More Than Just the Debtor’s discharge.

- **Recognize the two “twins” of Title 18.** “Knowingly” and “fraudulently”
See 18 U.S.C. § 152 – concealment of assets; false oaths and claims; bribery.

“A person who –

- (1) knowingly and fraudulently conceals from a custodian, trustee...;
- (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
- (3) knowingly and fraudulently makes a false declaration, certificate, verification or statement under penalty of perjury...;
- (4) knowingly and fraudulently presents any false claim for proof against the estate of the debtor...;
- (5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;
- (6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;
- (7) in any personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;

- (8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information....;
- (9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information....”

- **If it walks like a duck . . .**

See 18 U.S.C. § 157 – Bankruptcy Fraud.

“A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such scheme or artifice or attempting to do so –

- (1) files a petition under title 11, including a fraudulent involuntary bankruptcy petition...;
- (2) files a document in a proceeding under title 11; or
- (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11...”

U.S. v O’Donnell, 539 F.2d 1233 (9th Cir. 1976), *cert. denied*, 97 S. Ct. 386, 429 U.S. 960, 50 L. Ed. 2d 328 (in a prosecution for knowingly and fraudulently making false oath in relation to material matters in bankruptcy proceeding, allegations that defendant knowingly and fraudulently stated that he was employed by named employer, while in truth and fact he was not so employed, properly stated an offense despite defendant’s contention that such statements overstated, rather than minimized, defendant’s current earning capacity).

U.S. v. Minter, 109 Fed. Appx. 141, 2004 WL 1737918 (9th Cir. July 30, 2004) (evidence that defendant’s omission of certain debts from his bankruptcy estate was fraudulent and intentional was sufficient to support conviction for bankruptcy fraud; defendant incurred debt over \$150,000 concerning an investment in a pig effluent venture to a German natural and carried on an extramarital affair prior to filing bankruptcy petition, did not report debt on his schedule of liabilities, and denied its existence on inquiry from his bankruptcy attorney after being instructed to disclose all assets and liabilities).

U.S. v. Yagow, 953 F.2d 427 (8th Cir. 1992) *cert. denied*, 113 S. Ct. 103, 506 U.S. 833, 121 L. Ed. 2d 62 (“material” matters, within meaning of bankruptcy criminal fraud statute; include not only those pertinent to nature and extent of bankrupt’s assets, but also include those pertinent to his financial transactions; moreover, statements designed to secure adjudication by particular bankruptcy court are also material).

U.S. v. West, 22 F.3d 586 (5th Cir. 1994), *rehearing and suggestion for rehearing en banc denied*, 32 F.3d 568, *cert. denied*, 115 S. Ct. 584, 513 U.S. 1020, 130 L. Ed. 2d 498 (transfer may provide basis for bankruptcy fraud charge if it occurred more than one year prior to filing of bankruptcy petition; only requirements for conviction are that transfer was made knowingly, fraudulently, and in contemplation of bankruptcy or with intent to defeat provisions of Bankruptcy Code).

Cadle Co. v. Flanagan, 271 F. Supp. 2d 379 (D. Conn. 2003) (allegations that debtor fraudulently transferred portion of his assets to another prior to filing for bankruptcy protection and did so to keep those assets out of bankruptcy estate and away from his creditors, and that debtor filed false bankruptcy accounts in connection with his bankruptcy proceeding, supported claim that debtor engaged in racketeering activity for purposes of Racketeer Influenced and Corrupt Organizations Act (RICO)).

Bronston v. United States, 409 U.S. 352, 93 S. Ct 595, 34 L. Ed 568 (1973) (a criminal perjury case 18 U.S.C. § 1621) (noting that it is the responsibility of the lawyer to ascertain through testimonial interrogation and cross examination by probing, prying, and a pressing form of inquiry; if a witness evades, it is the lawyer’s responsibility to recognize the evasion, to bring the witness back to the mark, and to flush out the whole truth with the tools of adversary examination rather than merely relying on proscriptions of criminal statute).

Sole owner of corporation which had filed a petition for arrangement under Chapter XI of the Act of 1898 gave negative answers to a creditor’s inquiry whether the owner had any bank accounts in Swiss banks and the owner’s evasive answer to the following question, “Have you ever?” The fact that the company had a Swiss bank account for about six months did not form the basis for conviction under a general perjury statute based on a failure to disclose that the owner

personally had a Swiss bank account during the relevant period, even if the question was intended to specifically focus on the owner's personal bank account.

U.S. v. Grey, 856 F. Supp. 1515 (D. Kan. 1994), *aff'd* in part, vacated in part and reversed in part 56 F.3d 1219 (10th Cir. 1995) (failure of debtors to disclose gaming income during their Chapter 12 and Chapter 13 bankruptcy cases was shown to be "material mistake of fact" in context of their cases, that was done with "fraudulent intent," as required for bankruptcy fraud. Gaming income consisted of hundreds of thousands of dollars, and knowledge of such income could have altered creditors' decisions whether to vote to confirm plan or at least made the bankruptcy court skeptical of debtors' integrity and motivations, and the magnitude of undisclosed income negated any suggestion that debtors were mistaken or overlooked an error).

U.S. v. Lindholm, 24 F.3d. 1078 (9th Cir. 1994) (scope of "materiality" requirement for bankruptcy fraud includes: matters relating to extent and nature of debtor's assets; inquiries relating to debtor's business transactions or his estate; matters relating to discovery of assets; history of debtor's financial transactions; and statements designed to secure adjudication by a particular bankruptcy court).

U.S. v. Spurlin, 664 F.3d 954 (5th Cir. 2011), *cert. denied* 133 S. Ct. 104, 184 L. Ed. 2d 48, appeal after new sentencing hearing 512 Fed. Appx. 398, 2013 WL 599775 (evidence was insufficient to sustain conviction for knowingly making false statements in bankruptcy; bankruptcy trustee's questionnaire, which asked whether defendant's parents had left any property at their respective times of death, could reasonably have been interpreted as asking whether parents left any property specifically to defendant, and, thus, his negative response was not knowingly false, even though his father did leave property in his will to his wife).

- **Size does matter, or more precisely the materiality of any misrepresentation determines fraud.**

See Gullickson v. Brown (In re Brown), 108 F.3d 1290 (10th Cir. 1997) (holding that, to prove a false oath under § 727, a creditor must demonstrate by preponderance of the evidence that the debtor knowingly and fraudulently made oath and that oath related to a material fact).

- **Do not rely on the ability to amend.** The Bankruptcy Code provides for liberal amendment of schedules without requiring court permission. But, a late amendment does not cure a debtor's failure to submit true and accurate schedules and statements. Furthermore, Rule 4003(b)(2) allows a trustee up to one year after closing to object to a fraudulently asserted exemption. It is preferable to get it right the first time.

In re Barrows, 399 B.R. 506 (Bankr. D. Minn. 2009).

In re Stone, 504 B.R. 908 (Bankr. C.D. Ill. 2014) ("Mower" disclosed to attorney and listed as a household good worth less than \$400 but was actually worth \$4000 to \$9000. Court found debtor violated duty to make voluntary, full disclosure of assets and denied exemption).

Weese v. Lambert (In re Lambert), 280 BR 463 (Bankr. W.D. Mo. 2002) (Court found Debtor made false oath in original and amended schedules and discharge was denied).

- **Consumers do not understand that the U.S. Trustee has an obligation to make a referral to the U.S. Attorney if the U.S. Trustee has reason to believe that a crime may have been committed – not just bankruptcy fraud - but any crime.** Bankruptcy Judges have a similar obligation, as do case trustees. Pursuant to the Violence Against Women and Department of Justice Reauthorization Act of 2005, the United States Trustee Program makes an Annual Report to Congress about the numbers and types of referrals made to the U.S. Attorneys each Fiscal Year. These Annual Reports are available on the Program's website.

See 28 U.S.C. § 586(a)(3)(F).

See 18 U.S.C. § 3057.

See: www.justice.gov/ust/

- **Judicial estoppel may be invoked to preclude a debtor from pursuing claims or positions in bankruptcy or other proceedings.**

Strable v. Union Pacific R. Co., 396 S.W. 3rd 417 (Mo. App. 2013) (affirming grant of summary judgment holding that plaintiff, a railroad employee, was judicially estopped from asserting Federal Employers' Liability Act claim against railroad because he failed to disclose the claim in his bankruptcy case).

8. When in Doubt, Disclose.

- **Know that the debtor will throw you under the bus.** If the debtor fails to disclose and gets caught, there is a high degree of probability that the debtor will blame you. Protect yourself by retaining draft copies of schedules. Keep notes and emails. Put instructions in writing. Most importantly, do a good job in obtaining the information in the first place.

In re Evinger, 354 B.R. 850 (Bankr. W.D. Ark. 2006) (rejecting the debtors' attempt to shift blame to their counsel and finding that debtors were responsible for actions of their attorney).

Seaver v. Markey (In re Markey), 378 B.R. 597 (Bankr. D. Minn. 2007) (same).

- **Current Value v. Price.** “Nowadays people know the price of everything and the value of nothing.” Oscar Wilde, *The Picture of Dorian Gray*.

The majority of actions brought under § 727 for concealment or false oaths concern the complete omission of assets or information rather than issues concerning the under-estimation of value.

Job v. Calder (In re Calder), 907 F.2d 953 (10th Cir. 1990)(holding that the debtor's failure to disclose ownership interest and mineral interests, two bank accounts, and monthly income justified denial of discharge for making a false oath).

Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365, 127 S. Ct. 1105, 166 L. Ed. 2d 956 (2007) (the debtor misrepresented the value of his primary real estate and did not disclose that he transferred it during the preceding year).

Law v. Siegel, ___ U.S. ___, 134 S. Ct. 1188, 188 L. Ed. 2d 146 (2014) (the debtor claimed there was no equity in his California home because the value was exceeded by the combined total of his homestead exemption and two deeds of trust; however, the liens proved be to fictitious.)

9. “You get what you pay for” – don’t sell yourself or your client short.

- **Make certain that the value of the services you provide to your client are equal to the fees your client pays you.** Counsel who charge a fair wage for their bankruptcy services often obtain the information necessary to make full, complete, and accurate disclosures in their clients' bankruptcy cases. Those who don't may find themselves on the receiving end of a disgorgement action, thrown under the bus by their clients, or worse.

In re Wulfekuhl, 267 B.R. 856 (Bankr. W.D. Mo. 2001) (imposing sanctions on law firm for filing generic responses without making reasonable inquiry into factual basis for response to Chapter 13 trustee's motions to dismiss cases).

See 11 U.S.C. § 329(b).

- **Consumers should not meet their attorney for the first time at the § 341 meeting of creditors.** Counsel should not rely exclusively on paralegals and other employees to obtain all the necessary information from the clients, properly complete the petition, schedules, and statements, and assure that the documents accurately reflect the information the client has provided. Consumers don't understand the terminology. Consumers often do not keep adequate records. Discussing exemptions has been determined to constitute the practice of law in many Circuits.

Pillars of Professionalism Memorandum and Order by Kansas District Court.

Western District of Missouri *Rights and Responsibilities Agreement Between Chapter 13 Debtors and Their Attorneys*

Western District of Missouri *Rights and Responsibilities Agreement Between Chapter 7 Debtors and Their Attorneys*

- **Don't sell yourself short.** Price competition on fees is a race to the bottom. Such holdings as *Lamie v. United States*, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) and *Redmond v. Wagers (In re Wagers)*, 514 F.3d 1021 (10th Cir. 2007) find that only the competent and diligent representation from debtor's counsel provides a basis for the payment of fees.
- **Fees and retainers.** "The eternal conflict."

Lamie v. United States, 540 U.S. 526, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004) (11 U.S.C. § 330 does not allow payment of post-petition Chapter 7 debtor's attorney fees).

Redmond v. Lentz & Clark, P.A. (In re Wagers), 514 F. 3d 1021 (10th Cir. 2007) (holding that pre-petition retainers remain property of the estate for that portion of the retainer that is unearned as of the date of filing and counsel could not be paid for post-petition fees with property of the estate unless properly employed by the estate under § 327).

In re Sydmark, 2008 W.L. 2520105 (Bankr. D. Kan. June 20, 2008) (holding that attempt by debtor's counsel to obtain assignment and perfection of

debtor's interest in tax refunds to guarantee payment of post-petition fees did not divest the estate's interest in the tax refund and, despite purported assignment and perfection, counsel may not be paid for post-petition fees with property of the estate unless properly employed by the estate under § 327).

Weinman v. Graves (In re Graves), 609 F.3d 1153 (10th Cir. 2010), *cert. denied*, 131 S. Ct. 906, 178 L. Ed. 2d 749 (holding that debtor may irrevocably apply prior year tax refunds to current year tax obligation if tax return is filed pre-petition; and if, after the debtor's tax liability was determined, the debtor received a refund, the trustee could demand turnover of that portion of the refund attributable to pre-petition earnings).

In re Blagg, 372 B.R. 502 (Bankr. D. Kan. 2007) (holding that trustee could not compel turnover of federal income tax refund from debtor, which the IRS previously had setoff against debtor's tax liability for prior tax year and that equitable doctrine of marshaling could not be extended against debtor or IRS because debtor's tax refund was never in debtor's possession or control).

In re Blackburn, 448 B.R. 28 (Bankr. D. Idaho 2011) (holding that a "security" retainer held by debtor's counsel in trust account remained property of the estate and that the so-called "retainer exception" of *Lamie* does not apply to "security" retainers but instead is applicable only to "flat fee" agreements).

10. Be Sure to Ask Your Clients: "Have you paid any amount of money to anyone to assist you with your credit or your debt"?

- Though few, there are some individuals who are out to abuse the bankruptcy system and process to line their own pockets and perpetrate scams and other money making adventures by preying on consumers in financial distress.
- They sometimes get involved as BPPs. If you identify someone who has fallen victim to the unscrupulous actions of a BPP in violation of §110, please alert the United States Trustee to what you have found.

See § 110(i)(1) (providing for the award of actual and statutory damages plus attorney's fees to debtor)

- They sometimes have offered "debt settlement services" or "credit repair services".
- Sometimes debtors have been harmed by the actions of their creditors, whether it relates to the servicing of the mortgage while they are in bankruptcy, or before, or the disclosure of their personal identification information.

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- Too often these consumers don't even realize they have been the victim of a scam, possible crime or abusive practices.
- A diligent consumer attorney or trustee who is focused on the disclosures needed under the Bankruptcy Code can ask the right questions to identify these victims and possibly seek to recover money from those who have caused the harm.
- If you believe your client has been the victim of a crime, disclose this to the United States Trustee and the case trustee.
- If you identify someone who has fallen victim to a scam, please alert the United States Trustee to what you have found.
- If you identify someone who has been harmed by the abusive practices of one of their creditors, please alert the United States Trustee to what you have found.
- Consider contacting the Consumer Financial Protection Bureau to assist your client in addressing any harm caused by their creditors.

Pillars of Professionalism*

Professionalism focuses on actions and attitudes. A professional lawyer behaves with civility, respect, fairness, learning and integrity toward clients, as an officer of the legal system, and as a public citizen with special responsibilities for the quality of justice.

Admission to practice law in Kansas carries with it not only the ethical requirements found in the *Kansas Rules of Professional Conduct*, but also a duty of professionalism. Law students who aspire to be members of the Kansas bar should also heed these guidelines. Kansas lawyers have a duty to perform their work professionally by behaving in a manner that reflects the best legal traditions, with civility, courtesy, and consideration. Acting in such a manner helps lawyers preserve the public trust that lawyers guard and protect the role of justice in our society. Lawyers frequently interact with clients, courts, opposing counsel and parties, and the public at large. A lawyer's actions also reflect on the entire legal profession. With those interactions in mind, the following Pillars of Professionalism have been prepared. These Pillars should guide lawyers in striving for professionalism.

With respect to clients:

1. Respect your clients' goals and counsel them about their duties and responsibilities as participants in the legal process. Treat clients with courtesy, respect, and consideration.
2. Be candid with clients about the reasonable expectations of their matter's results and costs.
3. Encourage clients to act with civility by, for example, granting reasonable accommodations to opponents. Maintaining a courteous relationship with opponents often helps achieve a more favorable outcome. Counsel clients against frivolous positions or delaying tactics, which are unprofessional even if they may not result in sanctions.
4. Counsel clients about the risks and benefits of alternatives before making significant decisions. Act promptly to resolve the matter once the relevant facts have been obtained and a course of action determined.
5. Communicate regularly with clients about developments. Keep them informed about developments, both positive and negative.

With respect to courts:

1. Treat judges and court personnel with courtesy, respect, and consideration.
2. Act with candor, honesty, and fairness toward the court.

3. Counsel clients to behave courteously, respectfully, and with consideration toward judges and court personnel.
4. Accept all rulings, favorable or unfavorable, in a manner that demonstrates respect for the court, even if expressing respectful disagreement with a ruling is necessary to preserve a client's rights.

With respect to opposing parties and counsel:

1. Be courteous, respectful, and considerate. If the opposing counsel or party behaves unprofessionally, do not reciprocate.
2. Respond to communications and inquiries as promptly as possible, both as a matter of courtesy and to resolve disputes expeditiously.
3. Grant scheduling and other procedural courtesies that are reasonably requested whenever possible without prejudicing your client's interests.
4. Strive to prevent animosity between opposing parties from infecting the relationship between counsel.
5. Be willing and available to cooperate with opposing parties and counsel in order to attempt to settle disputes without the necessity of judicial involvement whenever possible.

With respect to the legal process:

1. Focus on the disputed issues to avoid the assertion of extraneous claims and defenses.
2. Frame discovery requests carefully to elicit only the information pertinent to the issues, and frame discovery responses carefully to provide that which is properly requested.
3. Work with your client, opposing counsel, nonparties, and the court to determine whether the need for requested information is proportional to the cost and difficulty of providing it.
4. Maintain proficiency, not only in the subject matter of the representation, but also in the professional responsibility rules that govern lawyers.
5. Be prepared on substantive, procedural, and ethical issues involved in the representation.

With respect to the profession and the public:

1. Be mindful that, as members of a self-governing profession, lawyers have an obligation to act in a way that does not adversely affect the profession or the system of justice.
2. Be mindful that, as members of the legal profession, lawyers have an obligation to the rule of law and to ensure that the benefits and the burdens of the law are applied equally to all persons.
3. Participate in continuing legal education and legal publications to share best practices for dealing ethically and professionally with all participants in the judicial system.
4. Take opportunities to improve the legal system and profession.
5. Give back to the community through pro bono, civic or charitable involvement, mentoring, or other public service.
6. Defend the profession and the judiciary against unfounded and unreasonable attacks and educate others so that such attacks are minimized or eliminated.
7. Be mindful of how technology could result in unanticipated consequences. A lawyer's comments and actions can be broadcast to a large and potentially unanticipated audience.
8. In all your activities, act in a manner which, if publicized, would reflect well on the legal profession.

* The late Chief Justice Robert E. Davis (1937-2010) inspired these pillars of professionalism. The Chief Justice "always maintained his sense of grace and civility" and was a model of professionalism. See 79 J. Kan. B. Ass'n. 10 (Oct. 2010). Chief Justice Davis cited the pillars in the Ralph Waldo Emerson poem "A Nation's Strength" to inspire and recognize the staff of the Kansas Legal Services and, thus we believe it is fittingly used here. See 79 J. Kan. B. Ass'n. 9 (Jan. 2010). We dedicate these pillars of professionalism to the memory of Chief Justice Davis.

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MOW 2016-1.3 (5/22/07)

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

IN RE:)
)
) Case No.
)
)
Debtors.)

**RIGHTS AND RESPONSIBILITIES AGREEMENT BETWEEN
CHAPTER 7 DEBTORS AND THEIR ATTORNEYS**

It is important for persons who file a Chapter 7 bankruptcy case to understand their rights and responsibilities. It is also important for them to know what their attorneys' responsibilities are and the necessity of communicating openly with their attorneys to make the case successful. Attorneys' clients also are entitled to expect certain services to be performed by their attorneys. In order to assure that clients and their attorneys understand their rights and responsibilities in the bankruptcy process, the following Rights and Responsibilities have been adopted by the Bankruptcy Court for the Western District of Missouri. The signatures below indicate that the responsibilities outlined in the agreement have been accepted by the Clients and their attorneys. Nothing in this agreement is intended to modify, enlarge or abridge the rights and responsibilities of a "debt relief agency," as that term is defined and used in 11 U.S.C. § 101, et seq.

Any attorney retained to represent you in a Chapter 7 case is responsible for representing you on all matters arising in the case (unless otherwise agreed as to adversary proceedings or otherwise ordered by the Court). The attorney may not withdraw from a bankruptcy case in this District unless (a) the attorney and you agree to the attorney's withdrawal and another attorney enters the case on your behalf, or (b) the Court, after notice and a hearing, approves an attorney's motion for withdrawal or substitution of attorneys. When appropriate, the attorney may apply to the Court for compensation that is additional to the maximum initial fees set out in this agreement.

I. BEFORE THE CASE IS FILED, YOU AGREE TO TIMELY:

1. Discuss with your attorney your goals in filing the case.
2. Cooperate with your attorney in preparing all required bankruptcy papers and documents, thoroughly reviewing drafts of documents, and advising your attorney of corrections needed.
3. Provide your attorney with all documentation he or she requests, including but not limited to accurate copies of the following documents:

- a. Certificate of Credit Counseling, together with the debt repayment plan, if any, prepared by the nonprofit budget and credit counseling agency that provided individual counseling services to you prior to bankruptcy.
- b. Proof of income you received from all sources in the 6-month period before your case was filed. Some examples include paycheck stubs, Social Security statements, worker's compensation payments, income from rental property, pensions, disability payments, self-employment income, child and spousal support, and other payments. If you are self-employed or own a business, you should provide report(s) disclosing monthly income and expenses for the 6-month period before the case was filed.
- c. Federal and state income tax returns, or transcripts of returns, for the most recently ended tax year, as well as any other returns requested by your attorney.
- d. Proof of your identity and Social Security number. Some examples are your driver's license, passport, or other document containing your photograph.
- e. A record of your interest, if any, in an educational individual retirement account or a qualified State tuition program.
- f. The name, address and telephone number of any person or state agency to whom you owe back child or spousal support or make current child or spousal support payments. Include all supporting documents for the payments. Some examples of supporting documents are a court order, a declaration of voluntary support payments, a separation agreement, a divorce decree, and a property settlement agreement.
- g. Any insurance policies requested by your attorney.
- h. Documents relating to any inheritance to which you are entitled.
- i. Documents relating to any legal action in which you are a party.

II. AFTER THE CASE IS FILED, YOU AGREE TO TIMELY AND PROMPTLY COMPLY WITH ALL APPLICABLE CHAPTER 7 RULES AND PROCEDURES, INCLUDING BUT NOT LIMITED TO:

1. Attend the § 341(a) meeting of creditors at the time(s) ordered.
2. Keep the Chapter 7 trustee and your attorney informed of your current address and telephone number and employment status.

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3. Inform your attorney of any wage garnishments, seizure of assets or liens that occur or continue after the filing of your bankruptcy case.
4. Provide copies of all federal tax returns or transcripts to your attorney when requested, and pay over to your attorney or the trustee, as directed, the nonexempt portion of any tax refunds.
5. Contact your attorney promptly if you are sued on a scheduled debt or if you file a lawsuit or intend to settle any dispute relating to events that occurred prior to the filing of your bankruptcy case.
6. Provide on a timely basis all information or documentation requested by your attorney, including all information needed to respond to any motion or objection seeking relief in your bankruptcy case.
7. Provide your attorney with any tax returns, account statements, pay stubs, or other documentation necessary to comply with any audit requests.
8. Respond promptly to all communications from your attorney.

III. BEFORE THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

Attorney will personally*:

1. Meet with you to review your assets, liabilities, income, and expenses.
2. Counsel you regarding the advisability of filing either a chapter 13 or a chapter 7 case, discuss bankruptcy procedures, and answer your questions.
3. Review the completed petition, statements, schedules, and all amendments with you.
4. Explain to you the attorney's fees that are being charged in the case, how and when those attorney's fees are determined and paid, and whether additional fees will be charged for representation in adversary proceedings that might be filed in the case.
5. Provide a fully signed copy of this document to you.

With the assistance of staff under his or her supervision, your attorney will:

6. Verify the number and status of any prior bankruptcy case(s) filed by you or any related entity.

7. Timely prepare and file your petition, statements, schedules, required documents and certificates, and all necessary amendments to these filings.

* The term “personally” means that the described service will be performed only by an attorney who is a member in good standing of the Bar and admitted to practice before the bankruptcy court. The service shall not be performed by a non-attorney even if that individual is employed by the attorney and is under the direct supervision and control of that attorney.

IV. AFTER THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

1. Advise you of the requirement to attend the § 341(a) meeting of creditors and inform you of the date, time, and place of the meeting. In the case of a joint filing, inform you and your spouse that both of you must appear at the meeting.
2. Inform you that you must be punctual for the § 341(a) meeting of creditors or the meeting may be continued to a later date.
3. Attend the § 341(a) meetings and any court hearings, either personally or through another attorney from his or her firm or through an appearance attorney who has been adequately briefed on the case.
4. Advise you if an appearance attorney will stand in for him or her at the § 341(a) meeting or any court hearing, and explain to you in advance, if possible, the role and identity of the appearance attorney. In any event, it is your attorney’s responsibility to adequately prepare the appearance attorney for the meeting or hearing by providing all documents and information in sufficient time to allow for proper representation of you.
5. Notify you on a timely basis if any pleading seeking relief against you is filed. This notification shall specify a deadline by which you should contact your attorney to discuss a response to the pleading and may state that if you do not contact the attorney timely, such attorney may choose not to file a response. Such notification should explain the potential consequences of not filing a response to the pleading.
6. If your attorney is contacted by you on a timely basis, as provided in paragraph 5, such attorney will timely respond in an appropriate manner to any pleading seeking relief against you.
7. Prepare, file, and serve on a timely basis any necessary amended statements and schedules and any change of address, based on information provided by you.

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8. Monitor all information filed in your case for accuracy and completeness.
9. File objections to claims when appropriate.
10. Prepare and file a proof of claim for a creditor when appropriate.
11. Advise you of the effect of proposed reaffirmation agreements and, where appropriate, negotiate alternate terms with secured creditors.
12. Attend any hearing scheduled by the court on a reaffirmation agreement, regardless whether such attorney has signed off on the agreement.
13. Unless otherwise agreed before the bankruptcy case is filed, your attorney will represent you in adversary proceedings, including but not limited to objections to discharge and/or dischargeability.
14. If your attorney has not been retained to represent you in adversary proceedings, and an adversary proceeding is then filed against you, the attorney will explain to you the estimated cost of providing representation in the adversary proceeding, the risks and consequences of an adverse judgment, and the risks and consequences of proceeding without counsel.
15. Prepare, file, and serve any other motion that may be necessary to appropriately represent you in the bankruptcy case, including but not limited to motions to impose or extend the automatic stay.
16. Respond promptly to your questions and communications for the duration of the case, and provide all other legal services that are necessary for the proper administration of the bankruptcy case.
17. Advise you of the requirement to complete an instructional course in personal financial management, and the consequences of not doing so.
18. Represent you at a discharge hearing, if required.
19. Represent you in connection with any audit request.

V. ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES

You and your attorney agree that the fee for all legal services to be provided in the bankruptcy case will be \$_____. You agree to pay this fee. This fee does/does not (circle the appropriate verb) include representation in adversary proceedings. (If neither is circled, representation in adversary proceedings is included).

If you dispute the legal services provided or the fees charged by your attorney, you may file an objection with the Court. Should your attorney's continued representation create a hardship, such attorney may seek a court order allowing him or her to withdraw from the case. Under Local Rule 2090-1, such attorney will not be allowed to withdraw until another attorney enters the case, unless good cause is shown for the withdrawal.

Client's Signature. By signing this agreement, you certify that you have read the agreement and understand and agree to carry out the terms of the agreement to the best of your ability, and that you have received a signed copy of the agreement.

Attorney's Signature. By signing this agreement, your attorney certifies that, before the case was filed, he or she personally met with you and counseled and explained to you all matters as required by this agreement.

_____ Debtor	_____ Date
_____ Debtor	_____ Date
_____ Attorney	_____ Date

Instructions: Do not file with the court. Instead file a Debtor Attorney Certification re Rights. This is a text only entry and does not require an attached pdf document.
ECF Event: Bankruptcy>Other>Debtor Attorney Certification re Rights (text)

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MOW 2016-1.4 (8/07)

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI

IN RE:)
)
) Case No.
)
)
Debtors.)

**RIGHTS AND RESPONSIBILITIES AGREEMENT BETWEEN
CHAPTER 13 DEBTORS AND THEIR ATTORNEYS**

It is important for persons who file a Chapter 13 bankruptcy case to understand their rights and responsibilities. It is also important for them to know what their attorneys' responsibilities are and the necessity of communicating openly with their attorneys to make the case successful. Attorneys' clients also are entitled to expect certain services to be performed by their attorneys. In order to assure that clients and their attorneys understand their rights and responsibilities in the bankruptcy process, the following Rights and Responsibilities have been adopted by the Bankruptcy Court for the Western District of Missouri. The signatures below indicate that the responsibilities outlined in the agreement have been accepted by the Clients and their attorneys. Nothing in this agreement is intended to modify, enlarge or abridge the rights and responsibilities of a "debt relief agency," as that term is defined and used in 11 U.S.C. § 101, et. seq.

Any attorney retained to represent you in a Chapter 13 case is responsible for representing you on all matters arising in the case (unless otherwise agreed as to adversary proceedings or otherwise ordered by the Court). The attorney may not withdraw from a bankruptcy case in this District unless (a) the attorney and you agree to the attorney's withdrawal and another attorney enters the case on your behalf, or (b) the Court, after notice and a hearing, approves an attorney's motion for withdrawal or substitution of attorneys. When appropriate, the attorney may apply to the Court for compensation that is additional to the maximum initial fees set out in this agreement.

I. BEFORE THE CASE IS FILED, YOU AGREE TO TIMELY:

1. Discuss with your attorney your goals in filing the case.
2. Cooperate with your attorney in preparing all required bankruptcy papers and documents, thoroughly reviewing drafts of documents, and advising your attorney of corrections needed.
3. Provide your attorney with all documentation he or she requests, including but not

limited to accurate copies of the following documents:

- a. Certificate of Credit Counseling, together with the debt repayment plan, if any, prepared by the nonprofit budget and credit counseling agency that provided individual counseling services to you prior to bankruptcy.
- b. Proof of income you received from all sources in the 6-month period before your case was filed. Some examples include paycheck stubs, Social Security statements, worker's compensation payments, income from rental property, pensions, disability payments, self-employment income, child and spousal support, and other payments. If you are self-employed or own a business, you should provide report(s) disclosing monthly income and expenses for the 6-month period before the filing date.
- c. If another person is expected to contribute to your Chapter 13 case, proof of that person's income and ability to pay.
- d. Copies of federal and state income tax returns, or transcripts of returns, for the most recently ended tax year, as well as any other returns requested by your attorney.
- e. Proof of your identity and Social Security number. Some examples are your driver's license, passport, or other document containing your photograph.
- f. A record of your interest, if any, in an educational individual retirement account or a qualified State tuition program.
- g. The name, address and telephone number of any person or state agency to whom you owe back child or spousal support or make current child or spousal support payments. Include all supporting documents for the payments. Some examples of supporting documents are a court order, a declaration of voluntary support payments, a separation agreement, a divorce decree, and a property settlement agreement.
- h. Any insurance policies requested by your attorney.
- i. Documents relating to any inheritance to which you are entitled.
- j. Documents relating to any legal action in which you are a party.

II. AFTER THE CASE IS FILED, YOU AGREE TO TIMELY AND PROMPTLY COMPLY WITH ALL APPLICABLE CHAPTER 13 RULES AND PROCEDURES, INCLUDING BUT NOT LIMITED TO:

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1. Keep the chapter 13 trustee and your attorney informed of your current address and telephone number and employment status.
2. Attend the § 341(a) meeting of creditors at the time(s) ordered.
3. Make all required Chapter 13 plan payments on time.
4. Sign a payroll deduction order, if one is required.
5. Inform your attorney of any change in your marital status, the commencement of any child support or spousal support obligation, or any change in any existing child support or spousal support obligation.
6. Inform your attorney of any wage garnishments, seizure of assets or liens that occur or continue after the filing of your bankruptcy case.
7. Contact your attorney if you lose your job, if your income increases, if you have new or unexpected financial problems, or if you receive (or find out that you might be entitled to receive) any money or property from an inheritance or legal action.
8. Inform your attorney of any change in a creditor's address or in the amount of any payment you are required to make.
9. Keep records of all mortgage payments you make to secured creditors during the case.
10. Provide copies of all federal and state tax returns or transcripts to your attorney when requested, and pay over to your attorney or the trustee, as directed, the nonexempt portion of any tax refunds.
11. Contact your attorney if any tax refunds are seized or are not received when expected.
12. Contact your attorney if you are sued during the case or if you file a lawsuit or intend to settle any dispute relating to events that occurred either before or after the filing of your bankruptcy case.
13. Contact your attorney before buying or selling any real estate, before buying or selling any unencumbered personal property with a value of more than \$2,500.00, or before incurring any debt in excess of \$2,500.00. Requests to incur debt of \$2,500 or less may be submitted directly to the Chapter 13 trustee.
14. Provide on a timely basis all information or documentation requested by your

attorney, including all information needed to respond to any motion or objection seeking relief in your bankruptcy case.

15. Provide your attorney with all documentation necessary to comply with any audit request.
16. Respond promptly to all communications from your attorney.

III. BEFORE THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

Attorney will personally:*

1. Meet with you to review your assets, liabilities, income, and expenses.
2. Counsel you regarding the advisability of filing either a Chapter 13 or a Chapter 7 case, discuss bankruptcy procedures, and answer your questions.
3. Review the completed bankruptcy petition, statements, schedules, and all amendments with you.
4. Explain to you that the attorney is being engaged to represent you on all matters arising in the Chapter 13 case, and reach an agreement with you on whether the attorney is to represent you in adversary proceedings that might be filed in the case.
5. Explain to you the attorney's fees that are being charged in the case, how and when those attorney's fees are determined and paid, and whether additional fees will be charged for representation in adversary proceedings that might be filed in the case.
6. Explain to you which payments must be made directly to creditors by you and which payments will be made through the Chapter 13 plan.
7. Explain to you how, when, and where to make the Chapter 13 plan payments.
8. Explain to you how, when, and where to make your mortgage payments after the bankruptcy case is filed.
9. Advise you of the need to maintain appropriate insurance, such as homeowner's insurance on your home and liability, collision, and comprehensive insurance on vehicles that are leased or are security for a loan.

10. Provide a fully signed copy of this agreement to you.

With the assistance of staff under his or her supervision, your attorney will:

11. Verify the number and status of any prior bankruptcy case(s) filed by you or any related entity.
12. Timely prepare and file your petition, statements, schedules, required documents and certificates, and all necessary amendments to these filings.

* The term “personally” means that the described service will be performed only by an attorney who is a member in good standing of the Bar and admitted to practice before the bankruptcy court. The service shall not be performed by a non-attorney even if that individual is employed by the attorney and is under the direct supervision and control of that attorney.

IV. AFTER THE CASE IS FILED, YOUR ATTORNEY AGREES TO PROVIDE ALL SERVICES NECESSARY FOR REPRESENTATION, INCLUDING BUT NOT LIMITED TO:

1. Advise you of the requirement to attend the § 341(a) meeting of creditors and inform you of the date, time, and place of the meeting. In the case of a joint filing, inform you and your spouse that both of you must appear at the meeting.
2. Inform you that you must be punctual for the § 341(a) meeting of creditors or the meeting may be continued to a later date.
3. Attend the § 341(a) meetings and any court hearings, either personally or through another attorney from his or her firm or through an appearance attorney who has been adequately briefed on the case.
4. Advise you if an appearance attorney will stand in for him or her at the § 341(a) meeting or any court hearing, and explain to you in advance, if possible, the role and identity of the appearance attorney. In any event, it is your attorney’s responsibility to adequately prepare the appearance attorney for the meeting or hearing by providing all documents and information in sufficient time to allow for proper representation of you.
5. Serve the Chapter 13 plan on all creditors and other parties on a timely basis.
6. Submit to the Chapter 13 trustee on a timely basis properly documented proof of all sources of income for you.

7. Notify you on a timely basis if any pleading seeking relief against you is filed. This notification shall specify a deadline by which you should contact your attorney to discuss a response to the pleading and may state that if you do not contact the attorney timely, such attorney may choose not to file a response. Such notification should explain the potential consequences of not filing a response to the pleading.
8. If your attorney is contacted by you on a timely basis, as provided in paragraph 7, such attorney will timely respond in an appropriate manner to any pleading seeking relief against you.
9. Prepare, file, and serve on a timely basis any necessary amended statements and schedules and any change of address, based on information provided by you.
10. Monitor all information filed in your case for accuracy and completeness, including but not limited to reviewing the order of confirmation, the claims register, and notices concerning the payment of claims, and promptly notify the trustee of any problems or discrepancies.
11. File objections to claims when appropriate.
12. Prepare and file proofs of claim for creditors when appropriate.
13. Prepare, file, and serve timely motions to modify the plan after confirmation, when necessary.
14. Explain to you that additional legal fees may be charged for filing or responding to motions after confirmation, and explain that the fees for those services are set or approved by the Court.
15. Prepare, file, and serve motions to buy, sell, or refinance real estate or personal property, when appropriate.
16. Prepare, file, and serve any other motion that may be necessary to appropriately represent you in the bankruptcy case, including but not limited to motions to impose or extend the automatic stay, motions to avoid liens on real or personal property, and motions to value the collateral of secured creditors.
17. Respond promptly to your questions and communications throughout the term of the plan, and provide all other legal services that are necessary for the administration of the bankruptcy case.
18. Unless otherwise agreed before the bankruptcy case is filed, your attorney will represent you in adversary proceedings, including but not limited to objections to

discharge and/or dischargeability.

- 19. If your attorney has not been retained to represent you in adversary proceedings, and an adversary proceeding is then filed against you, the attorney will explain to you the estimated cost of providing representation in the adversary proceeding, the risks and consequences of an adverse judgment, and the risks and consequences of proceeding without counsel.
- 20. Advise you of the requirement to complete an instructional course in personal financial management, and the consequences of not doing so.
- 21. Represent you at a discharge hearing, if required.
- 22. Represent you in connection with any audit request.

V. ALLOWANCE AND PAYMENT OF ATTORNEYS' FEES

The guidelines in this District for payment of attorneys' fees in Chapter 13 cases without a detailed fee application provide for maximum initial fees of \$3,000 for legal services provided up to confirmation of the Chapter 13 Plan. In this case, the parties agree that the fee for these preconfirmation services will be \$_____, payable as follows:

_____.

Such fee does/does not (circle the appropriate verb) include representation in adversary proceedings. (If neither is circled, representation in adversary proceeding is included) Fees for postconfirmation services are subject to court approval, based on the schedule contained in Local Rule 2016-1, or based on actual time records submitted by the attorney.

Other than the initial retainer, your attorney may not receive fees directly from you. All other fees due shall be paid through the Chapter 13 Plan unless otherwise ordered by the Court.

If you dispute the legal services provided or the fees charged by your attorney, you may file an objection with the court. Should your attorney's continued representation create a hardship, such attorney may seek a court order allowing him or her to withdraw from the case. Under Local Rule 2090-1, such attorney will not be allowed to withdraw until another attorney enters the case, unless good cause is shown to permit the withdrawal.

Client's Signature. By signing this agreement, you certify that you have read the agreement and understand and agree to carry out the terms of the agreement to the best of your ability, and that you have received a signed copy of the agreement.

Attorney's Signature. By signing this agreement, your attorney certifies that, before the case was filed, he or she personally met with you and counseled and explained to you all matters as required by this agreement.

Debtor

Date

Debtor

Date

Attorney

Date

**BEST PRACTICES FOR DOCUMENT PRODUCTION
REQUESTS BY TRUSTEES IN CONSUMER BANKRUPTCY CASES**

Shortly after the effective date of BAPCPA, the United States Trustee Program (“USTP”) reviewed its document production requirements and decided that USTP staff would not routinely request from debtors any documentation that is not otherwise required by the Bankruptcy Code (“Code”) or Federal Rules of Bankruptcy Procedure (“Rules”). The USTP similarly notified chapter 7 and chapter 13 trustees that we did not require them to collect additional documents without a specific need for additional information. In an effort to control the cost of consumer bankruptcy without interfering with a trustee’s obligation to investigate the financial affairs of the debtor, the USTP consulted with the National Association of Bankruptcy Trustees (“NABT”), National Association of Chapter 13 Trustees (“NACTT”), and the National Association of Consumer Bankruptcy Attorneys (“NACBA”) to consider prevailing document request practices in consumer bankruptcy cases. After reviewing its own practices and considering the input of those entities, the USTP developed the best practices set forth below.

By identifying common examples of potentially unreasonable or burdensome document requests and some of the most common situations that may reasonably lead a trustee to make further inquiry, this USTP guidance is intended to ensure that all parties in interest are focused on documentation that is likely to advance the proper and efficient administration of a particular bankruptcy case.

These best practices are not intended to override the requirements of the Code, Rules or local bankruptcy rules. Nor are they intended to interfere with the reasonable judgments made by trustees in light of the facts and circumstances in specific cases.

I. Common Examples of Potentially Unreasonable or Overly Burdensome Document Requests

- A. A trustee asks every debtor to supply copies of automobile titles, copies of a county treasurer’s tax statement for real property, six months of bank statements, three years of tax returns, an itemized inventory of household goods, copies of divorce decrees or property settlements entered in the last three years, and copies of the complaint and answer in any legal proceeding to which the debtor is a party. This request is excessive. There may be good reasons to make any or all of these requests in an individual case, but a blanket request for all of these documents should not be made in all cases.
- B. Trustees in a particular jurisdiction have met and agreed upon a uniform letter request or questionnaire that requires all debtors to submit documents and

information that supplement and expand upon the detail required by the Bankruptcy Code and Rules. This request is excessive. In a specific case, there may be valid reasons to make such a request, but that request should not be made routinely in all cases.

- C. A trustee routinely rejects liquidation analyses and plan calculations that contain *de minimis* mathematical errors that will not affect the ultimate distribution to creditors. Generally, before rejecting a plan with minor errors, the trustee should weigh the cost to the debtor of preparing a new plan against the benefit to creditors.

II. Common Examples That May Lead to Further Inquiry and Document Requests

- A. The debtor's schedules show an expensive home but value household goods and furniture at a disproportionately nominal amount (e.g., \$500). The inconsistency between the value of the debtor's home and the value of the household goods and furnishings may cause the trustee to make further inquiry and request additional documents.
- B. On Schedule I, the debtor lists monthly pay but does not itemize deductions or identify his employer. On the Statement of Financial Affairs ("SOFA"), Question 1, the debtor lists income for the previous year only. Since Schedule I and question 1 of the SOFA appear to be incomplete, the trustee might request additional information regarding the source of the debtor's income for the current and prior years as well as the monthly deductions from the debtor's pay.
- C. On Schedule D, the debtor lists a secured automobile loan that is owed to a relative. The fact that the debt is owed to an insider may cause the trustee to request proof that the security interest has been properly perfected or other documents relating to this transaction.
- D. The debtor lists a value for his residence that, in the trustee's experience, is significantly lower than homes in that neighborhood or town. The apparent asset undervaluation may cause the trustee to request some proof of value, particularly if there appears to be equity in the property. However, trustees should not request proof of value if the asset is fully exempt under state law or there is clearly no equity.
- E. A debtor's attorney files a large number of cases in which the same questions on Schedule B are left blank, or lists the identical value on Schedule B for all of his

debtors. To the extent that the trustee believes Schedule B to be inaccurate or incomplete in a particular case, the trustee may request documents in that case to supplement the incomplete information provided.

- F. The debtor lists significant unsecured debts on his Schedule F, including recent and high credit card debt, but minimal or no assets on Schedule B. The trustee might request additional documentation, including credit card and bank statements, to determine whether the debtor has dissipated or failed to disclose assets.
- G. A debtor's attorney files cases in which the means test forms are frequently completed improperly or contain significant mathematical errors. To the extent that the trustee believes the improperly completed or miscalculated means test form will have a material impact on a debtor's case, the form deficiencies may cause the trustee to request documents to supplement the incomplete or miscalculated information provided.
- H. The debtor lists a vehicle that appears to be a "classic" or vintage car and values it at a nominal amount (e.g., \$250). The apparent undervaluation may cause the trustee to request that the debtor provide proof of the car's value, which proof may include an appraisal or documentation regarding the purchase price.
- I. The debtor lists her past-due federal tax debt and child support as "secured" debts on Schedule D. The categorization of these debts, which usually are unsecured liabilities, may cause the trustee to request that the debtor provide proof that the debts are secured.
- J. The debtor works for an hourly wage with differing hours each pay period, sometimes resulting in overtime. The debtor supplies a recent payment advice that lists cumulative year-to-date information and provides only a rough estimate of the debtor's earnings in the six months prior to filing. The variance in hours and pay may cause the trustee to request additional information to confirm the debtor's income in order to conduct a proper means-test analysis.
- K. A trustee requests additional documents such as six months of bank statements and credit card statements based on a "feeling" or "hunch" following the debtor's testimony at the meeting of creditors. The debtor's testimony may cause the trustee to make such requests in order to fully investigate the debtor's compliance with the Code and Rules. However, the trustee should be able to provide debtor's

counsel or an unrepresented debtor with a reasonable explanation for the “feeling” or “hunch”.

III. Submission of Documents to the Trustee

Currently, there is no uniformity in the manner in which debtors furnish documents, information, verification of identity, and other materials to the trustee. Even in the same geographic locality, trustees may have different preferences on the production and receipt of information and documents; and debtors and debtors’ attorneys can have different preferences on the assembly and production of this material. To avoid confusion and promote judicial efficiency, it is in the interest of all parties to the bankruptcy system to agree on a uniform manner or process through which documents, information, verification of identity, and other materials are timely furnished by debtors and debtors’ counsel to trustees. Ideally, a uniform process, such as email, should impose the least burden and cost on both trustees and debtors. Examples of uniform procedures that trustees could adopt are set forth below.

- A. Trustees in a jurisdiction have adopted a uniform method of receiving information by email. Trustees allow pro se debtors and counsel without access to email to submit their additional information in hard copy.
- B. Trustees in a jurisdiction have set up a system that allows debtors and debtors’ attorneys to send copies of encrypted information and documents to a central file-transfer-protocol site or third-party repository. Trustees allow debtors and debtors’ counsel to submit documents by another method on a case-by-case basis to accommodate specific needs or requests.

US Code - Chapter 47:
Fraud & False Statements

- Section 1001 : Statements or entries generally
- Section 1002 : Possession of false papers to defraud
United States
- Section 1003 : Demands against the United States
- Section 1004 : Certification of checks
- Section 1005 : Bank entries, reports and transactions
- Section 1006 : Federal credit institution entries, reports
and transactions
- Section 1007 : Federal Deposit Insurance Corporation
transactions
- Section 1008 : Repealed
- Section 1010 : Department of Housing and Urban
Development and Federal Housing
Administration transactions
- Section 1011 : Federal land bank mortgage transactions
- Section 1012 : Department of Housing and Urban
Development transactions
- Section 1013 : Farm loan bonds and credit bank
debentures
- Section 1014 : Loan and credit applications generally;
renewals and discounts; crop insurance

- Section 1015 : Naturalization, citizenship or alien registry
- Section 1016 : Acknowledgment of appearance oath
- Section 1017 : Government seals wrongfully used and instruments wrongfully sealed
- Section 1018 : Official certificates or writings
- Section 1019 : Certificates by consular officers
- Section 1020 : Highway projects
- Section 1021 : Title records
- Section 1022 : Delivery of certificate, voucher, receipt for military or naval property
- Section 1023 : Insufficient delivery of money or property for military or naval service
- Section 1024 : Purchase or receipt of military, naval, or veteran's facilities property
- Section 1025 : False pretenses on high seas and other waters
- Section 1026 : Compromise, adjustment, or cancellation of farm indebtedness
- Section 1027 : False statements and concealment of facts in relation to documents required by the Employee Retirement Income Security Act of 1974
- Section 1028 : Fraud and related activity in connection with identification documents, authentication features, and information

- Section 1028a: Aggravated identity theft
- Section 1029 : Fraud and related activity in connection with access devices
- Section 1030 : Fraud and related activity in connection with computers
- Section 1031 : Major fraud against the United States
- Section 1032 : Concealment of assets from conservator, receiver, or liquidating agent
- Section 1033 : Crimes by or affecting person engaged in the business of insurance whose activities affect interstate commerce
- Section 1034 : Civil penalties and injunctions for violations of section 1033
- Section 1035 : False statements relating to health care matters
- Section 1036 : Entry by false pretenses to any real property, vessel, or aircraft of the United States or secure area of any airport or seaport
- Section 1037 : Fraud and related activity in connection with electronic mail
- Section 1038 : False information and hoaxes
- Section 1039 : Fraud and related activity in connection with obtaining confidential phone records information of a covered entity
- Section 1040 : Fraud in connection with major disaster or emergency benefits

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

U.S. Code › Title 18 › Part I › Chapter 9 › § 152

[PREV](#) | [NEXT](#)

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code	Notes	Updates
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A person who—

- (1) knowingly and fraudulently conceals from a custodian, trustee, marshal, or other officer of the court charged with the control or custody of property, or, in connection with a case under title 11, from creditors or the United States Trustee, any property belonging to the estate of a debtor;
- (2) knowingly and fraudulently makes a false oath or account in or in relation to any case under title 11;
- (3) knowingly and fraudulently makes a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, in or in relation to any case under title 11;
- (4) knowingly and fraudulently presents any false claim for proof against the estate of a debtor, or uses any such claim in any case under title 11, in a personal capacity or as or through an agent, proxy, or attorney;
- (5) knowingly and fraudulently receives any material amount of property from a debtor after the filing of a case under title 11, with intent to defeat the provisions of title 11;
- (6) knowingly and fraudulently gives, offers, receives, or attempts to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof for acting or forbearing to act in any case under title 11;
- (7) in a personal capacity or as an agent or officer of any person or corporation, in contemplation of a case under title 11 by or against the person or any other person or corporation, or with intent to defeat the provisions of title 11, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation;
- (8) after the filing of a case under title 11 or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor; or
- (9) after the filing of a case under title 11, knowingly and fraudulently withholds from a custodian, trustee, marshal, or other officer of the court or a United States Trustee entitled to its possession, any recorded information (including books, documents, records, and papers) relating to the property or financial affairs of a debtor,

shall be fined under this title, imprisoned not more than 5 years, or both.

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

U.S. Code › Title 18 › Part I › Chapter 9 › § 152

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Source

(June 25, 1948, ch. 645, [62 Stat. 689](#); [Pub. L. 86-519](#), § 2, June 12, 1960, [74 Stat. 217](#); [Pub. L. 86-701](#), Sept. 2, 1960, [74 Stat. 753](#); [Pub. L. 94-550](#), § 4, Oct. 18, 1976, [90 Stat. 2535](#); [Pub. L. 95-598](#), title III, § 314(a), (c), Nov. 6, 1978, [92 Stat. 2676](#), 2677; [Pub. L. 100-690](#), title VII, § 7017, Nov. 18, 1988, [102 Stat. 4395](#); [Pub. L. 103-322](#), title XXXIII, § 330016(1)(K), Sept. 13, 1994, [108 Stat. 2147](#); [Pub. L. 103-394](#), title III, § 312(a)(1)(A), Oct. 22, 1994, [108 Stat. 4138](#); [Pub. L. 104-294](#), title VI, § 601(a)(1), Oct. 11, 1996, [110 Stat. 3497](#).)

Historical and Revision Notes

Based on section 52(b) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29b, [30 Stat. 554](#); May 27, 1926, ch. 406, § 11 (part), [44 Stat. 665](#); June 22, 1938, ch. 575, § 1 (part), [52 Stat. 855](#)).

Section was broadened to apply to one who gives or offers a bribe.
Minor changes were made in phraseology.

Amendments

1996—[Pub. L. 104-294](#) substituted "fined under this title" for "fined not more than \$5,000" in closing provisions.

1994—[Pub. L. 103-394](#) amended section generally, designating undesignated pars. as opening provisions, pars. (1) to (9), and closing provisions, and in pars. (1) and (9) inserting reference to United States Trustee.

[Pub. L. 103-322](#) substituted "fined under this title" for "fined not more than \$5,000" in last par.

1988—[Pub. L. 100-690](#) substituted "penalty of perjury" for "penalty or perjury" in third par.

1978—[Pub. L. 95-598](#) substituted, wherever appearing, "debtor" for "bankrupt", "case under title 11" for "bankruptcy proceeding", and "provisions of title 11" for "bankruptcy law"; and substituted "a custodian" for "the receiver, custodian", wherever appearing, and "recorded information, including books, documents, records, and papers, relating to the property or financial affairs" for "document affecting or relating to the property or affairs", in two places.

1976—[Pub. L. 94-550](#) inserted paragraph covering the knowing and fraudulent making of a false declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28 or in relation to any bankruptcy proceeding.

1960—[Pub. L. 86-701](#) included fraudulent transfers and concealment of property by persons in their individual capacity in sixth par.

[Pub. L. 86-519](#) struck out "under oath" after "knowingly and fraudulently presents" in third par.

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

Effective Date of 1994 Amendment

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of Title 11.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 3057, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

U.S. Code > Title 18 > Part I > Chapter 9 > § 152

18 U.S. Code § 152 - Concealment of assets; false oaths and claims; bribery

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code **Notes** **Updates**

The table below lists the classification updates, since Jan. 3, 2012, for this section. Updates to a broader range of sections may be found at the update page for containing chapter, title, etc.

The most recent Classification Table update that we have noticed was Tuesday, August 13, 2013

An empty table indicates that we see no relevant changes listed in the classification tables. If you suspect that our system may be missing something, please double-check with the [Office of the Law Revision Counsel](#).

18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 153 - Embezzlement against estate

U.S. Code > Title 18 > Part I > Chapter 9 > § 153

18 U.S. Code § 153 - Embezzlement against estate

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code **Notes** **Updates**

[prev](#) | [next](#)

(a) **Offense.**— A person described in subsection (b) who knowingly and fraudulently appropriates to the person's own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor shall be fined under this title, imprisoned not more than 5 years, or both.

(b) **Person to Whom Section Applies.**— A person described in this subsection is one who has access to property or documents belonging to an estate by virtue of the person's participation in the administration of the estate as a trustee, custodian, marshal, attorney, or other officer of the court or as an agent, employee, or other person engaged by such an officer to perform a service with respect to the estate.

18 U.S. Code § 153 - Embezzlement against estate

U.S. Code › Title 18 › Part I › Chapter 9 › § 153

18 U.S. Code § 153 - Embezzlement against estate

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code	Notes	Updates
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Source

(June 25, 1948, ch. 645, [62 Stat. 690](#); [Pub. L. 95-598](#), title III, § 314(a)(1), (d)(1), (2), Nov. 6, 1978, [92 Stat. 2676](#), 2677; [Pub. L. 103-322](#), title XXXIII, § 330016(1)(K), Sept. 13, 1994, [108 Stat. 2147](#); [Pub. L. 103-394](#), title III, § 312(a)(1)(A), Oct. 22, 1994, [108 Stat. 4139](#); [Pub. L. 104-294](#), title VI, § 601(a)(1), Oct. 11, 1996, [110 Stat. 3497](#).)

Historical and Revision Notes

Based on section 52(a) of title [11](#), U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29a, [30 Stat. 554](#); May 27, 1926, ch. 406, § 11 (part), [44 Stat. 665](#); June 22, 1938, ch. 575, § 1 (part), [52 Stat. 855](#)).

Minor changes were made in phraseology.

Amendments

1996—Subsec. (a). [Pub. L. 104-294](#) substituted "fined under this title" for "fined not more than \$5,000".

1994—[Pub. L. 103-394](#) amended section generally. Prior to amendment, section read as follows: "Whoever knowingly and fraudulently appropriates to his own use, embezzles, spends, or transfers any property or secretes or destroys any document belonging to the estate of a debtor which came into his charge as trustee, custodian, marshal, or other officer of the court, shall be fined under this title or imprisoned not more than five years, or both."

[Pub. L. 103-322](#) substituted "fined under this title" for "fined not more than \$5,000". 1978—[Pub. L. 95-598](#) struck out ", receiver" after "trustee" in section catchline and in text struck out "receiver," before "custodian" and substituted "debtor" for "bankrupt".

Effective Date of 1994 Amendment

Amendment by [Pub. L. 103-394](#) effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of [Pub. L. 103-394](#), set out as a note under section [101](#) of Title [11](#).

Effective Date of 1978 Amendment

Amendment by [Pub. L. 95-598](#) effective Oct. 1, 1979, see section 402(a) of [Pub. L. 95-598](#), set out as an Effective Date note preceding section [101](#) of Title [11](#), Bankruptcy.

Savings Provision

Amendment by section 314 of [Pub. L. 95-598](#) not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section [2516](#), [3057](#), or [3284](#) of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1,

18 U.S. Code § 153 - Embezzlement against estate

1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

18 U.S. Code § 153 - Embezzlement against estate

U.S. Code > Title 18 > Part 1 > Chapter 9 > § 153

18 U.S. Code § 153 - Embezzlement against estate

Current through Pub. L. 113-121. (See [Public Laws](#) for the current Congress.)

US Code **Notes** **Updates**

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The most recent Classification Table update that we have noticed was **Tuesday, August 13, 2013**

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 154 - Adverse interest and conduct of officers

U.S. Code > Title 18 > Part I > Chapter 9 > § 154

18 U.S. Code § 154 - Adverse interest and conduct of officers

Current through Pub. L. 113--121. (See [Public Laws for the current Congress.](#))

[US Code](#) [Notes](#) [Updates](#)

[prev](#) | [next](#)

A person who, being a custodian, trustee, marshal, or other officer of the court—

- (1) knowingly purchases, directly or indirectly, any property of the estate of which the person is such an officer in a case under title 11;
- (2) knowingly refuses to permit a reasonable opportunity for the inspection by parties in interest of the documents and accounts relating to the affairs of estates in the person's charge by parties when directed by the court to do so; or
- (3) knowingly refuses to permit a reasonable opportunity for the inspection by the United States Trustee of the documents and accounts relating to the affairs of an estate in the person's charge,

shall be fined under this title and shall forfeit the person's office, which shall thereupon become vacant.

18 U.S. Code § 154 - Adverse interest and conduct of officers

U.S. Code > Title 18 > Part 1 > Chapter 9 > § 154

18 U.S. Code § 154 - Adverse interest and conduct of officers

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Source

(June 25, 1948, ch. 645, [62 Stat. 690](#); [Pub. L. 95-598](#), title III, § 314(a)(2), (e)(1), (2), Nov. 6, 1978, [92 Stat. 2676](#), 2677; [Pub. L. 103-322](#), title XXXIII, § 330016(1)(C), Sept. 13, 1994, [108 Stat. 2147](#); [Pub. L. 103-394](#), title III, § 312(a)(1)(A), Oct. 22, 1994, [108 Stat. 4139](#); [Pub. L. 104-294](#), title VI, § 601(a)(1), Oct. 11, 1996, [110 Stat. 3497](#).)

Historical and Revision Notes

Based on section 52(c) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29c, [30 Stat. 554](#); June 22, 1938, ch. 575, § 1 (part), [52 Stat. 856](#)).
Minor changes were made in phraseology.

Amendments

1996—[Pub. L. 104-294](#) substituted “fined under this title” for “fined not more than \$5,000” in closing provisions.

1994—[Pub. L. 103-394](#) amended section generally. Prior to amendment, section read as follows:

“Whoever, being a custodian, trustee, marshal, or other officer of the court, knowingly purchases, directly or indirectly, any property of the estate of which he is such officer in a case under title 11; or

“Whoever being such officer, knowingly refuses to permit a reasonable opportunity for the inspection of the documents and accounts relating to the affairs of estates in his charge by parties in interest when directed by the court to do so—

“Shall be fined under this title, and shall forfeit his office, which shall thereupon become vacant.”

[Pub. L. 103-322](#) substituted “fined under this title” for “fined not more than \$500” in third par.

1978—[Pub. L. 95-598](#) struck out “referees and other” before “officers” in section catchline, and in text struck out “Whoever knowingly acts as a referee in a case in which he is directly or indirectly interested; or” before “Whoever, being a” and “referee, receiver,” before “custodian” and substituted “case under title 11” for “bankruptcy proceeding”.

Effective Date of 1994 Amendment

Amendment by [Pub. L. 103-394](#) effective Oct. 22, 1994, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before Oct. 22, 1994, see section 702 of [Pub. L. 103-394](#), set out as a note under section 101 of Title 11.

Effective Date of 1978 Amendment

18 U.S. Code § 154 - Adverse interest and conduct of officers

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

Savings Provision

Amendment by section 314 of Pub. L. 95-598 not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section 2516, 305Z, or 3284 of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of Pub. L. 95-598, set out as a note preceding section 101 of Title 11, Bankruptcy.

18 U.S. Code § 154 - Adverse interest and conduct of officers

U.S. Code > Title 18 > Part 1 > Chapter 9 > § 154

18 U.S. Code § 154 - Adverse interest and conduct of officers

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code **Notes** **Updates**

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bu...

U.S. Code › Title 18 › Part 1 › Chapter 9 › § 158

18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

(a) **In General.**— The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

(b) **United States Attorneys and Agents of the Federal Bureau of Investigation.**— The individuals referred to in subsection (a) are—

- (1) the United States attorney for each judicial district of the United States; and
- (2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

(c) **Bankruptcy Investigations.**— Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

(d) **Bankruptcy Procedures.**— The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.

18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bu...

U.S. Code > Title 18 > Part I > Chapter 9 > § 158

18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

US Code **Notes** **Updates**

Source

(Added [Pub. L. 109-8](#), title II, § 203(b)(1), Apr. 20, 2005, [119 Stat. 49](#).)

Effective Date

Section effective 180 days after Apr. 20, 2005, and not applicable with respect to cases commenced under Title 11, Bankruptcy, before such effective date, except as otherwise provided, see section 1501 of [Pub. L. 109-8](#), set out as an Effective Date of 2005 Amendment note under section [101](#) of Title [11](#).

18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bu...

U.S. Code › Title 18 › Part 1 › Chapter 9 › § 158

18 U.S. Code § 158 - Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code Notes Updates

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

U.S. Code > Title 18 > Part 1 > Chapter 19 > § 371

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code Notes Updates

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not more than five years, or both.

If, however, the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor.

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

U.S. Code › Title 18 › Part 1 › Chapter 19 › § 371

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Source

(June 25, 1948, ch. 645, [62 Stat. 701](#); [Pub. L. 103-322](#), title XXXIII, § 330016(1)(L), Sept. 13, 1994, [108 Stat. 2147](#).)

Historical and Revision Notes

Based on title 18, U.S.C., 1940 ed., §§ 88, 294 (Mar. 4, 1909, ch. 321, § 37, [35 Stat. 1096](#); Mar. 4, 1909, ch. 321, § 178a, as added Sept. 27, 1944, ch. 425, [58 Stat. 752](#)).

This section consolidates said sections 88 and 294 of title 18, U.S.C., 1940 ed.

To reflect the construction placed upon said section 88 by the courts the words "or any agency thereof" were inserted. (See *Haas v. Henkel*, 1909, 30 S. Ct. 249, 216 U. S. 462, 54 L. Ed. 569, 17 Ann. Cas. 1112, where court said: "The statute is broad enough in its terms to include any conspiracy for the purpose of impairing, obstructing, or defeating the lawful functions of any department of government." Also, see *United States v. Walter*, 1923, 44 S. Ct. 10, 263 U. S. 15, 68 L. Ed. 137, and definitions of department and agency in section 6 of this title.)

The punishment provision is completely rewritten to increase the penalty from 2 years to 5 years except where the object of the conspiracy is a misdemeanor. If the object is a misdemeanor, the maximum imprisonment for a conspiracy to commit that offense, under the revised section, cannot exceed 1 year.

The injustice of permitting a felony punishment on conviction for conspiracy to commit a misdemeanor is described by the late Hon. Grover M. Moscowitz, United States district judge for the eastern district of New York, in an address delivered March 14, 1944, before the section on Federal Practice of the New York Bar Association, reported in 3 *Federal Rules Decisions*, pages 380-392.

Hon. John Paul, United States district judge for the western district of Virginia, in a letter addressed to Congressman Eugene J. Keogh dated January 27, 1944, stresses the inadequacy of the 2-year sentence prescribed by existing law in cases where the object of the conspiracy is the commission of a very serious offense.

The punishment provision of said section 294 of title 18 was considered for inclusion in this revised section. It provided the same penalties for conspiracy to violate the provisions of certain counterfeiting laws, as are applicable in the case of conviction for the specific violations. Such a punishment would seem as desirable for all conspiracies as for such offenses as counterfeiting and transporting stolen property in interstate commerce.

A multiplicity of unnecessary enactments inevitably leads to confusion and disregard of law. (See reviser's note under section [493](#) of this title.)

Since consolidation was highly desirable and because of the strong objections of prosecutors to the general application of the punishment provision of said section 294,

AMERICAN BANKRUPTCY INSTITUTE

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

the revised section represents the best compromise that could be devised between sharply conflicting views.

A number of special conspiracy provisions, relating to specific offenses, which were contained in various sections incorporated in this title, were omitted because adequately covered by this section. A few exceptions were made, (1) where the conspiracy would constitute the only offense, or (2) where the punishment provided in this section would not be commensurate with the gravity of the offense. Special conspiracy provisions were retained in sections 241, 286, 372, 757, 794, 956, 1201, 2271, 2384 and 2388 of this title. Special conspiracy provisions were added to sections 2153 and 2154 of this title.

Amendments

1994—Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$10,000".

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

U.S. Code › Title 18 › Part I › Chapter 19 › § 371

18 U.S. Code § 371 - Conspiracy to commit offense or to defraud United States

US Code **Notes** **Updates**

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investi...

U.S. Code > Title 18 > Part I > Chapter 73 > § 1519

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investi...

U.S. Code > Title 18 > Part I > Chapter 73 > § 1519

18 U.S. Code § 1519 - Destruction, alteration, or
falsification of records in Federal investigations and
bankruptcy

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code Notes Updates

Source

(Added [Pub. L. 107-204](#), title VIII, § 802(a), July 30, 2002, [116 Stat. 800.](#))

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investi...

U.S. Code › Title 18 › Part 1 › Chapter 73 › § 1519

18 U.S. Code § 1519 - Destruction, alteration, or falsification of records in Federal investigations and bankruptcy

Current through Pub. L. 113-121. (See [Public Laws](#) for the current Congress.)

US Code **Notes** **Updates**

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 3057 - Bankruptcy investigations

U.S. Code > Title 18 > Part II > Chapter 203 > § 3057

18 U.S. Code § 3057 - Bankruptcy investigations

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code	Notes	Updates
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(a) Any judge, receiver, or trustee having reasonable grounds for believing that any violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.

(b) The United States attorney thereupon shall inquire into the facts and report thereon to the judge, and if it appears probable that any such offense has been committed, shall without delay, present the matter to the grand jury, unless upon inquiry and examination he decides that the ends of public justice do not require investigation or prosecution, in which case he shall report the facts to the Attorney General for his direction.

18 U.S. Code § 3057 - Bankruptcy investigations

U.S. Code › Title 18 › Part II › Chapter 203 › § 3057

18 U.S. Code § 3057 - Bankruptcy investigations

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Source

(June 25, 1948, ch. 645, [62 Stat. 818](#); May 24, 1949, ch. 139, § 48, [63 Stat. 96](#); [Pub. L. 95-598](#), title III, § 314(i), Nov. 6, 1978, [92 Stat. 2677](#).)

Historical and Revision Notes

1948 Act

Based on section 52(e)(1), (2) of title 11, U.S.C., 1940 ed., Bankruptcy (July 1, 1898, ch. 541, § 29e(1), (2), as added by May 27, 1926, ch. 406, § 11, [44 Stat. 665](#), 666; June 22, 1938, ch. 575, § 1, [52 Stat. 840](#), 856).

Remaining provisions of section 52 of title 11, U.S.C., 1940 ed., Bankruptcy, constitute sections 151-154, and [3284](#) of this title.

The words "or laws relating to insolvent debtors, receiverships, or reorganization plans" were inserted to avoid reference to "Title 11".

Minor changes were made in phraseology.

1949 Act

This section [section [481](#)] clarifies the meaning of section [3057](#) of title 18, U.S.C., by expressly limiting to laws "of the United States", violations of laws which are to be reported to the United States attorney.

Amendments

1978—Subsec. (a). [Pub. L. 95-598](#), § 314(i), substituted "judge" for "referee" and "violation under chapter 9 of this title" for "violations of the bankruptcy laws".

Subsec. (b). [Pub. L. 95-598](#), § 314(i)(1), substituted "judge" for "referee".

1949—Subsec. (a). Act May 24, 1949, substituted "or other laws of the United States" for "or laws".

Effective Date of 1978 Amendment

Amendment by [Pub. L. 95-598](#) effective Oct. 1, 1979, see section 402(a) of [Pub. L. 95-598](#), set out as an Effective Date note preceding section [101](#) of Title 11, Bankruptcy.

Savings Provision

Amendment by [Pub. L. 95-598](#) not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section [2516](#), [3057](#), or [3284](#) of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of [Pub. L. 95-598](#), set out as a note preceding section [101](#) of Title 11, Bankruptcy.

Transfer of Functions

18 U.S. Code § 3057 - Bankruptcy investigations

Functions of all other officers of Department of Justice and functions of all agencies and employees of such Department, with a few exceptions, transferred to Attorney General, with power vested in him to authorize their performance or performance of any of his functions by any of such officers, agencies, and employees, by Reorg. Plan No. 2 of 1950, §§ 1, 2, eff. May 24, 1950, 15 F.R. 3173, 64 Stat. 1261, set out in the Appendix to Title 5, Government Organization and Employees.

18 U.S. Code § 3057 - Bankruptcy investigations

U.S. Code › Title 18 › Part II › Chapter 203 › § 3057

18 U.S. Code § 3057 - Bankruptcy investigations

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code **Notes** **Updates**

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18 USC	Description of Change	Session Year	Public Law	Statutes at Large
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18 U.S. Code § 3284 - Concealment of bankrupt's assets

U.S. Code > Title 18 > Part II > Chapter 213 > § 3284

18 U.S. Code § 3284 - Concealment of bankrupt's assets

Current through Pub. L. 113--121. (See [Public Laws for the current Congress.](#))

US Code	Notes	Updates
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The concealment of assets of a debtor in a case under title 11 shall be deemed to be a continuing offense until the debtor shall have been finally discharged or a discharge denied, and the period of limitations shall not begin to run until such final discharge or denial of discharge.

18 U.S. Code § 3284 - Concealment of bankrupt's assets

U.S. Code › Title 18 › Part II › Chapter 213 › § 3284

18 U.S. Code § 3284 - Concealment of bankrupt's assets

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code Notes Updates

Source

(June 25, 1948, ch. 645, [62 Stat. 828](#); [Pub. L. 95-598](#), title III, § 314(k), Nov. 6, 1978, [92 Stat. 2678](#).)

Historical and Revision Notes

Based on section 52(d) of title [11](#), U.S.C., 1940 ed., Bankruptcy (May 27, 1926, ch. 406, § 11d, [44 Stat. 665](#); June 22, 1938, ch. 575, § 1, [52 Stat. 856](#)).
The 3-year-limitation provision was omitted as unnecessary in view of the general statute, section [3282](#) of this title.
The words "or a discharge denied" and "or denial of discharge" were added on the recommendation of the Department of Justice to supply an omission in existing law.
Other subsections of said section 52 of title [11](#), U.S.C., 1940 ed., are incorporated in sections 151-154 and [3057](#) of this title.
Other minor changes of phraseology were made.

Amendments

1978—[Pub. L. 95-598](#) substituted "debtor in a case under title 11" for "bankrupt or other debtor".

Effective Date of 1978 Amendment

Amendment by [Pub. L. 95-598](#) effective Oct. 1, 1979, see section 402(a) of [Pub. L. 95-598](#), set out as an Effective Date note preceding section [101](#) of Title [11](#), Bankruptcy.

Savings Provision

Amendment by section 314 of [Pub. L. 95-598](#) not to affect the application of chapter 9 (§ 151 et seq.), chapter 96 (§ 1961 et seq.), or section [2516](#), [3057](#), or [3284](#) of this title to any act of any person (1) committed before Oct. 1, 1979, or (2) committed after Oct. 1, 1979, in connection with a case commenced before such date, see section 403(d) of [Pub. L. 95-598](#), set out as a note preceding section [101](#) of Title [11](#), Bankruptcy.

18 U.S. Code § 3284 - Concealment of bankrupt's assets

U.S. Code > Title 18 > Part II > Chapter 213 > § 3284

18 U.S. Code § 3284 - Concealment of bankrupt's assets

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

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26 U.S. Code § 7202 - Willful failure to collect or pay over tax

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part I > § 7202

26 U.S. Code § 7202 - Willful failure to collect or pay over tax

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code **Notes** **Updates**

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S. Code § 7202 - Willful failure to collect or pay over tax

U.S. Code › Title 26 › Subtitle F › Chapter 75 ›
Subchapter A › Part I › § 7202

26 U.S. Code § 7202 - Willful failure to collect or pay
over tax

Current through Pub. L. 113–121. (See [Public Laws for the current Congress.](#))

US Code Notes Updates

Source

(Aug. 16, 1954, ch. 736, 68A Stat. 851.)

26 U.S. Code § 7202 - Willful failure to collect or pay over tax

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part 1 > § 7202

26 U.S. Code § 7202 - Willful failure to collect or pay
over tax

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

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26 USC	Description of Change	Session Year	Public Law	Statutes at Large
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26 U.S. Code § 7203 - Willful failure to file return, supply information, or pay tax

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part I > § 7203

26 U.S. Code § 7203 - Willful failure to file return, supply information, or pay tax

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section [6654](#) or [6655](#) with respect to such failure. In the case of a willful violation of any provision of section [6050l](#), the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".

26 U.S. Code § 7203 - Willful failure to file return, supply information, or pay tax

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part I > § 7203

26 U.S. Code § 7203 - Willful failure to file return,
supply information, or pay tax

US Code Notes Updates

Source

(Aug. 16, 1954, ch. 736, 68A Stat. 851; Pub. L. 90-364, title I, § 103(e)(5), June 28, 1968, 82 Stat. 264; Pub. L. 97-248, title III, §§ 327, 329(b), Sept. 3, 1982, 96 Stat. 617, 618; Pub. L. 98-369, div. A, title IV, § 412(b)(9), July 18, 1984, 98 Stat. 792; Pub. L. 100-690, title VII, § 7601(a)(2)(B), Nov. 18, 1988, 102 Stat. 4504; Pub. L. 101-647, title XXXIII, § 3303(a), Nov. 29, 1990, 104 Stat. 4918.)

Amendments

1990—Pub. L. 101-647 substituted "substituting 'felony' for 'misdemeanor' and" for "substituting".
1988—Pub. L. 100-690 inserted at end "In the case of a willful violation of any provision of section 60501, the first sentence of this section shall be applied by substituting '5 years' for '1 year'."
1984—Pub. L. 98-369 struck out "(other than a return required under the authority of section 6015)" after "to make a return".
1982—Pub. L. 97-248, § 329(b), substituted "\$25,000 (\$100,000 in the case of a corporation)" for "\$10,000".
Pub. L. 97-248, § 327, inserted last sentence providing that, in the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure.
1968—Pub. L. 90-364 struck out reference to section 6016.

Effective Date of 1990 Amendment

Pub. L. 101-647, title XXXIII, § 3303(c), Nov. 29, 1990, 104 Stat. 4918, provided that: "The amendment made by subsection (a) [amending this section] shall apply to actions, and failures to act, occurring after the date of the enactment of this Act [Nov. 29, 1990]."

Effective Date of 1988 Amendment

Amendment by Pub. L. 100-690 applicable to actions after Nov. 18, 1988, see section 7601(a)(3) of Pub. L. 100-690, set out as a note under section 60501 of this title.

Effective Date of 1984 Amendment

Amendment by Pub. L. 98-369 applicable with respect to taxable years beginning after Dec. 31, 1984, see section 414(a)(1) of Pub. L. 98-369, set out as a note under section 6654 of this title.

Effective Date of 1982 Amendment

26 U.S. Code § 7203 - Willful failure to file return, supply information, or pay tax

Amendment by section 329(b) of Pub. L. 97-248 applicable to offenses committed after Sept. 3, 1982, see section 329(e) of Pub. L. 97-248, set out as a note under section 7201 of this title.

Effective Date of 1968 Amendment

Amendment by Pub. L. 90-364 applicable with respect to taxable years beginning after Dec. 31, 1967, except as provided by section 104 of Pub. L. 90-364, see section 103(f) of Pub. L. 90-364, set out as a note under section 243 of this title.

26 U.S. Code § 7203 - Willful failure to file return, supply information, or pay tax

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part 1 > § 7203

26 U.S. Code § 7203 - Willful failure to file return,
supply information, or pay tax

Current through Pub. L. 113-121. (See [Public Laws for the current Congress](#).)

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26 U.S. Code § 7206 - Fraud and false statements

U.S. Code › Title 26 › Subtitle F › Chapter 75 ›
Subchapter A › Part I › § 7206

26 U.S. Code § 7206 - Fraud and false statements

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code	Notes	Updates
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Any person who—

(1) Declaration under penalties of perjury

Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or

(2) Aid or assistance

Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document; or

(3) Fraudulent bonds, permits, and entries

Simulates or falsely or fraudulently executes or signs any bond, permit, entry, or other document required by the provisions of the internal revenue laws, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in, or connives at such execution thereof; or

(4) Removal or concealment with intent to defraud

Removes, deposits, or conceals, or is concerned in removing, depositing, or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property upon which levy is authorized by section 6331, with intent to evade or defeat the assessment or collection of any tax imposed by this title; or

(5) Compromises and closing agreements

In connection with any compromise under section 7122, or offer of such compromise, or in connection with any closing agreement under section 7121, or offer to enter into any such agreement, willfully—

(A) Concealment of property

Conceals from any officer or employee of the United States any property belonging to the estate of a taxpayer or other person liable in respect of the tax, or

(B) Withholding, falsifying, and destroying records

Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the taxpayer or other person liable in respect of the tax;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation), or imprisoned not more than 3 years, or both, together with the costs of prosecution.

26 U.S. Code § 7206 - Fraud and false statements

U.S. Code > Title 26 > Subtitle F > Chapter 75 >
Subchapter A > Part 1 > § 7206

26 U.S. Code § 7206 - Fraud and false statements

Current through Pub. L. [113-121](#). (See [Public Laws for the current Congress](#).)

US Code Notes Updates

Source

(Aug. 16, 1954, ch. 736, 68A Stat. 852; [Pub. L. 97-248](#), title III, § 329(c), Sept. 3, 1982, [96 Stat. 618](#).)

Amendments

1982—[Pub. L. 97-248](#) substituted "\$100,000 (\$500,000 in the case of a corporation)" for "\$5,000".

Effective Date of 1982 Amendment

Amendment by [Pub. L. 97-248](#) applicable to offenses committed after Sept. 3, 1982, see section 329(e) of [Pub. L. 97-248](#), set out as a note under section [7201](#) of this title.

26 U.S. Code § 7206 - Fraud and false statements

U.S. Code › Title 26 › Subtitle F › Chapter 75 ›
Subchapter A › Part I › § 7206

26 U.S. Code § 7206 - Fraud and false statements

Current through Pub. L. 113-121. (See [Public Laws for the current Congress.](#))

US Code Notes Updates

The table below lists the classification updates, since Jan. 3, 2012, for this section. Updates to a broader range of sections may be found at the update page for containing chapter, title, etc.

The most recent Classification Table update that we have noticed was Tuesday, August 13, 2013

An empty table indicates that we see no relevant changes listed in the classification tables. If you suspect that our system may be missing something, please double-check with the [Office of the Law Revision Counsel.](#)

26 USC	Description of Change	Session Year	Public Law	Statutes at Large
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