

INSTRUCTIONS FOR COMPLETING OFFICIAL FORM 1, VOLUNTARY PETITION**I. INTRODUCTION**

This form, known as a "voluntary petition," must be used by a debtor to begin a bankruptcy case. Filing this petition is how an individual or other entity "declares bankruptcy." Filing the petition also generally operates to stop action by creditors to collect their debts, a feature of the bankruptcy process described more fully below.

The voluntary petition also provides the bankruptcy court with the basic information needed to begin the case. Although some of the information asked for in Official Form 1 will be repeated in greater detail in the schedules and statements that also must be filed, the court needs certain data immediately to make a rough estimate of the resources needed to handle the case, to monitor multiple and repeat filings, to assign cases to judges, and to provide certain statistical information that the court is required by law to compile.

II. APPLICABLE LAW AND RULES

Filing a voluntary petition with a bankruptcy court under a chapter of the Bankruptcy Code (chapter 7, 9, 11, 12, or 13) starts a bankruptcy case under that chapter. 11 U.S.C. §§ 301, 302. It also constitutes an "order for relief." 11 U.S.C. §§ 301, 302. Similarly, a joint case is started by the filing of a single petition by an individual and that individual's spouse. 11 U.S.C. § 302.

Section 109 of the Bankruptcy Code sets forth the debtor's eligibility requirements for filing under chapters 7, 9, 11, 12, and 13. In addition, a chapter 11 debtor that qualifies under section 101 may elect to be treated as a "small business." Specific requirements regarding a debtor's eligibility to file under the various chapters are discussed below under "Chapter or Section of Bankruptcy Code Under Which the Petition is Filed."

Rule 1002 of the Federal Rules of Bankruptcy Procedure (referred to as "Bankruptcy Rule" or "Fed. R. Bankr. P.") requires a petition to be filed with the clerk of court. The case should be filed in an appropriate bankruptcy court location (venue), based on the criteria established in 28 U.S.C. § 1408, discussed below under "Venue."

The filing of a bankruptcy case requires, in addition the petition, the filing of schedules listing the debtor's property and debts, a statement of financial affairs, and several other documents. These include mailing list or "matrix" containing the names and addresses of the creditors and others that should receive notices from the court in the case. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007; local rules of each court. Each bankruptcy court has its own requirements concerning the format of the mailing list, and anyone planning to file a bankruptcy case should contact the clerk's office ahead of time to obtain information about the specific requirements of

Official Form 1
continued

the court in which the case will be filed. (See instructions under "United States Bankruptcy Court," below). If the schedules and other documents are not prepared and ready to be filed at the same time the petition is filed, Bankruptcy Rule 1007(c) allows 15 days for completing and filing them. The mailing list, however, must accompany the petition. Fed. R. Bankr. P. 1007(c). Moreover, in a case under chapter 9, 11, 12, or 13 of the Code, a plan for repaying creditors must be filed according to the time limits and criteria set forth in 11 U.S.C. §§ 941, 1121, 1221, 1321, and Bankruptcy Rules 3015, 3016.

By signing, filing, or submitting a petition, schedule, statement, or other paper with the court, the debtor and the debtor's attorney (if any) are certifying — to the best of each person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances — that the petition, schedule, statement, or other paper meets the evidentiary and legal standards set out in Bankruptcy Rule 9011(b). Under the rule, each person also certifies that the petition, schedule, statement, or other paper is not being presented to the court for any improper purpose such as causing unnecessary delay or to harass. After notice and an opportunity to respond, the court may sanction violations of the rule. Fed. R. Bankr. P. 9011(c).

Before a bankruptcy case is commenced by an individual whose debts are primarily consumer debts, the clerk must give written notice to the individual that indicates each chapter of the Bankruptcy Code under which the individual may proceed. 11 U.S.C. § 342(b). The debtor may receive the notice by reading and signing a copy of procedural form 201, which is included in Part II of this Manual. (Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes. 11 U.S.C. § 101(8).)

The signature block on Official Form 1 for individual chapter 7 consumer debtors includes a declaration that the debtor is aware of the debtor's right to proceed under chapters 7, 11, 12, and 13 and the relief available under each chapter. Exhibit B, which is to be completed by the attorney for individual consumer debtors, includes the attorney's declaration that the attorney has advised the debtor that the debtor may proceed under chapter 7, 11, 12, or 13 and has explained the relief available under each chapter. The declarations were added to Official Form 1 by section 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353.

In addition to the petition, lists, schedules, and statements, Bankruptcy Rule 1006(a) requires every petition to be accompanied by the filing fee required by law. See 28 U.S.C. § 1930(a). In certain cases, however, an individual debtor may file an application to pay the filing fee in installments. Fed. R. Bankr. P. 1006(b). Other miscellaneous fees have been prescribed in the Bankruptcy Court Miscellaneous Fee Schedule issued in accordance with 28 U.S.C. § 1930(b). (See "Filing Fee" below).

The filing of a petition "operates as a stay, applicable to all entities." 11 U.S.C. § 362(a). This stay takes effect automatically, immediately upon the filing of a petition. The automatic stay essentially places a freeze on the collection of debts incurred before the filing of the petition. Creditors must cease all existing collection activities and are forbidden to initiate new ones. Section 362 provides a list of specific actions from which the debtor and the debtor's property are protected under the stay, as well as various exceptions to the stay.

It is important to remember that the filing of a bankruptcy case is a public transaction. The information on file with the court will remain open to review by any entity, including any person, estate, trust, governmental unit, and the United States trustee. 11 U.S.C. §§ 101, 107. In many bankruptcy courts, papers filed in cases may be viewed on the court's Internet website in addition to being available for review in the clerk's office.

A debtor has a right to amend a voluntary petition as a matter of course at any time before the case is closed. Fed. R. Bankr. P. 1009(a). Bankruptcy Rule 1009(a) requires the debtor to give notice of any amendment to the trustee and to any entity affected by the amendment.

III. DIRECTIONS

United States Bankruptcy Court

Debtors must identify the judicial district in which they intend to file the petition, for example, "Eastern District of California." To find the correct name of the district, debtors may refer to the local telephone directory, which should have a listing in the blue pages for "United States Government." Debtors should look under category "C" for courts and locate the listing for "District Court for the . . ." The bankruptcy court will be listed under the district court. Some telephone directories may list courts for more than one federal judicial district. If a debtor is in doubt about the name of the district, the debtor should check with the bankruptcy court clerk's office before proceeding.

Names/Identification Numbers

Bankruptcy Rule 1005 requires a debtor filing a voluntary petition to "include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition." For example, all names used by the debtor, including trade names, names used in doing business, former married name(s), and maiden name (if used within six years before filing the petition) should be furnished in the space provided. If there is not sufficient room for all such names on the form itself, the list should be continued on an additional sheet attached to the petition. The debtor's name also should be inserted at the top of the second page of Official Form 1.

Separate spaces are provided for the name, address, and other information on joint debtors filing bankruptcy together in a single (joint) case. Only a husband and wife may file a joint bankruptcy case. 11 U.S.C. § 302. If the bankruptcy case is filed by one person, a corporation, or a partnership, the "joint debtor" spaces on the petition should be left blank.

Complete information assists the creditors to (1) identify the debtor when they receive notices and orders, (2) comply with the automatic stay, (3) file a proof of claim, and (4) exercise other rights give to them by the Bankruptcy Code. It is important to ensure that all creditors know about the bankruptcy proceeding and are allowed to exercise their rights in the case. Debts owed to creditors who are not given proper notice of the bankruptcy may not be "discharged" or "forgiven," and the debtor may continue to be liable for their payment despite having completed the bankruptcy case. Therefore, it is essential to provide all means of identification of both the debtor and any joint debtor.

Addresses/Location of Principal Assets

The form requires both a street address and any separate mailing address, as well as any separate addresses used by a joint debtor. Thus, the debtor(s) must include the complete street address and mailing address, if different, in the appropriate boxes. Married debtors living together can write "same" in the joint debtor address box. If an individual, the debtor must state the county of residence in the boxes provided. If the debtor is a business, the debtor should state the county where the principal place of business is located. A business debtor should designate the location of the principal assets of the debtor, if different from the street address.

Venue

An individual generally should file a bankruptcy case in the federal judicial district in which the individual resides or maintains a domicile. In a business case, the debtor should file in the district in which the debtor maintains a domicile, a residence, a principal place of business, or in which the debtor's principal assets are located. If the debtor has not maintained a domicile, residence, principal place of business in the United States, or principal assets in the United States, in the district for the entire 180 days before filing the bankruptcy case, the debtor should file in the district in which its domicile, residence, principal place of business, or principal assets were located for the longest portion of the 180 days. 28 U.S.C. § 1408. This provision applies also to a corporation, partnership, or other entity. For this purpose, a corporation has a domicile in its state of incorporation. A corporation, partnership, or other entity also can file in any district in which its "affiliate," as defined in section 101 of the Bankruptcy Code, general partner, or partnership has a bankruptcy case pending. Debtors should check the appropriate box, to indicate the basis for the choice of venue.

Type of Debtor

A debtor can be an individual or individuals, a corporation, a partnership, a railroad, a stockbroker, or a commodity broker. (Bankruptcy Rule 1004 requires that all general partners consent to the petition; if they do not, the case must be filed as "involuntary," using Official Form 5.) If a debtor does not fit into any of these categories, a box labeled "other" is provided.

Nature of Debts

A consumer debt is defined in section 101 of the Bankruptcy Code as a debt incurred by an individual primarily for a personal, family, or household purpose. If the debtor is a corporation or partnership, the debtor should check the box marked "Business." Even in a case filed by an individual or married couple, if debt related to operation of a business predominates, the debtor should check the box marked "Business."

Small Business

A chapter 11 debtor that qualifies as a "small business" under section 101 of the Bankruptcy Code may elect special expedited treatment under chapter 11. If a debtor is a small business as defined in section 101 of the Bankruptcy Code, the court may order that a creditors' committee not be appointed, even if the debtor has not elected to be treated as a small business. The court may conditionally approve a disclosure statement and combine the final hearing on the disclosure statement with the confirmation hearing. A separate disclosure statement hearing is not mandatory. 11 U.S.C. §§ 1102(a)(3), 1125(f). In addition, the debtor has a shortened period of time (100 days from the date of the filing of the petition) within which only the debtor may file a plan. 11 U.S.C. § 1121(e). Accordingly, the form requires a small business debtor, filing under chapter 11, to identify itself by checking the appropriate box. Actual election to be treated as a small business is not required at the time the petition is filed, but the petition offers a small business chapter 11 debtor an opportunity to make the election at the commencement of the case by checking the appropriate, optional box.

Chapter or Section of Bankruptcy Code Under Which the Petition is Filed

Only a "person" (defined by section 101 of the Bankruptcy Code, to include an individual, partnership, and corporation) that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor. 11 U.S.C. § 109(a). Section 109 of the Bankruptcy Code also states the eligibility requirements for filing under various chapters. Once a case is filed under a certain chapter, various rights and duties arise for both the debtor and creditors. Although the case can be converted to another chapter later in the proceeding, it is important to file under the chapter that best suits the debtor's needs, and under which the debtor is legally able to file. The following is a brief summary of the requirements of each chapter:

I. **Chapter 7:** A "person" (defined by section 101 of the Bankruptcy Code to include an individual, partnership, and corporation, but not a governmental unit) may be a debtor under chapter 7 only if that person is not a (1) railroad or (2) an insurance company, bank, small business investment company, or credit union, as specified in section 109(b) of the Bankruptcy Code. 11 U.S.C. § 109(b). Stockbrokers and commodity brokers can only file under this chapter, which contains special provisions governing their cases.

II. **Chapter 9:** Only a municipality or municipal corporation authorized by state law to file bankruptcy may be a debtor under chapter 9. 11 U.S.C. § 109(c).

III. Chapter 11: Only a person that may be a debtor under chapter 7 (except a stockbroker or a commodity broker) and a railroad may be a debtor under chapter 11. 11 U.S.C. § 109(d).

IV. Chapter 12: Only a "family farmer," as defined in section 101 of the Bankruptcy Code, with regular annual income may be a debtor under chapter 12. 11 U.S.C. § 109(f).

V. Chapter 13: Relief under chapter 13 is limited to an individual, or individual and spouse, with regular income, who owes (on the date of the filing of the petition) less than \$269,250 in unsecured debts (*i.e.*, those for which a creditor does not have a lien or, if the property on which a creditor has a lien is not worth enough to pay the creditor in full, that portion of the debt which exceeds the value of any pledged property, or "collateral") and less than \$807,750 in secured debts (*i.e.*, those for which a creditor has a lien on property of the debtor (collateral) that gives the creditor the right to be paid from that property before creditors who do not have a lien on the property). If the debt(s) or account(s) owed is contingent or unliquidated, chapter 13 may be available even to a debtor whose creditors assert that the debtor owes amounts higher than the limits set forth above. 11 U.S.C. § 109(e). (A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosigner on another person's loan, and that person fails to pay. A claim is unliquidated when the amount owed has not been determined.)

VI. Sec. 304--Case Ancillary to Foreign Proceeding: A case ancillary to a foreign proceeding that meets the criteria of 11 U.S.C. § 304 may be commenced by the filing of a petition with the bankruptcy court by a foreign representative.

Debtors should check the box that indicates the chapter or section of the Code under which the petition is filed.

Filing Fee

Every case requires the payment of a filing fee. Filing fees for all chapters of the Bankruptcy Code are prescribed in section 1930(a) of title 28, United States Code (28 U.S.C. § 1930(a)). As of January 1, 2005, the filing fee for a chapter 7 or chapter 13 case is \$155, a chapter 9 case is \$300, a chapter 11 case is \$800, and a chapter 12 case is \$200.

A person filing a bankruptcy case also must pay a \$39 administrative fee in addition to the filing fee prescribed under 28 U.S.C. § 1930(a). Chapter 7 debtors must also pay a \$15 trustee surcharge. These miscellaneous fees (\$39 administrative fee and \$15 trustee surcharge) are part of the Bankruptcy Court Miscellaneous Fee Schedule prescribed in accordance with 28 U.S.C. § 1930(b). Thus, the fees required to file a chapter 7 case total \$209, whereas the fees to file a chapter 13 case total \$194.

Bankruptcy Rule 1006 requires that an individual debtor either: 1) pay the fee with the filing of the petition or 2) file a completed application to pay the fee in installments. The court will consider and may approve a debtor's application to pay in installments. The rule limits the number of installments to four, and the final installment must be paid not later than 120 days after filing the petition. The court can extend the time of any installment, but the debtor must file a motion explaining the reason an extension is needed. In any case, the last installment must be paid not later than 180 days after filing the petition. The miscellaneous fees mentioned above may also be paid in installments.

To pay the fees in installments, Official Form 3 must be completed and filed with the petition. If the debtor will pay the fees in installments, the filing fee must be paid in full before the debtor or chapter 13 trustee may pay an attorney or any other person who renders services to the debtor in connection with the case. Fed. R. Bankr. P. 1006.

Check the appropriate box on Official Form 1 to indicate whether the fee is being paid or an application to pay in installments is being filed.

Statistical/Administrative Information

The debtor is requested to predict whether funds will be available for distribution to unsecured creditors by checking one of the two boxes provided. On the basis of the information provided by the debtor, the clerk may notify creditors in a chapter 7 case that it appears there are no assets from which they may be paid and it is unnecessary for them to file claims at that time.

The debtor is asked to indicate in the boxes provided the **estimated** number of creditors, amount of assets, and amount of liabilities. This information is used by the clerk to complete statistical reports that are required by law, see 28 U.S.C. § 604, and to advise the court of what to expect from the case in terms of size and time.

Prior Bankruptcy Case Filed Within Last 6 Years

Under section 727(a)(8) of the Bankruptcy Code, a debtor is not entitled to a chapter 7 discharge if the debtor has been granted a discharge in a chapter 7 or chapter 11 case begun within six years before the date of the filing of the petition. A chapter 7 discharge order eliminates a debtor's legal obligation to pay any debts (with some exceptions) that existed on the date the bankruptcy case was filed. Under section 727(a)(9) of the Code a debtor is not entitled to a chapter 7 discharge if the debtor received a discharge in a chapter 12 or 13 case commenced within six years before the date of the filing of the petition, unless (1) the plan payments totaled 100% of the allowed unsecured claims, or (2) the plan payments totaled 70% of such claims and the debtor proposed the plan in good faith and it was the debtor's best effort. Section 109(g) of the Bankruptcy Code restricts repeat filings at intervals shorter than 180 days under certain circumstances even if no discharge was granted.

Disclosure of earlier bankruptcy filings puts the court and any trustee on notice that an investigation may be needed. It is intended to alert the trustee to cases in which an objection to discharge pursuant to section 727(a)(8) or (a)(9) or a motion to dismiss under section 109(g) may be appropriate. The debtor may be called upon to explain the circumstances of having filed multiple cases. These may not prevent a discharge in the new case, but the court will need to make a determination based on the actual facts in each case.

The debtor is asked to state the location in which the prior bankruptcy case was filed, for example, "District of Maryland," in the space provided. The case number of the prior case and the date the petition was filed should be placed in the appropriate spaces. Debtors should be sure to list all prior bankruptcy cases and attach additional sheets, if necessary.

Pending Bankruptcy Case Filed by any Spouse, Partner or Affiliate of this Debtor

The information about pending, related bankruptcy cases signals the clerk to assign the case to the judge to whom any related case has been assigned. Debtors are requested to place the name of any spouse, partner, or affiliate that has a pending case (one that has not been closed) under the heading "Name of Debtor." The debtor should include the case number, date the petition was filed, relationship, district where case is pending, and the judge assigned to the case in the spaces provided. Additional sheets may be attached if there is more than one pending case.

Signatures

The section states that the debtor requests relief in accordance with the chapter of title 11 (the Bankruptcy Code) specified on the first page of the petition. Signing also indicates to the court that the debtor, in fact, is requesting relief under the Bankruptcy Code. Signing and filing combine to make the petition operative, that is, to make the petition a legally effective document.

Bankruptcy Rule 1008 requires all petitions to be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746. The unsworn declaration on page two of the petition conforms with section 1746, which permits the declaration to be made in the language provided with the same force and effect as a sworn statement. In other words, by signing the petition, the debtor(s) is (are) declaring, under penalty of perjury, that the information in the petition is true and correct.

The debtor(s) must sign the petition in the appropriate signature block on page 2, either the "Individual/Joint" section or the "Corporation/Partnership" section. The choice of signature block should be consistent with the debtor's response to "Type of Debtor" box on page 1. Unsigned papers shall be stricken unless the omission of the signature is corrected promptly after being called to the attention of the attorney or party. Fed. R. Bankr. P. 9011(a).

An individual debtor must sign on the top line of the "Individual/Joint" section and place the date on the bottom line. A married couple filing a joint case must sign and date the petition as "debtor" and "joint debtor." If the debtor is not represented by an attorney, the debtor should include the debtor's telephone number so court personnel, the trustee, other parties in the case, and attorneys representing other parties can contact the debtor concerning matters in the case. Although the debtor's telephone number should be stated in the petition if the debtor is not represented by an attorney, the telephone number is not included in the notice of the bankruptcy filing that is sent to all creditors.

The signature section for individual and joint chapter 7 consumer debtors includes a declaration that the debtors are aware of their right to proceed under chapters 7, 11, 12, and 13 of the Code and of the relief available under each chapter. Procedural form B 201, which is included in Part II of this Manual, summarizes the relief available under each chapter. Consumer debts are debts incurred by individuals primarily for personal, family, or household purposes. 11 U.S.C. § 101(8).

There is a separate signature block for debtors that are corporations or partnerships. Individual and joint debtors should leave this section blank. The individual authorized by the debtor entity (the corporation or partnership) to file the petition should sign the petition and include the individual's title and the date on the lines provided. By signing the petition, the authorized individual is representing that the information in the petition is true and correct, and that the individual has been authorized to file the petition on behalf of the debtor. A corporation that files a bankruptcy case must be represented by an attorney. Certain corporate debtors filing chapter 11 petitions must also complete Exhibit A discussed below.

Signature of Attorney

If an attorney is representing the debtor in the bankruptcy case, the attorney must sign and date the petition and set out the attorney's name, address, and telephone number in the spaces provided. If a law firm is representing the debtor, the attorney in the firm who is handling the case should sign and date the petition and set out the attorney's name as well as the law firm's name, address, and telephone number. Fed. R. Bankr. P. 9011(a). Debtors who are not represented by an attorney should leave this section blank.

Exhibit A

The debtor is required to complete and file Exhibit A only if the debtor is a corporation requesting relief under chapter 11 and if the debtor is required to file periodic reports with the Securities and Exchange Commission pursuant to section 13 or 15 of the Securities Exchange Act of 1934. If required, the debtor should check the box on page 2 and complete Exhibit A. The completed form supplies the SEC with information that the SEC needs to determine how actively (or whether) to monitor the chapter 11 case.

Exhibit B

Exhibit B, which is included in the petition itself, is to be signed by the attorney for individual consumer debtors. The exhibit, which is required by section 322 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. 98-353, is a declaration that the

attorney has advised the debtor(s) that the debtor(s) may proceed under chapter 7, 11, 12, or 13 of the Code and that the attorney has explained the relief available under each chapter. Debtors not represented by an attorney should leave Exhibit B blank. The signature section for chapter 7 consumer debtors includes a similar declaration by the debtors.

Certification of Non-Attorney Bankruptcy Petition Preparer

A bankruptcy petition preparer is required to sign the petition and disclose the requested information, such as name, Social Security number, address, and telephone number in the spaces provided. 11 U.S.C. § 110.