

INSTRUCTIONS FOR COMPLETING SCHEDULE E CREDITORS HOLDING UNSECURED PRIORITY CLAIMS

I. INTRODUCTION

This schedule lists the types of unsecured claims that are entitled to priority. It requests the debtor to indicate the existence of claims in each category. Unsecured debts are those for which the creditor does not have a lien or other collateral.

Those claims that are considered "priority" are specified in section 507 of the Bankruptcy Code. They are given an order of importance, and they enjoy priority in payment over other unsecured claims. Frequently, unsecured priority claims are subject to monetary restrictions that must be taken into account in this form. For example, under section 507(a)(4) of the Bankruptcy Code, contributions to employee benefit plans enjoy priority status, but only to the extent of the number of employees covered by each plan multiplied in 1999 by \$4,300. (These amounts were adjusted on April 1, 1998, to reflect changes in the Consumer Price Index (CPI) and will be readjusted every three years thereafter). A debtor must be careful to take into account any restrictions imposed on unsecured priority claims when filling out this form. This schedule asks for both the total amount of the claim and the amount of that claim that is entitled to priority under section 507 of the Bankruptcy Code.

II. APPLICABLE LAW AND RULES

Types of Priority Claims:

- 1) Not included in this form but first on the priorities list are administrative expenses, fees, and charges incurred by the estate during the bankruptcy case. 11 U.S.C. § 507(a)(1). Those who are entitled to payment under this section are not deemed "creditors" in the bankruptcy case. The bulk of administrative expense claims arise after the case is filed. Accordingly, the amounts incurred, and often the identity of many who eventually become claimants, are unknown at the time the schedules are filed.

- 2) The second priority is afforded to claims under 11 U.S.C. § 507(a)(2) of the Bankruptcy Code to the group frequently known as "involuntary gap" creditors. Involuntary gap creditors are those whose claims arise in an involuntary case during the "gap" between the commencement of the case and the earlier of the appointment of a trustee or the order for relief. These claims are allowable under section 502(f) of the Bankruptcy Code.

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- 3) Section 507(a)(3) gives third priority to unpaid wages, salaries, and commissions earned by employees of the debtor within 90 days before the earlier of the date of the filing of the petition or the date the debtor ceased doing business. The maximum amount that any employee could claim under this priority in 1999 is \$4,300, an amount that was adjusted in 1998 to reflect changes in the CPI and will be readjusted every three years thereafter. The remainder of the claim is a general, unsecured claim.
- 4) Under section 507(a)(4) of the Bankruptcy Code, the priority for contributions to employee benefit plans has the same monetary restrictions as wages, salaries, and commissions, limiting the portion of the claim entitled to priority to \$4,300 per employee in 1999, less any amount entitled to priority under § 407(a)(3). The contributions are those that were payable for services rendered within 180 days before the filing of the petition or the date the debtor ceased doing business, whichever occurs first.
- 5) Section 507(a)(5) of the Bankruptcy Code provides priority for a farmer in the business of raising or producing grain against a debtor who operates grain storage facilities, as well as for a United States fisherman against a debtor who operates a fish storage or processing facility. Both types of claims must arise from the sale, conversion, or consignment of these commodities to the debtor, and the priority does not exceed \$4,300 per farmer or fisherman.
- 6) Section 507(a)(6) of the Bankruptcy Code gives priority status to a claim by an individual who made a deposit with the debtor, before the bankruptcy case was filed, for the purchase of either property or services, and "lost the deposit," never having received the property or services in return for payment. Examples are deposits for furniture that was ordered but never delivered and prepaid "memberships" in gyms or health clubs. The deposit is money owed for goods or services that have not been rendered. The maximum amount entitled to priority for such a claim is \$1,950 per individual.
- 7) Section 507(a)(7) of the Bankruptcy Code gives priority status to claims of a spouse, former spouse, or child of the debtor for alimony, maintenance, or support, to the extent provided in this section. Some restrictions apply to this priority, and debtors should read section 507(a)(7) carefully before completing this form.
- 8) Sections 507(a)(8) and 507(a)(9) of the Bankruptcy Code give priority status to claims for unpaid taxes and debts owed to federal, state, or local governments, and claims against certain defined debtors for commitments to the federal bank insurance companies, such as the FDIC. Taxes that are collateralized by a lien on property should not be included in this form. Tax liens should be reported on Schedule D. Sections 507(a)(8) and 507(a)(9) provide a long list of restrictions on the priority of taxes which a debtor should read carefully.

III. DIRECTIONS

If no unsecured priority claims exist, a debtor should place an "X" in the box located just above the line entitled "Types of Priority Claims." The debtor should check the box next to as many types of priority claims as exist against the debtor. Debtors should be sure to complete at least one separate continuation sheet for each type of priority claim that exists against the debtor. Debtors are asked to place the type of priority on the line provided at the top of the form. It is helpful if the creditors on each schedule are listed alphabetically. Debtors should be sure to include the creditor's name, mailing address, zip code, and the account number in the spaces provided.

Debtors are asked to place an "X" in the column labeled "Codebtor" if an entity, other than a spouse, may be jointly liable on a claim. Debtors filing a joint petition should designate whether the husband, wife, both of them, or the marital community may be liable on each claim, by placing a "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."

Debtors are instructed to state the date the claim was incurred and the consideration for the claim in the space provided. In other words, the debtor should state what the debtor received in exchange for the claim such as, "goods purchased," or "hours worked," or "cash deposited."

If the claim is contingent, unliquidated, or disputed, the debtor should place an "X" in one or more of the appropriate columns. Otherwise, leave these columns blank. A general definition of the terms "contingent, unliquidated, or disputed" is provided below.

Definitions:

Contingent Claim --- A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosignor on another person's loan, and that person fails to pay.

Unliquidated Claim --- An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

Disputed Claim --- A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

These three columns are particularly important for the chapter 11 creditor in determining whether to file a proof of claim. 11 U.S.C. § 1111(a).

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Debtors are directed to place the amount of the claim in the space provided and place the subtotal at the bottom of each page. The total should appear only on the last continuation sheet. Debtors should report the total on the Summary of Schedules in the column labeled "Liabilities."

Debtors should place the amount entitled to priority in the last column. It is important to remember that many categories are restricted to certain dollar limits and, thus, the amount entitled to priority might not be the same as the total amount of the claim.

**INSTRUCTIONS FOR COMPLETING SCHEDULE F
CREDITORS HOLDING UNSECURED NONPRIORITY CLAIMS**

- 1) Schedule F requires the debtor to list creditors holding unsecured nonpriority claims, as of the date of the filing of the petition. Unsecured debts are those for which there is no lien on the debtor's property. If the debtor has no creditors holding unsecured nonpriority claims to report on this schedule, the debtor should check the box provided at the top of this form and proceed to the next schedule.
- 2) Unsecured nonpriority claims include all claims a creditor may have that are neither secured nor entitled to priority status under section 507 of the Bankruptcy Code. Generally, this schedule is used for the majority of the debts a debtor seeks to have discharged.
- 3) It is crucial for the debtor to list all remaining creditors on this form, because the debtor may be unable to receive a discharge of debt if the creditor was not properly scheduled and had no notice of the bankruptcy. 11 U.S.C. § 523(a). Claims listed on Schedules D and E should not be listed again on this form.
- 4) Although not required by law, it is strongly urged that the debtor place the creditors on this form in alphabetical order. Continuation sheets should be used if more space is needed.
- 5) The most important aspect of this form is the listing of the creditors and their complete addresses, including zip codes. Debtors should include their account numbers with each creditor, such as credit card account, department store account, etc., if applicable. If multiple addresses exist, the debtor should repeat the creditor's name and list each address in the spaces provided. Debtors should not repeat the description and amount of the debt, but note that the debt is the "same as above" or similar appropriate statement. (Multiple addresses should be included in the mailing list or mailing matrix, using a separate entry and repeating the creditor's name for each address.)
- 6) Debtors are instructed to place an "X" in the column labeled "Codebtor" if an entity other than a spouse may be jointly liable on a claim. Debtors filing a joint petition should designate whether the husband, wife, both of them, or the marital community may be liable on each claim, by placing a "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community."
- 7) Debtors are directed to state the date the claim was incurred and the consideration for the claim in the space provided. In other words, debtors should state what the debtor received in exchange for the claim such as, "goods purchased" or "extension of credit," or "medical treatment."

8) If a claim is subject to setoff, the debtor is required to state that fact on the form. A "setoff" is when part of the debt owed by the debtor to the creditor is "canceled out" by a pre-existing debt owed by the creditor to the debtor. Since certain pre-petition setoffs taken by a creditor may be subject to recovery by the bankruptcy estate, it is important that all setoffs be accounted for on this form.

9) If the claim is contingent, unliquidated, or disputed, the debtor should place an "X" in one or more of the appropriate columns. Otherwise, leave these columns blank. General definitions of the terms "contingent," "unliquidated," and "disputed" are provided below.

Definitions:

Contingent Claim --- A claim is contingent if the debtor's liability depends on the occurrence of a certain event, such as where the debtor is a cosignor on another person's loan, and that person fails to pay.

Unliquidated Claim --- An unliquidated claim is a claim the amount of which is not completely certain. The claim exists, but the amount is presently unknown. For example, a debtor may have been at fault in a car accident, but there is no judgment yet establishing the amount of the debtor's liability. The debtor will have to estimate the amount of such a claim and designate it as unliquidated.

Disputed Claim --- A claim is disputed when the debtor and creditor do not agree on the debtor's liability or on the amount of the debt.

These three columns are particularly important a creditor in a chapter 11 case in determining whether to file a proof of claim. 11 U.S.C. § 1111(a).

10) The stated amount of each claim need not be exact, but it should be as precise as possible. If the only figure attainable is an approximation, this should be noted on the form, such as by adding "approx." after the amount.

11) Debtors whose debts have been sent to collection agencies or attorneys for collection may wish to add an appendix to this schedule listing the names and addresses of these entities or individuals, to ensure that they receive notice of the bankruptcy and refrain from attempting to collect debts. 11 U.S.C. § 362(a). (Any collection agency and every attorney collecting a debt on behalf of a creditor should also be listed in the mailing list or mailing matrix.)

12) Debtors should place a subtotal at the bottom of each continuation sheet and the total on the last continuation sheet. Debtors should report the total of all claims listed on this schedule in the Summary of Schedules in the column labeled "Liabilities."

**INSTRUCTIONS FOR COMPLETING SCHEDULE G
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Federal Rule of Bankruptcy Procedure 1007(b) requires the debtor to file a schedule of executory contracts and unexpired leases, unless the court orders otherwise. The Code does not define the term "executory contract." Generally, executory contracts are those contracts in which, to some extent, the obligations of both parties are unperformed, so that the failure of one party to complete performance would constitute a material breach excusing the performance of the other party. In re Texscan Corp, 976 F.2d 1269 (9th Cir. 1992). A body of case law has developed further defining "executory contracts" and determining whether particular types of contracts constitute executory contracts. Common types of executory contracts include orders for furniture and layaway arrangements at clothing stores.

Debtors that have no executory contracts or unexpired leases should check the box provided on the form and proceed to the next schedule.

The information on this schedule should not be repeated in the schedules of assets; however, parties listed on this schedule will not receive notice of the filing of the bankruptcy case, unless the party is also listed in the appropriate schedule of creditors. It is important to list the name, mailing address, and zip code of other parties to an executory contract or unexpired lease on this schedule and also on other appropriate schedules, if any party is a creditor or contingent creditor in the bankruptcy case.

All unexpired leases of either real or personal property are to be reported on this schedule, including any timeshare interests. The schedule requires the debtor to disclose specific information to assist the trustee in identifying leases which must be assumed within 60 days after the order for relief or be deemed rejected under section 365(d) of the Bankruptcy Code. Thus, it is important to state the description of the lease and the nature of the debtor's interest in the lease, such as "lessor" or "lessee."

INSTRUCTIONS FOR COMPLETING SCHEDULE H -- SCHEDULE OF CODEBTORS

This schedule is designed to provide the trustee and creditors with information about codebtors of all types other than spouses in joint cases. Generally, a codebtor is any person or entity, other than a spouse in a joint case, that is also liable on any debts listed by the debtor in the schedules of creditors. The completed schedule provides information concerning nondebtor parties, such as guarantors, cosigners, and nondebtor spouses who are liable on a consumer loan, a mortgage, or other debt. In chapter 12 and chapter 13 cases, the completed schedule also indicates those persons who may be entitled to certain protections from creditor action under sections 1201 and 1301 of the Bankruptcy Code.

Debtors that have no codebtors should check the box provided and proceed to the next schedule.

**INSTRUCTIONS FOR COMPLETING SCHEDULE I
SCHEDULE OF CURRENT INCOME OF INDIVIDUAL DEBTOR(S)**

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the schedules contain forms on which individuals must report this information, no form is prescribed for a corporation or partnership. A corporation or partnership also must file a statement that provides the required information, but must devise its own form for this purpose.

The individual debtor should total the monthly income for the debtor and, in a joint case or a chapter 12 or chapter 13 case filed by a married debtor, the debtor's spouse and place the total on the line provided. The total combined monthly income should be placed on the form and reported on the Summary of Schedules under the column labeled "Other."

Debtors should include a description of any anticipated increase or decrease of over ten percent (10%) in any category that may occur within the year following the filing of Schedule I.

**INSTRUCTIONS FOR COMPLETING SCHEDULE J
SCHEDULE OF CURRENT EXPENDITURES OF INDIVIDUAL DEBTOR(S)**

The Bankruptcy Code requires all debtors to file a statement of current income and current expenditures. 11 U.S.C. § 521(1). Although the Schedules contain forms on which individuals must report this information, no form is prescribed for a corporation or partnership. A corporation or partnership also must file a statement that provides the required information, but must devise its own form for this purpose.

Joint debtors should check the box at the top of the form only if the debtor's spouse maintains a separate household. In such a case, a separate schedule of expenses labeled "Spouse" should be completed.

After completing the schedule, the debtor should total the monthly expenses and report the total on the Summary of Schedules under the column labeled "Other." Upon the completion of all the schedules, the debtor should go back to the Summary of Schedules and total all columns before signing the Declaration Concerning Debtor's Schedules.