



## BANKRUPTCY FIRST MEETINGS OF CREDITORS— A GUIDE FOR DEBTORS

By: Trev E. Peterson

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Most debtors are concerned about what normally is their only appearance before a court officer in a bankruptcy case, the §341 meeting or the “first meeting of creditors.” This article is intended to provide information about §341 meetings in Nebraska and what debtors can expect to occur at the § 341 meeting.

The §341 meeting or a “first meeting of creditors” is generally scheduled within a month to six weeks after the filing of a bankruptcy case. The “first meeting of creditors” moniker is a misnomer. There is only one meeting of creditors so the first meeting is also the last meeting, in most cases.<sup>1</sup> In Nebraska, the first meeting is scheduled automatically by the ECF filing software as a part of the electronic filing process. The computer assigns the panel trustee and sets the first meeting for the next available first meeting date and time. The place of the first meeting—Lincoln, Omaha, Grand Island, North Platte or Scottsbluff—are set based on the debtors’ address.

In Chapter 7 and 13 cases, approximately six first meetings are scheduled for each one-half hour time increment during the first meeting day. In Lincoln, Chapter 7 first meetings are scheduled for Mondays. In Omaha, first meetings are scheduled on Tuesdays or Thursdays. A schedule of first meetings is available on-line at the bankruptcy court’s PACER site, and debtor’s counsel can find the exact order of the first meetings set for a particular time.

The first meeting room is a conference room in Lincoln and Omaha. In Grand Island the first meeting room is a college classroom. First meetings are more like conferences than court appearances. The trustee sits at a table, and there is a table for the

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<sup>1</sup> If a creditor or the trustee wants to examine the debtor, Bankruptcy Rule 2004 permits the examination of the debtor under oath. Procedurally, the party seeking a Rule 2004 examination either seeks an agreement with the debtor’s counsel to hold the examination or files a motion for a court order requiring the 2004 examination. The Rule 2004 examination can also be used to obtain information concerning the debtor’s assets from non-debtors.

debtors and their attorney, and a table for creditors or their counsel. A taped record of each first meeting is made by the trustee, so it is important that the debtor answer the questions out loud.

The general rules for parties testifying at trial or during a deposition apply to first meetings:

- Listen to the question.
- Answer the question asked.
- Tell the truth.
- Don't guess at the answer. If the question is about the schedules filed in the case, and you don't recall how the asset was listed, ask to see the schedules.
- If you don't understand the question, ask that the question be repeated or explained so that you understand what the trustee or the creditor is asking.

In Nebraska, the examination of the debtor begins with the panel trustee, in a Chapter 7, 12 or 13 case, or by an attorney with the U.S. Trustee's office in a Chapter 11 case. Almost all first meetings are conducted in the following order:

1. The trustee or, in a Chapter 11 case, the U.S. Trustee's attorney places the debtors under oath. Debtors are usually requested to remain standing and raise their right hand while the oath is administered.

2. The trustee asks for the appearance of debtors' counsel and for the appearance of any creditor or creditor's counsel appearing at the first meeting. At this point in the first meeting the debtors' counsel usually says something like "please enter the appearance of Trev Peterson for Mr. and Mrs. Debtor." Creditor's counsel would say something like "please enter the appearance of Trev Peterson for ABC Bank."

3. The debtors are asked to provide the trustee with their photo identification (usually a driver's license<sup>2</sup>) and verification of social security number (usually a social security card<sup>3</sup>). The Chapter 13 trustee (and perhaps a Chapter 7 trustee or two) have a

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<sup>2</sup> A state identification card is also acceptable. If you do not have photo identification issued by a governmental agency, you will not be able to pass security in the federal buildings in Lincoln or Omaha, and you will not be able to complete the first meeting of creditors.

<sup>3</sup> If you do not have a social security card, you can get a verification of your social security number at the social security office located in the federal building in Lincoln, which is conveniently located across the hall from the first meeting room. If you do not have a Social Security card, you can also use a W-2 earnings statement issued by your employer or an income tax return to verify your social security number.

paralegal who checks the identification and social security information for debtors as they enter the first meeting room to save time at the first meeting.

4. The trustee goes through a series of questions. While the questions asked vary from trustee to trustee, the following is an example of the trustee's questions:

- Please state your name and address
- Are any people dependent on you or supported by you?
- Do the schedules you filed in this case list all of your assets and all of your debts?
- Are there any changes that need to be made to your schedules?
- How long have you lived in Nebraska?
- Is this the first time you have filed bankruptcy?
- Do you expect to receive an inheritance or will you become entitled to receive an inheritance within the next six months?
- Do you own or are you buying your own home?
- Do you own any real estate?
- Have you sold any real estate in the last year?
- Have you paid any creditors more than \$600 in the 90 days before the filing of the case?
- Have you paid any family members within a year before the filing of the case?
- Have you received and read a copy of the bankruptcy information sheet provided by the U.S. Trustee's office?
- Are you suing anybody?

5. After the general questions, the trustee will ask specific questions based on the information disclosed in the debtors' schedules. For real estate and vehicles shown in the schedules, the questions are about how the value was determined; how much debt is owed against the property and whether the property can be claimed as exempt.

There may be additional questions depending on what was disclosed in the schedules. For example, if one of the debtors is unemployed, the trustee might ask if the unemployed debtor is looking for a job; what actions are being taken to locate a job; and whether the joint debtor thinks he or she will be successful in locating a job.

6. After the trustee completes his or her examination, the trustee will call on the creditors or creditors' attorneys to begin his or her examination. The types of questions that you can expect from a creditor depend on the claim that the creditor has in the case. If you assume that the creditor has a claim secured by a piece of business property (in a case where a sole proprietor of a business files bankruptcy) the following questions could be asked:

- Mr. Debtor, is your inventory and business property that you used for your business still located at 1234 Main Street?
- Is the rent paid on the 1234 Main Street location?
- Is the inventory and other business property insured?
- If so, with whom?
- When is the insurance premium due next?
- Have you sold or moved any inventory or machinery or equipment from the 1234 Main Street location?
- How much is the inventory worth?
- How did you arrive at that value?
- Did you sell any inventory outside of the ordinary course of your business?
- How much is the equipment worth?
- How did you arrive at that value?
- Did you sell any equipment?
- What equipment?
- To whom?

- For what price?

Other questions could be asked depending on the type of property involved in the case and the collateral securing the creditor's claim. The attorney representing a creditor whose collateral is likely to be used by the debtor during the bankruptcy case to perform under a plan in a Chapter 11, 12 or 13 is much more likely to appear and ask questions about his or her client's security than is a creditor in a Chapter 7 case, or a creditor where the debtors have agreed to surrender the collateral.

After all of the creditors have asked their questions, the trustee will ask the debtors' attorney whether he or she has any questions. If not, and assuming that the trustee has no further questions, the trustee adjourns the first meeting and the debtors are free to leave.

Following the first meeting, the Chapter 7 trustee will determine whether or not to claim assets listed by the debtor and file a report showing the assets, if any, that the trustee intends to claim.

While the first meeting is an important part of the bankruptcy proceeding, debtors should not be worried about their testimony. The debtors need to tell the truth and do their best to answer the questions. The trustee will allow the debtors to review the schedules if necessary and to ask their attorney's for assistance. The best advice for people testifying at a first meeting are to relax, listen and tell the truth.