

## ***New Handbook for Chapter 7 Trustees* Provides Updated Guidance**

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The new *Handbook for Chapter 7 Trustees* – the first major update in 10 years -- was released on June 29, 2012, and takes effect on October 1, 2012. We are grateful to the NABT members and United States Trustee personnel who contributed to this accomplishment.

The new *Handbook* has been reorganized and simplified. It incorporates the provisions of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) (Pub. L. 109-8, 119 Stat. 23, enacted April 20, 2005), as well as important United States Trustee Program (Program) priorities. Numerous provisions have been clarified, and the word “should” has been replaced with “must” wherever “must” is intended. In addition, the instructions for completing Forms 1, 2 and 3 and various other exhibits have been removed from the *Handbook* and made available as a separate resource referred to, collectively, as Supplementary Materials.

This article highlights several changes that may be of particular interest to chapter 7 trustees.

### **Question 1 of the Mandatory Section 341 Meeting Questions**

The first of the 10 mandatory section 341 meeting questions has been modified to protect a debtor’s personally identifiable information (PII). The Program defines PII to include “information which can be used to distinguish or trace an individual’s identity... alone, or when combined with other personal or identifying information.” A debtor’s name and address, when combined, meet this definition. To protect this PII, debtors are no longer required to state their addresses on the record. Instead, trustees and those persons who swear in debtors at remote locations must ask debtors if the address on the petition is their current address. If a debtor states that the address is different, the trustee can ask the debtor to write down the new address.

### **Inventorying Estate Property**

The requirement for inventorying estate property has been expanded. The inventory must be sufficient to enable a trustee to verify later whether an auctioneer or other liquidator has accounted for all property turned over for sale. While the trustee may use an auctioneer or appraiser to conduct the inventory, this auctioneer or appraiser may not subsequently sell the property unless the trustee or a designee, such as a staff person, was also present when the inventory was taken. The trustee’s ability to be accountable for all property received (11 U.S.C § 704(a)(2)) can be compromised if the person who counts the inventory also sells it without oversight by the trustee. This *Handbook* change strengthens the trustee’s supervision of auctioneers and other asset liquidators, as well as his or her control over estate assets.

## **Self-Dealing and Insider Transactions**

This *Handbook* section clarifies that a trustee may not purchase assets from an estate administered by the trustee (18 U.S.C § 154) or from an estate administered by another trustee. In addition, the trustee may not knowingly sell estate property to another trustee or a professional regularly employed by the trustee, including the auctioneer, a family member of the trustee or professional, or an employee of the trustee or professional. If a trustee becomes aware of any indications of sales to insiders or of collusion, the sale must immediately be stopped, and the matter reported to the United States Trustee.

## **Computer System Security**

While the previous *Handbook* generally discussed the need to limit system access to authorized users and for authorized purposes, it did not provide specific guidance. New provisions cover remote access security and encryption requirements for laptop hard drives and mobile storage media, such as USB thumb drives. In addition, computer passwords must be changed quarterly rather than annually. Finally, there is a new requirement for trustees to have a policy governing computer use by employees and others who have access to the case management system. A sample policy is provided in the *Handbook* Supplementary Materials. It covers appropriate use of email and the Internet, protection of trustee information, reporting known and suspected security incidents, passwords, and hardware and software controls. These enhancements to the computer security section of the *Handbook* strengthen the controls over debtor PII and protect the chapter 7 information and data from unauthorized disclosure, loss or manipulation.

## **Other Internal Controls**

Several internal control requirements relating to disbursements have been updated to provide more flexibility for trustees. The United States Trustee may authorize a trustee to use a signature stamp to sign checks for a specific case if appropriate safeguards are maintained. Wire transfers may be used without prior United States Trustee approval in the following situations:

- an immediate payment by a trustee is necessary to prevent loss to the estate or injury to a person or property and the person to whom payment will be made will not accept an estate check;
- a wire transfer is required by applicable law or regulation;
- a payment must be made to an overseas creditor or a foreign corporation; or
- the court order approving the transaction requires that the trustee make payment by wire transfer.

Although the *Handbook* addresses the situation in which a court order requires payment by wire transfer, note that trustees should oppose the routine inclusion of such requirements in court orders.

Payments to the court for fees, unclaimed dividends and dividends of less than \$5 may be paid by estate checks processed as Automated Clearing House (ACH) transactions or electronic

funds transfers (EFTs). But because wire transfers, ACH transactions and EFTs can be harder to trace than estate checks and are, therefore, subject to manipulation and abuse, trustees are cautioned to review bank statements promptly to ensure that they personally authorized all wire transfers and other non-routine debits to their estate accounts. In addition, they must maintain appropriate supporting documentation, including wire transfer bank advices, in estate files.

A new section on internal controls for Internet auctions and sales has been added. It covers the use of Internet commerce accounts such as Paypal, as well as procedures to ensure that the sale proceeds are adequately protected until received by the trustee. There are also enhanced policies on: investing estate funds, such as factors to consider when determining the reasonableness of the interest rate; handling funds that cannot be deposited immediately, by recording them in the cash receipts log and safely storing the funds until they can be deposited; and handling earnest monies and settlement proceeds pending court approval, including who can hold the funds and what type of accounts can be used.

### **Changes to Program Reporting Requirements (Forms 1, 2 and 3)**

The definition of an “asset case” for reporting purposes has been modified so trustees no longer need to report annually on cases open for less than 120 days after the initial examination of the debtor at the section 341 meeting. The practical effect of this change is that chapter 7 trustees can now exclude from Form 3 those no-asset cases that have been open more than 60 days and less than 120 days from the initial examination of the debtor. In addition, trustees are no longer required to prepare Form 1 for these cases.

The requirements for reporting on abandoned assets have also changed. It is no longer necessary to enter “DA” on Form 1 for assets to be “deemed abandoned” at closing pursuant to 11 U.S.C § 554(a).

The instructions for preparing Forms 1 and 2 have been updated to explain more clearly how to prepare these forms when a trustee is serving as a successor trustee or serving in a case converted from another chapter. In addition, a new sample case illustrating these provisions has been added to the Supplementary Materials.

### **Conclusion**

We are confident that the new and improved *Handbook for Chapter 7 Trustees* will help you administer your cases more effectively and efficiently. The new provisions will be covered in greater detail during upcoming seminars presented by the United States Trustee. As always, if you have any questions, please contact your local office of the United States Trustee.