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Expanded role of the accountant under the 1978 bankruptcy code: a summary for trustees, examiners, creditors' committees and accountants;

Homer A. Bonhiver
The Expanded Role of the Accountant Under the 1978 Bankruptcy Code
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The Expanded Role of the Accountant Under the 1978 Bankruptcy Code

A Summary for Trustees, Examiners, Creditors’ Committees and Accountants

By Homer A. Bonhiver, CPA, MBA
in cooperation with the partners and staff of Deloitte Haskins & Sells

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About the Author

Homer A. Bonhiver is a certified public accountant who specializes in bankruptcy and corporate refinancing matters. In addition to his regular accounting practice, which he began in 1952, Mr. Bonhiver has served and continues to serve as receiver, trustee and expert accounting witness in numerous bankruptcy and reorganization actions, including the Sister Elizabeth Kenny Foundation, American Allied Insurance Company, Mid American Savers, Inc., Minnesota Blue Shield, IDS Realty Trust and New World Inns, Inc. He has served as special consultant, investigator and/or witness for various Attorneys General, Commissioners of Insurance, the Office of the Governor of Minnesota, and the Department of Justice. In October 1979 he testified before the U.S. Senate Subcommittee on Improvements in Judicial Machinery, where he gave his views regarding control of bankruptcy fraud.

Mr. Bonhiver is a member of the American Institute of Certified Public Accountants and the Minnesota State Society of CPAs. He is a former member and past chairman of the Minnesota State Board of Accountancy.
Foreword

The purpose of this book is to familiarize accountants and others with the changes brought about by the Bankruptcy Reform Act of 1978 and to give them an idea of the increased opportunities to serve in this field.

The Reform Act resulted from efforts to make the bankruptcy process more responsive to the rights of all parties involved. In order for the Act to be implemented effectively, the services of members of the accounting profession as well as those of specialists in other professions will be required.

Much of the material that follows deals with the responsibilities of non-accountants who serve in various capacities under the Act. This is done to remedy one of the major flaws that has affected the process in the past — the lack of widespread understanding of the various functions of others involved in a bankruptcy case.

This book describes the parts of the Reform Act that are of special interest to accountants, but it does not purport to give legal advice. The point is made again and again that counsel should be consulted — the entire bankruptcy proceeding is truly one continuous court case.
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Glossary*

**Accountant**—A person or firm legally authorized to practice public accounting. Includes professional accounting associations, corporations or partnerships.

**Affiliate†**—
- Any entity which is a 20 percent parent or subsidiary of the debtor (with power to vote securities).
- A person whose business is operated under a lease or operating agreement by the debtor.
- A person substantially all of whose property is operated under an operating agreement with the debtor.
- Any entity that operates the business, or substantially all of the property, of the debtor under a lease or operating agreement.

**Cash collateral**—Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents in which the estate and an entity other than the estate have an interest, such as a lien or co-ownership interest.

**Claim**—Any right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. Also includes an equitable right to performance that gives rise to a right to payment.

**Community claim**—Applies in those states having community property laws whereby the debtor’s property is liable for a claim against either the debtor or the debtor’s spouse.

**Confirmation**—Formal acceptance by bankruptcy court of reorganization after a hearing and notice, and a determination that the specific requirements of Section 1129 have been fulfilled.

**Consummation**—See “substantial consummation.”

**Consumer debt**—A debt incurred by an individual primarily for a personal, family or household purpose.

**Corporation**—
- Any association having a power or privilege that a private corporation, but not an individual or partnership, possesses.
- A partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association.
- A joint stock company. An unincorporated company or association (including labor unions). A business trust.

Limited partnerships are specifically excluded from this classification.

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*This Glossary is summarized from Section 101 and other sections of the Bankruptcy Act.
†See Appendix II for full legal definitions of these terms.
**Creditor**—
- A holder of a claim (against the debtor) that arose before the filing of the petition.
- In an involuntary case, also includes holders of claims arising before the appointment of a trustee or the order for relief.
- A person injured by the rejection of an executory contract or unexpired lease.
- Certain investment tax recapture claim holders.
- Certain holders of the right of setoff.
- A holder of a community claim.

**Custodian**—
- A receiver or trustee of any of the debtor’s property who is appointed in an earlier case or proceeding.
- An assignee under a general assignment for the benefit of the debtor’s creditors.
- A trustee, receiver or agent under applicable law, or under contract, who is appointed or authorized to take charge of the debtor’s property for the purpose of enforcing a lien against such property, or for the purpose of general administration of such property for the benefit of the debtor’s creditors.

**Debt**—Liability on a claim.

**Debtor**—A person (including individuals, partnerships and corporations) or a municipality that is the subject of a case under this title.

**Disinterested person**—A person who is not a creditor, equity security holder or insider; has not been an investment banker for any outstanding security of the debtor; has not been an investment banker for a security of the debtor within three years before the date of filing of the petition, nor an attorney for the investment banker; has not been a director, officer or employee of the debtor, or investment banker within two years of the filing of the petition; and does not have an interest materially adverse to the estate.

**Entity**—A person, estate, trust or governmental unit, or the U.S. trustee.

**Equity security**—A share in a corporation or a limited partner’s interest in a limited partnership. Includes warrants or rights to subscribe to such equity. Conversion rights are excluded.

**Examiner**—A person appointed under Section 1106(b) in a Chapter 11 (reorganization) case to perform investigative duties otherwise given to the trustee. Under some circumstances the court may give the examiner additional duties. The examiner may not become, or be retained by, the trustee in the same case (see page 16).
**Individual with regular income**—An individual whose income is sufficiently stable and regular to enable such individual to make payments under a plan under Chapter 13, other than a stockbroker or a commodity broker. It includes individuals on welfare, social security and fixed pension income.

**Insider†**—A person who has certain close relationships with the debtor. If the debtor is an individual, this includes a relative, a partnership in which the debtor is a general partner, a general partner of the debtor or a corporation of which the debtor is a director. If the debtor is a corporation, this includes a director, officer, general partner or any other person in control, and any relative of such controlling person(s). This also includes a general partnership in which the debtor is a general partner. If the debtor is a partnership, it includes any general partner or relative of any person in control. If the debtor is a municipality, it includes any elected official or relative.

**Insolvent†**—An entity whose debts are greater than its assets, exclusive of property exempted or fraudulently transferred.

**Judicial lien**—A lien obtained by judgment, levy, sequestration or other legal or equitable process.

**Lien**—A charge against or an interest in property to secure payment of a debt or performance of an obligation.

**New value**—Money or money’s worth in goods, services or new credit, or release by a transferee of property previously transferred to that transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law. Does not include an obligation substituted for an existing obligation.

**Person**—Includes an individual, partnership and corporation. Does not include a governmental unit.

**Petition**—A pleading that commences a case under the Bankruptcy Act.

**Receivable**—Right to payment, whether or not such right has been earned by performance.

**Receiver**—An indifferent person between the parties to a cause who is appointed by the bankruptcy court to receive and preserve the property or fund in litigation, and to receive its rents, issues and profits, and apply or dispose of them at the direction of the court when it does not seem reasonable that either party should hold them.†

†Ibid.

‡The former bankruptcy law provided for the appointment of receivers where the court did not wish to turn the entire business and estate over to a trustee. The Bankruptcy Reform Act of 1978 specifically prohibits the appointment of a receiver.
Referee—A bankruptcy court administrator and fact finder who directs and rules on all bankruptcy matters or cases arising prior to October 1, 1979. These individuals, called “judges” (as provided in the Reform Act), will also serve in the capacity of bankruptcy judges on all new cases under the Reform Act for the remainder of their six-year terms of appointment, or until the appointment of judges on or after April 1, 1984. (See page 13.)

Relative—An individual related by affinity or consanguinity within the third degree. Includes an individual in a step or adoptive relationship.

Security†—Notes, stocks, bonds, certificates, contracts, claims and other documents as specifically described in the Act.

Statutory lien—A lien that arises automatically under a statute. Includes a lien for rent.

Straight bankruptcy—A Chapter 7 (liquidation) proceeding.

Substantial consummation—Transfer of all or substantially all of the property proposed by the plan (of reorganization) to be transferred; the assumption, by the debtor or successor to the debtor (under the plan of the business or of the management) of all or substantially all of the property dealt with in the plan; and commencement of distribution under the plan.

Transfer—Every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property. Includes retention of title as a security interest.

Trustee†—An individual, partnership or corporation elected or appointed to perform certain functions as described by the Bankruptcy Act, and whose selection has been approved by the court (see page 19).

†Ibid.
II. Introduction

On November 6, 1978, President Carter signed into law the Bankruptcy Reform Code of 1978 (Reform Act). This resulted in a reorganization of the federal courts and a new pattern of activity within the bankruptcy system.

Up to now, the involvement of independent accountants in bankruptcy procedures has been very limited. For that matter, so has the involvement of most attorneys. Various roles in the administration of bankruptcies have generally been filled by a relatively small and closely knit group of attorneys who move from one chair to another—often within the same proceeding. The need for good accounting and investigative efforts beyond what these attorneys have been able or willing to provide has been largely ignored—except where pressure has been applied by the Securities and Exchange Commission (SEC), some other regulatory agency or an organized group of creditors.

With the rapid growth in the number of business bankruptcies and an acceleration of this pace during a period of recession, it is now apparent that bankruptcy has become a significant factor in our economic life. Billions of dollars are involved, and almost everyone is affected at some time by the bankruptcies of various businesses. Despite this disturbing condition relatively few standards of accountability have been established for handling bankruptcy matters.

Even though a business may have become insolvent and unable to meet obligations as they fall due, there can still be substantial available assets, both tangible and intangible. Frequently included in these assets are choses in action (personal rights not reduced into possession, but recoverable by a suit at law), which can and should be pursued against "insiders" and favored creditors. Many of these assets can be adequately identified and pursued through appropriate legal action only where there is reliable and responsible accounting.

In an attempt to reduce delays and offer more decision-making authority to creditors and the court, the Reform Act eliminates the right of the SEC to enter a case as a "party-in-interest." The SEC will still be permitted to appear and to raise and be heard on any issue, but will not be able to appeal any judgment, order or decree entered in the case. Because of this, there will be an even greater need for assistance from independent accountants.

Value judgments and interpretations of investigative reports will rest much more heavily on the shoulders of bankruptcy judges. Creditors themselves or their representatives will be expected to pursue their rights to recover, restore and otherwise protect assets that actually belong to them, and to arrange for effective presentation of their position. Only
through the use of competent accounting assistance can trustees and/or their attorneys adequately represent the creditors in hearings before the court. To carry out their expanded responsibilities, everyone—particularly bankruptcy judges—will need reliable accounting and financial reports.

A vast new challenge has been placed on the doorstep of the accounting profession, but there are many ways in which members of the profession can respond. This manual identifies roles in the bankruptcy procedure that can be filled by accountants.

In addition, much remains to be done in the development of uniform accounting and reporting and in investigative procedures and standards. Various portions of this manual will identify the needs for accounting assistance and specific legal requirements. Sections of the law which may be of particular concern to accountants are reproduced in the Appendices.

This is not intended to be a legal treatise, but a presentation of the accountant's perspective of various significant legal requirements. It is emphasized throughout that wherever there is any question or doubt, the accountant must seek the advice of a qualified attorney. In order to serve effectively, the accountant must recognize that the entire bankruptcy proceeding is really a continuous court case and that all his actions must be taken within a strict legal framework. No accountant should ever attempt to serve without preparation and reliance on the advice of legal counsel.

Accountants will frequently be principal witnesses at hearings and trials. Therefore, they must be ready to make their opinions and findings part of the court records. Most important decisions will be made by the court only after the accountant's reports and testimony have been considered. In most respects the accountant will be considered a "friend of the court" who is there to help the court gain a clearer picture before making a decision. The judge will understand and appreciate the extraordinary circumstances under which the accountant must work.

The law, plus the accountant's own description of the limitations on his opinion, will reduce his exposure to personal liability—assuming that the accountant works conscientiously and competently, and testifies forthrightly.
III. History of the Bankruptcy System

Bankruptcy laws from 1800 to the present. A bankrupt is defined as “a person who upon his own petition or that of his creditors is adjudged insolvent by a court, and whose property is administered for and divided among his creditors, under a bankruptcy law.” The word appears to come from the Italian term banco rupta meaning “broken bench.” This describes the medieval custom of breaking up the debtor’s bench or stall that was used in Roman markets. The businessman who failed was subject to banishment and public disgrace.

Over the ages debtors who found themselves unable to meet obligations were dealt with harshly. Not only were all their assets taken from them, but they were given little or no relief through legal forgiveness of debts. Many of them ended up in debtors’ prisons with all means of rehabilitation removed. A large number of the early settlers in this country left their homelands to escape such a fate.

The U.S. Constitution addressed itself to the problem of bankruptcy by providing in Article I, paragraph 8, that “the Congress shall have the power to establish uniform laws on the subject of bankruptcies throughout the United States.” The first bankruptcy law passed in 1800 was rejected in 1803. A second law passed in 1841 lasted until 1844. The third law, passed in 1867, was repealed in 1878.

Finally, in 1898 a bankruptcy law (the “Bankruptcy Act”) was established. It continued in effect until the 1978 Reform Act. The Chandler Act of 1938 made broad revisions in the 1898 law, and in 1970 there were additional significant changes in the jurisdiction of bankruptcy referees. Since 1973 the basic bankruptcy law has been modified by rules adopted by the Judicial Conference of the United States. The entire 1898 law has now been repealed, but will continue to govern all cases that were commenced prior to October 1, 1979. All cases commenced after that date are subject to the Reform Act of 1978.

Bankruptcy Reform Act of 1978. In 1965 the Brookings Institution established a task force to study and report on the operation of the bankruptcy laws. The report of this task force was published in 1971 under the title Bankruptcy: Problem, Process and Reform. Several problems of bankruptcy administration were identified in this report:

- A “dreary, costly, slow, and unproductive process”
- Baffling inequities from one court to another concerning the relief afforded and its cost
- Casual and generally inadequate representation of debtors by counsel
• Inadequate incentives for creditors to be provident in extending credit or to participate in bankruptcy administration

• Use of adversary procedure when there is no adversary interest

• Management of business bankruptcy cases without significant creditor input

• Inefficient management of bankruptcy administration by a coalition of referees, trustees and the bankruptcy bar

One of the most important recommendations of the task force was that an administrative agency in the executive branch of the federal government should perform the functions of bankruptcy administration.

Congressional movement for comprehensive reform of the Bankruptcy Act was initiated on August 2, 1967 when Senator Quentin Burdick of North Dakota proposed the creation of a Commission on Bankruptcy Laws of the United States. After a number of hearings, conferences and congressional actions, a resolution creating the Commission was adopted on July 14, 1970. According to the resolution a principal factor warranting the creation of the Commission was the fact that there had been a 1,000 percent increase in the annual volume of consumer bankruptcies during the last twenty years. The Commission made its report on July 31, 1973 and proposed a new Bankruptcy Act of 1973.

The Congressional Commission based its proposals upon extensive hearings that sought to identify many of the problems with the existing system, including those indicated by the Brookings report. The National Conference of Bankruptcy Judges was not satisfied with all of the Commission's proposals, however, and drafted a rival bankruptcy act. After many hearings and compromises, a bankruptcy reform act was developed and finally passed by both houses of Congress on October 6, 1978 and signed into law by President Carter.


Title I contains eight chapters identified by odd numbers 1 through 15, which constitute new Title 11 of the United States Code:

Chapter 1, General Provisions
Chapter 3, Case Administration
Chapter 5, Creditors, the Debtor and the Estate
These three chapters have general applicability to and deal with definitions, case administration, creditor claims, debtor responsibilities, property of the estate and avoidance provisions.

Chapter 7, Liquidations, covers straight bankruptcies.

Chapter 9, Adjustments of Debts of a Municipality, pertains to municipalities which come under jurisdiction of the bankruptcy court.

Chapter 11, Reorganization, covers cases in which there is an effort to reorganize or rehabilitate a business (other than small sole proprietorships).

Chapter 13, Adjustment of Debts of an Individual with Regular Income, affords relief to an individual with regular income (including sole proprietors of a business) who at the time of the filing of the petition owes unsecured debts of less than $100,000 and secured debts of less than $350,000.

Chapter 15, U.S. Trustees, provides for ten pilot programs to be tested in eighteen judicial districts, in which bankruptcy administration is in the hands of U.S. trustees appointed and supervised by the U.S. Attorney General.

Title II contains amendments to Title 28 of the United States Code and to the Federal Rules of Evidence, including:

- Detailed provisions relating to the creation and composition of new bankruptcy courts; and procedures for appointment, tenure and residence, salaries and various rules regarding bankruptcy judges and appellate panels.
- A new Chapter 39 creating the office of U.S. trustee in ten judicial districts or groups of districts, and defining the organization and responsibilities of this office.
- A new Chapter 50 providing for bankruptcy court clerks, reporters and other employees or appointees and the maintenance of records.
- New and amended Sections 1293, 1334 and 1408 of Title 28 dealing with bankruptcy appeals.
- A new Chapter 90 covering the relationships of district courts and bankruptcy courts on matters relating to all cases under Title 11.
- Changes in filing fees to the following: Chapters 7 or 13, $60; Chapter 9, $300; Chapter 11 (not a railroad), $200; Chapter 11 (railroad), $500.
- A new habeas corpus procedure.
Title III contains thirty-eight sections amending other titles of the United States Code to correlate their provisions with the new Title 11—particularly provisions in Chapter 9 of Title 18 dealing with bankruptcy crimes. Some examples of important changes in terms relating to bankruptcy matters are: “bankrupt” is now “debtor”; “bankruptcy proceeding” is now “case under title”; “bankruptcy law” is now “provisions of title.”

Title IV contains eleven sections dealing with the period of transition prior to April 1, 1984:

1. Repeal of the 1898 Bankruptcy Act
2. Statement of the effective dates of various provisions of the Reform Act
3. Savings provisions
4. Continuation of courts during transition
5. Jurisdiction and procedure during transition
6. Studies and surveys of conditions in the judicial districts
7. Judicial administration during period of transition.
8. Study and survey of U.S. trustee pilot system
9. Transfer to new court system
10. Additional rulemaking power for Supreme Court
11. Increase in salaries of bankruptcy judges to $50,000

Effective dates. The bankruptcy rules promulgated by the U.S. Supreme Court will, to the extent they are not in conflict with the Reform Act, remain in effect until new rules are adopted. Generally, the Reform Act became effective on October 1, 1979. Any case or proceeding filed prior to that date is being conducted under prior law, as if the Reform Act had not been enacted. The new bankruptcy court structure becomes effective on April 1, 1984. Until then, the existing courts of bankruptcy will continue to serve.

Rules of bankruptcy procedure. The bankruptcy statute is administered under rules adopted by the Judicial Conference of the United States, which is directly under the jurisdiction of the U.S. Supreme Court. These rules are further modified and elaborated upon by local rules of practice formulated by district courts. District judges have also empowered bankruptcy judges to fix some of their own rules.
Prior to the Reform Act, rules promulgated by the U.S. Supreme Court superseded all laws with which they conflicted. But, according to Chapter 131 of the Judicial Code, such rules "shall not abridge, enlarge, or modify any substantive right." This resulted in considerable difficulty and misunderstanding, leaving the courts and lawyers to determine for themselves which portions of the Bankruptcy Act were "substantive" and therefore still prevailing. Effective with passage of the Reform Act, however, these rules of procedure do not supersede laws with which they conflict.*

New rules are to be initiated and developed by an official Advisory Committee and, after hearings and amendments, will be finally approved by Congress. The process of developing them is quite lengthy, and it may not be until 1982 that a set of rules applicable to the 1978 law will have been completed. Meanwhile, the old rules will continue with the full force of law except where they are inconsistent with provisions of the new law.

Accountants may also find it important to obtain and study copies of local rules of the district court, as well as any rules of the bankruptcy court.

*An outline of the existing Rules of Bankruptcy Procedure is presented as Appendix I. Details of these rules, together with explanatory comments, are available in Part 2 of Collier Pamphlet Edition of Bankruptcy Rules and Official Forms published by Matthew Bender & Co. Inc., New York, N.Y.
IV. Parties Involved in Bankruptcy Proceedings

**The judge.** Originally called "referees," judges in bankruptcy have received gradually improved status and enlarged powers. Referees were appointed for six-year terms by the district judges, and their decisions and actions were subject to review by the district judges.

The Chandler Act of 1938 significantly expanded the limited powers of the referees. The Referees' Salary Act of 1946 removed referees from dependence on fees charged for the measure of their compensation, and 1970 legislation substantially extended their jurisdiction. The Rules of Bankruptcy Procedure, adopted during 1973-1976, extended the tenor of bankruptcy legislation to elevate the status of referees, who are called "judges" under the Reform Act.

The Reform Act creates a new U.S. bankruptcy court as an adjunct to the district court. There will be new appointments of bankruptcy judges who will be on the same level as district judges and receive commensurate salaries. Appointments will be by the President, with consent of the Senate, for fourteen-year terms. However, these appointments will not be effective until April 1, 1984. Referees, or bankruptcy judges presently in office, will continue to serve until March 31, 1984 or until a successor takes office, and they will carry out responsibilities under the law and rules covering the particular proceeding or case before the court.

Under the old law, the referee appointed receivers and trustees and served as general administrator as well as judge. Under the Reform Act, however, most administrative matters were removed from the court and are now taken care of by the U.S. trustee or private trustees (see below). The position of receiver has been eliminated. Bankruptcy judges are expected to remove themselves from activities and administrative functions which could tend to bias their decisions.

**The U.S. trustee.** In ten pilot programs covering eighteen judicial districts, the U.S. Attorney General will appoint a U.S. trustee to assume administrative responsibilities in all bankruptcy cases. In some cases, one or more assistant U.S. trustees will also be appointed. (A list of the test areas and names of the individuals selected by the Attorney General is given in Appendix III.)

United States trustees are supervised by, and answerable to, an assistant attorney general in the Executive Office for U.S. Attorneys and Trustees, Department of Justice, in Washington, D.C. Appointments are for a seven-year term. Either before or at the end of the ten five-year pilot programs that terminate April 1, 1984. Congress will evaluate the effectiveness of the U.S. trustees. Congress will then decide whether to expand the programs to all other parts of the United States or to terminate the project.
In districts in which there is no U.S. trustee, private trustees are elected by creditor committees or appointed by bankruptcy judges. However, the Reform Act appears to provide for little direct supervision of these private trustees.

Because they are part of a new and experimental program, definitions of the limits of authority and accountability of the U.S. trustees have not been well established. It is clear, though, that each of them has broad authority and considerable responsibility for the success or failure to achieve objectives of the Reform Act.

Administrative responsibilities of the U.S. trustee include supervising all bankruptcy cases and all trustees within a particular district. The Reform Act specifically provides that the U.S. trustee

1. Establish, maintain and supervise a panel of private trustees to serve under Chapter 7 (liquidation).

2. Serve as trustee under Title 11 cases when required.

3. Supervise the administration of all cases and all private trustees under Chapters 7, 11 and 13 of Title 11.

4. Deposit or invest, under rules, money received as trustee under Title 11 (see Appendix IV).

5. Perform duties prescribed under Title 11.

6. Make such reports as directed by the U.S. Attorney General.

According to the committee report of the House of Representatives, the U.S. trustee's primary function, and most important responsibility in the administration of the bankruptcy system, is maintaining and supervising a panel of private trustees. If, in any given Chapter 7 case, the U.S. trustee is unable to find a suitable trustee who is willing to accept appointment, then he is required to fill that position personally until a selection has been completed. Therefore, the U.S. trustee should be just as familiar with procedures as the other members of his panel. If the number of Chapter 13 cases in a particular judicial district warrants it, the U.S. trustee may appoint one or more individuals to serve as standing trustees. These could include one or more assistant U.S. trustees.

In a Chapter 11 or 13 case, the U.S. trustee has the authority and responsibility to make an early decision as to whether it is reasonable to permit the debtor to attempt rehabilitation (see page 36). At any point during the proceeding, the U.S. trustee may request authorization to appoint an examiner or private trustee to investigate the affairs (past and present) of the debtor, and, if it is in the interests of creditors, the trustee may elect to remove authority from the debtor.
Compensation. The salaries of U.S. trustees and assistant U.S. trustees are fixed by the U.S. Attorney General at rates "not to exceed the lowest annual rate of basic pay in effect for grade GS-16 of the General Schedule prescribed under section 5332 of title 5." (Effective October 1, 1979, this was $60,657.)

A U.S. trustee is also allowed necessary office expenses, staff and other employees as approved by the U.S. Attorney General. It is anticipated that the U.S. trustee's office will be completely separate from that of the bankruptcy court.

The examiner. An examiner is a disinterested professional person appointed in Chapter 11 (reorganization) cases by the U.S. trustee, or by the court (in districts in which there is no U.S. trustee), to conduct such an investigation of the debtor as is appropriate. Such investigations would deal with allegations of fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity in the management of the affairs of the debtor, provided:

- such appointment is in the best interest of creditors, any equity security holders or other interests of the estate; or
- the debtor's fixed and liquidated unsecured debts—other than debts for goods, services or taxes, or owing to an insider—exceed $5,000,000.

A request for the appointment of an examiner may be initiated either by a party-in-interest or by the U.S. trustee. After a notice and hearing, the court may order an appointment. The U.S. trustee will then make the appointment after consultation with the parties-in-interest and with court approval.

The examiner conducts an investigation and prepares a report for all concerned parties—particularly for the U.S. trustee, the court, creditors' committee and claimants. The role of examiner is independent of the debtor-in-possession or any trustee. The examiner is given the private trustee's investigative responsibilities and such additional duties as the court decides are necessary under the circumstances.

Except to the extent that the court orders otherwise, the examiner is required to perform the following:

1. Investigate the acts, conduct, assets, liabilities, and financial condition of the debtor; the operation of the debtor's business; and any other matter relevant to the case or to the formulation of a plan.
2. As soon as practicable—
   a. file a statement of any investigation conducted under this sub-
      section, including any fact ascertained pertaining to fraud, dis-
      honesty, incompetence, misconduct, mismanagement or
      irregularity in the management of the affairs of the debtor, or to a
      cause of action available to the estate; and
   b. transmit a copy or summary of any such statement to any credi-
      tors’ or equity security holders’ committee, indenture trustee or
      such other entity as the court designates.

3. Any other duties of the trustee that the court orders the debtor-in-
   possession not to perform.

Normally, the examiner will not be responsible for supervising the ongo-
ring operation of the business under Chapter 11. Any investigative
activities and the timing of the examiner’s report should therefore neither
delay nor interfere with appropriate operating activities—that is, unless
damaging discoveries are made that reflect on those who continue to
operate the business. Under such circumstances, the U.S. trustee, with
court approval, may either expand the duties of the examiner or (if this
hasn’t already been done) appoint a trustee; in either event, certain or all
duties and authority are taken away from the debtor-in-possession.

A person who has served as an examiner in a case may not serve as
trustee in the same case, nor may the trustee employ a person who has
served as an examiner in the case.

In addition to gathering information for possible fraud actions, the
examiner is generally the only professional in a position to provide the
U.S. trustee, the court and creditors’ committees with the reasonably
reliable accounting information they may need to carry out their respon-
sibilities. For example, one of the key determinations that the court must
make before confirming a proposed reorganization plan is that:

with respect to each class, each holder of a claim or interest of such class either
(1) has accepted the plan, or (2) will receive or retain under the plan on account
of such claim or interest property of a value, as of the effective date of the plan,
that is not less than the amount that such holder would so receive or retain if the
debtor were liquidated under Chapter 7 of this title on such date.

It is likely that the examiner will be called upon to prepare statements of
liquidating balances as of various dates determined relevant by the court.

In either a Chapter 11 or 7 case the trustee may perform the same func-
tions as the examiner. If the trustee is qualified and approved by the
court, the law also permits him to serve as an investigative accountant. In
such circumstances, compensation for these services must be separate
from that for serving as trustee.
The law places firm limitations on the compensation a trustee may receive. In most cases, it may be not only desirable but also necessary for the trustee to restrict his activities to supervision and engage a professional accountant(s) to perform special examiner services.

Compensation. After a notice and hearing, the court may determine and award reasonable compensation for actual and necessary services rendered by the examiner, based on the following criteria:

- time spent
- nature of services
- extent of services
- value of services
- cost of comparable services in nonbankruptcy matters
- reimbursement for actual and necessary expenses

In complex cases, it appears only logical that the court will recognize the need for an "examiner team." Approval for any such arrangement should be obtained in advance from the court.

The debtor-in-possession. In the consolidation of former Chapters X, XI and XII of the Bankruptcy Act, the Reform Act has adopted the flexible approach of presuming that the debtor will remain in possession (debtor-in-possession) and will continue to operate the business unless a request is made for the appointment of a trustee. The request for a trustee may come from any party-in-interest, the U.S. trustee, an indenture trustee or the SEC. Unless or until a disinterested professional trustee is appointed, the debtor may continue in possession subject to such limitations or conditions as the court prescribes, and perform the functions and following duties of a trustee:

1. Be accountable for all property received.
2. If a purpose would be served, examine proofs of claims, and object to the allowance of any claim that is improper.
3. Unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party-in-interest.
4. If the business of the debtor is authorized to be operated, file the following documents with the court and with any governmental unit charged with the responsibility of collecting or determining any tax arising out of such operations: periodic reports and summaries of the operations of the business, including a statement of receipts and disbursements, and such other information as the court requires.
5. As soon as practicable, file a reorganization plan or a report of why none will be filed; recommend conversion of the case to a case under Chapter 7 or 13; or recommend dismissal of the case.

6. For any year in which the debtor has not previously filed a tax return required by law, furnish such information as may be required by the governmental unit with which such tax return was to be filed.

7. After confirmation of a plan, file such reports as are necessary or as the court orders.

The debtor-in-possession must file a plan of reorganization within a period of 120 days, or such additional time as the court may grant after a notice and hearing.

The court may set limitations and conditions on the debtor-in-possession that it feels are necessary to protect the rights of creditors. These could include a requirement that there be an indemnification bond. At any time after convening the case, at the request of a party-in-interest or the U.S. trustee, and after a notice and hearing in which it is established that it is in the interest of creditors or that the conditions otherwise warrant it, the court is required to order the appointment of an investigating examiner or a trustee.

If an examiner is appointed, the debtor-in-possession may continue to supervise operating activities and develop a plan for reorganization, but will be restricted to the extent that specific trustee duties are taken by the court and transferred to the examiner.

If a trustee is appointed, the debtor must release possession of the business to the trustee. In this case, the following persons may file a reorganization plan at any time: the debtor, or any other party-in-interest, including the trustee, a creditors’ or equity security holders’ committee, a creditor, an equity security holder or indenture trustee. Such a plan could call for liquidation.

**Compensation.** The law regarding compensation to a debtor-in-possession appears vague. In most respects, the rights and responsibilities are the same as those of a trustee. A debtor-in-possession is specifically forbidden the “right to compensation under Section 330 of this title,” however, and there is no provision stating what, if anything, he can receive. This must be determined by the U.S. trustee and the court.

**The debtor’s accountant.** As long as the debtor remains in possession of the business, he may retain such personnel and professional assistants and consultants as are necessary to conduct the business and provide reports required by the court and the bankruptcy proceeding.
The debtor will normally request assistance from the accountant who served the business prior to the order for relief. This same accountant also may participate in the development and presentation of the plan for reorganization. In some instances, however, the debtor may find it desirable, or even necessary, to select a new independent accountant to perform an opinion audit. This would be particularly true if the case is near the termination of court supervision and acceptance of the report by creditors, investors and regulatory agencies becomes a key factor.

If the court has approved the retention of an accountant by a creditors' committee or the trustee, care must be taken to avoid duplication of effort. Although any accountant should be expected to maintain the same standards of objectivity regardless of who initiated his engagement, creditors will naturally give more credence to reports prepared or reviewed by accountants they helped select and who have had no previous relationship with the debtor and, particularly, no uncollected bills for past services.

**Compensation.** As in the case of any other unsecured creditor, the debtor's accountant must file a claim for any unpaid services rendered prior to the order for relief. For any services rendered after the order, the arrangement is treated as a new engagement and the accountant is paid from assets and income received after the order. To be on the safe side, however, terms of the engagement should be approved in advance by the court and submitted to the court again for authorization at time of payment.

**The debtor's attorney.** The debtor is entitled to legal representation at all times and, with court approval, may make necessary arrangements to retain counsel. Since this is a very specialized field of law, the debtor would normally seek out and engage an attorney who practices regularly in bankruptcy courts.

**Compensation.** The attorney must file a regular claim for any unpaid services rendered prior to the order for relief. Court approval must be obtained before any payment is made for services after the order for relief. It is advisable to agree upon and report terms of the engagement before rendering any services.

**The trustee.** A trustee may be any individual who is competent to perform the duties of a trustee; or, a corporation authorized by its charter or bylaws to act as trustee. In a Chapter 7 or 13 case the individual trustee must have a residence or office either in the judicial district within which the case is pending or in any adjacent judicial district. If the trustee is a corporation, it must have an office in at least one of these districts.
Upon election or appointment and qualification, the trustee becomes the legal representative of the estate, and has the responsibility to sue and be sued.

Within five days after selection and before beginning official duties, the person named as trustee must file a bond conditioned on faithful performance. The court determines the amount of bond and sufficiency of the surety on it. The bond must be in favor of the United States and filed with the court. The Reform Act relieves the trustee from personal liability and from liability on this bond for any penalty or forfeiture incurred by the debtor. A proceeding against a trustee's bond may not be commenced after two years following the date on which the trustee was discharged.

As previously stated, a person who has served as an examiner in a case may not serve as trustee in the same case, nor may the trustee employ a person who has served as an examiner in the case.

**Procedures related to selection of a trustee.** Election or appointment to the position of trustee is made by the creditors, the U.S. trustee or the court under various circumstances.

The following procedures are in effect in districts in which there is a U.S. trustee:

**Chapter 11 cases**

- If the court orders the appointment of a trustee, then the U.S. trustee, after consultation with parties-in-interest and with court approval, appoints a disinterested person. The appointee need not be a member of the standing panel of trustees. The U.S. trustee cannot serve in this capacity.

**Chapter 7 cases**

- The U.S. trustee appoints as interim trustee either a disinterested person from the court's standing panel of private trustees or the trustee who served under the Chapter 11 case—that is, if such a case preceded the order for relief under Chapter 7. Or, the U.S. trustee may serve as interim trustee. The interim trustee continues to serve until a trustee is elected or designated.

- Creditors holding 20 percent of total allowable unsecured claims may elect a person to serve as trustee (see Appendix V).

- If a trustee is not elected by eligible creditors, then the interim trustee serves as trustee in the case.
The following procedures are in effect in districts in which there is no U.S. trustee:

**Chapter 11 cases**

- The court may determine after a notice and hearing that the appointment of a trustee is necessary because of fraud, dishonesty, incompetence or gross mismanagement. If this is the case and no examiner has been appointed, or if such appointment is otherwise in the interest of the estate, the court selects and appoints a disinterested person as trustee. There is no requirement that the selection be made from the standing panel of trustees.

**Chapter 7 cases**

- The court appoints as interim trustee either a disinterested person from the court’s standing panel of private trustees or the trustee who served under the Chapter 11 case—that is, if such a case preceded the order for relief under Chapter 7. The interim trustee continues to serve until a trustee is elected or designated.
- Creditors holding 20 percent of total allowable unsecured claims may elect a person to serve as trustee (see Appendix V).
- If a trustee is not elected by eligible creditors, then the interim trustee serves as trustee in the case.

**In all Chapter 7 or 11 cases the trustee:**

1. Is accountable for all property received.
2. Investigates the financial affairs of the debtor.
3. If a purpose would be served, examines proofs of claims and objects to the allowance of any claim that is improper.
4. If advisable, opposes the discharge of the debtor.
5. Unless the court orders otherwise, furnishes such information concerning the estate and the estate’s administration as requested by a party-in-interest.
6. If the business of the debtor is authorized to be operated, files the following documents with the court and with any governmental unit charged with the responsibility of collecting or determining any tax arising out of such operations: periodic reports and summaries of the operation of the business, including a statement of receipts and disbursements, and such other information as the court requires; and
7. Makes a final report and files a final account of the administration of the estate with the court and with the U.S. trustee (in districts where there is one).
In all Chapter 7 cases, the trustee also collects and reduces to money the property of the estate for which such trustee serves, and closes up the estate as expeditiously as is compatible with the best interests of parties-in-interest.

**Compensation.** In a Chapter 7 or 11 case the court may allow reasonable compensation for the trustee's services, within limits which are determined by a percentage of the amount of "moneys disbursed or turned over in the case by the trustee to parties-in-interest, excluding the debtor, but including holders of secured claims." The percentage limitations are as follows: 15 percent of the first $0-$1,000; 6 percent of the portion between $1,000 and $3,000; 3 percent of the portion between $3,000 and $20,000; 2 percent of the portion between $20,000 and $50,000; and 1 percent of any excess.

It becomes readily apparent that this scale of maximum fees does not adequately provide for work on complex investigations, preparations for or participation in lengthy court proceedings, or efforts resulting in settlements of claims with little or no funds changing hands. In such situations, to assure appropriate aggressive effort on behalf of all claimants, the trustee must qualify himself as either an accountant or attorney, as well as trustee, so that he can be paid for these services; or rely on other accountants to "carry the ball" on all matters beyond routine liquidation procedures.

**Panel of private trustees.** *Districts in which there is a U.S. trustee:* The Reform Act provides that each U.S. trustee shall "establish, maintain, and supervise a panel of private trustees that are eligible and available to serve as trustees in cases under Chapter 7 of Title 11." The Act further provides that the U.S. Attorney General shall "prescribe by rule qualifications for membership on the panels." (As of the date of publication of this manual, rules are being developed by the Attorney General.)

In practice, the U.S. trustee will need to have a list of trustees who are qualified and available to serve on relatively short notice. The U.S. trustee must appoint an interim trustee for every case under Chapters 7 and 13. The U.S. trustee may also decide to appoint a trustee in a Chapter 11 case. There is no requirement that he select his appointee from the standing panel of private trustees, except in a Chapter 7 case in which he does not choose the trustee who served in the preceding Chapter 11 case.

In an involuntary Chapter 7 case, it may be necessary to act promptly to preserve property or prevent loss to the estate. If so, the court may order the appointment of an interim trustee even before an order for relief has been entered. Generally, however, the appointment will be made shortly...
after the order. In districts where there is a U.S. trustee, the U.S. trustee will present a nominee for court approval. The interim trustee will serve until a trustee is elected by the creditors. If a permanent trustee is not elected, the interim trustee will become the trustee.

Selection of the trustee will be made at a meeting of creditors, which must be held within a reasonable time after the order for relief. Either the U.S. trustee or his selected interim trustee is to preside at the meeting of creditors. The meeting is to be conducted in accordance with the Rules of Bankruptcy Procedure. Rules that were in existence prior to the Reform Act will continue to govern until new ones are promulgated. The Reform Act also authorizes the court to order a separate meeting of equity security holders (generally only in a Chapter 11 case). The bankruptcy judge is prohibited from presiding at or attending the meeting of creditors or equity security holders because he may hear evidence outside of the context of a dispute that may later require a judicial decision.

**Districts in which there is no U.S. trustee:** If there is no U.S. trustee, interim trustees are selected by the court. In a Chapter 7 case, the court may appoint the person who served as trustee under the Chapter 11 case—that is, if such a case preceded the Chapter 7 case. If the court does not appoint such an interim trustee, it must appoint a disinterested person that is a member of the panel of private trustees established by the Director of Administration of the U.S. Courts. Section 604(f) of Title 28 states:

For each bankruptcy court, the Director [of the Administrative Office of the United States Courts] shall name qualified persons to membership on the panel of trustees. The number and qualifications of persons named to membership on the panel of trustees shall be determined by rules and regulations to be adopted by the Director. An individual named to membership on the panel of trustees shall have a residency or office in the State served by the court or in any adjacent State. A corporation named to membership on the panel of trustees shall be authorized by its charter or by the law to act as trustee and shall have an office in the State served by the court. The Director on his own initiative may at any time remove for cause a person named to a panel of trustees or remove a trustee appointed from the panel.

**The trustee’s accountant.** By definition, an accountant in bankruptcy proceedings is any person or firm legally authorized to practice public accounting, including a professional accounting association, corporation or partnership.

With the court’s approval, the trustee may employ one or more accountants (as well as other professional persons) that do not hold or represent an interest adverse to the estate, and that are disinterested persons.
A trustee’s accountant may also be:

- One who served as a salaried employee of the debtor but is not presently representing a creditor in the case, and whose services are necessary in the operation of the business. Because of his familiarity with records of the debtor, he need not be licensed as a public accountant to serve in this special capacity.

- The trustee, if such service is in the best interest of the estate and if he is authorized to practice public accounting.

The trustee, however, may not employ an accountant who has served as an examiner in the same case.

**Compensation.** Employment of the trustee’s accountant may be on any reasonable terms and conditions of employment, including a retainer, hourly or contingent fee basis. However, the court may allow compensation different from that provided under the original terms and conditions after the conclusion of employment, if the original terms and conditions prove to have been improvident.

After a notice and hearing, the court may determine and award reasonable compensation for actual and necessary services rendered by the accountant (or any paraprofessional person employed by the accountant) based upon the following criteria:

- time spent
- nature of services
- extent of services
- value of services
- cost of comparable services in nonbankruptcy matters
- reimbursement for actual and necessary expenses

If the trustee also serves as the accountant in the case, he is only entitled to compensation as the accountant if he renders services other than those generally rendered by a trustee without the assistance of an accountant (see Appendix VI).

**The trustee’s attorney.** With court approval, the trustee may employ one or more attorneys who do not hold or represent an interest adverse to the estate and are disinterested persons.
A trustee's attorney may be:

- One who served as a salaried employee of the debtor but is not presently representing a creditor in the case, and whose services are necessary in the operation of the business.
- For a specified special purpose (other than to represent the trustee in conducting the case), an attorney that has represented the debtor.
- The trustee, if such service is in the best interest of the estate and if he is authorized to practice law.

The trustee, however, may not employ an attorney who has served as an examiner in the same case.

**Compensation.** Employment of the trustee’s attorney may be on any reasonable terms and conditions of employment, including a retainer, hourly or contingent fee basis. However, the court may allow compensation different from that provided under the original terms and conditions after the conclusion of employment, if the original terms and conditions prove to have been improvident.

After a notice and hearing, the court may determine and award reasonable compensation for actual and necessary services rendered by the attorney (or any paraprofessional person employed by the attorney) based upon the following criteria:

- time spent
- nature of services
- extent of services
- value of services
- cost of comparable services in nonbankruptcy matters
- reimbursement for actual and necessary expenses

If the trustee also serves as the attorney in the case, he is only entitled to compensation as the attorney if he renders services other than those generally rendered by a trustee without the assistance of an attorney (see Appendix VI).

**Creditors' committee.** Chapter 7 cases. A committee consisting of no fewer than three nor more than eleven eligible unsecured creditors may be elected at a meeting called within a reasonable time after the order for relief. The Reform Act does not state who is to preside at the meeting, although presumably it would be either the U.S. trustee or interim trustee. At this meeting, the creditors elect a committee and may select a trustee (see Appendix V). The elected committee may:
- Consult with the trustee in regard to the administration of the estate
- Make recommendations to the trustee regarding the performance of the trustee's duties
- Submit to the court any questions affecting the administration of the estate

**Chapter 11 cases.** The U.S. trustee, or the court (in districts in which there is no U.S. trustee), appoints a committee of unsecured creditors. At the request of any party-in-interest and by court order, the U.S. trustee, or the court (in districts in which there is no U.S. trustee), may order the appointment of additional committees of creditors or of equity security holders to assure adequate representation.

Appointees to these committees are those creditors who are willing to serve, and who hold the seven largest claims in each group of claimants. As an alternative, if a creditors' committee already exists when the order for relief is entered, and if the committee was fairly chosen and is representative of the different kinds of claims to be represented, then the members of that committee may be the appointees. After a notice and hearing at the request of a party-in-interest, the court may change the membership or size of any committee if membership is not representative.

**Powers and duties of committees.** An appointed committee may:

1. Consult with the trustee or debtor-in-possession about the administration of the case
2. Investigate the acts, conduct, assets, liabilities and financial condition of the debtor; the operation of the debtor's business and the desirability of the continuance of such business; and any other matter relevant to the case or to the formulation of a plan
3. Participate in the formulation of a plan, advise those represented by the committee of the committee's recommendations for any plan formulated, and collect and file acceptances of a plan with the court
4. Request the appointment of a trustee or examiner
5. Perform other services that are in the interests of those represented

With court approval, the creditors' committee may employ one or more accountants, attorneys or other agents. A person employed by the committee may not simultaneously represent any other entity in connection with the case.
Compensation. Members of committees serve without pay from the estate. However, after court approval, accountants, attorneys and other professional persons employed by the committee are allowed reasonable compensation and reimbursement for actual and necessary expenses. Payment for these professional services becomes an administrative expense obligation of the estate.

The creditors' committee's accountant. During the term of a Chapter 11 proceeding, at least four major areas are of special concern to creditors and require competent financial and accounting analysis:

1. past activities of the debtor
2. present operations
3. plans for reorganization
4. decision as to whether creditors would fare better under liquidation

An accountant acceptable to the creditors' committee may be appointed as examiner in the case. If this person is charged with full responsibility to, and does in fact, investigate and report on all four matters, the creditors may not feel the need for a separate accountant. The same situation may prevail if a trustee has been appointed and retains a satisfactory accountant.

On the other hand, the creditors may decide that their interests are not being adequately represented, and that they are not receiving necessary financial accounting information. Under such circumstances, and with court approval, one or more accountants may be selected at a meeting of the creditors' committee that is attended by a majority of the members. The selection is subject to court approval.

Compensation. Professional persons (or any paraprofessionals employed by the professionals) retained by the creditors' committee after court approval are allowed reasonable compensation from the assets of the estate and reimbursement for actual and necessary expenses. The award will be based upon the following criteria:

- time spent
- nature of services
- extent of services
- value of services
- cost of comparable services in nonbankruptcy matters
- reimbursement for actual and necessary expenses

(See Appendix VI.)
The creditors' committee's attorney. In a Chapter 11 case, and with court approval, a creditors' committee may employ one or more attorneys to represent the interests of all creditors in the group covered by the committee. Normally, one attorney will suffice, but more than that may be authorized if good cause is shown. The selection of the attorney(s) must be done at a meeting of the committee that is attended by a majority of the members.

An attorney retained to represent a creditors' committee may not represent any other entity in connection with the case while employed by that committee.

Compensation. After a notice and hearing, the court may determine and award reasonable compensation for actual and necessary services rendered by the attorney (or any paraprofessional employed by the attorney) based upon the following criteria:

- time spent
- nature of services
- extent of services
- value of services
- cost of comparable services in nonbankruptcy matters
- reimbursement for actual and necessary expenses

(See Appendix VI.)

Others. The trustee may, with specific court authorization, engage appraisers, auctioneers or other professional persons to represent or assist him in carrying out his duties. These must be disinterested persons.

Anyone who is affected in any way by past, present or future activities of the debtor, or by the absence thereof, has a concern and, accordingly, plays some role in a bankruptcy proceeding—however minor.

The following, through the legal definition of not being “disinterested,” are persons who are likely to have a special interest, but whose interests are represented by the previously mentioned “parties involved”:

- creditors
- equity security holders
- insiders
• investment bankers for securities of the debtor
• attorneys for such investment bankers
• directors, officers or employees of the debtor
• directors, officers or employees of the debtor's investment banker
• affiliates of the debtor
• relatives of the debtor
• persons or entities who received assets of the debtor that are subject to avoidance
• any other claimants
• anyone subject to legal actions initiated by the trustee

Any individual creditor or other party may find it helpful, and sometimes necessary, to retain an accountant skilled in bankruptcy procedures to serve as a personal representative, agent or witness in a proceeding.
V. Role of the Professional Accountant

The Bankruptcy Reform Act of 1978 requires major changes in the handling and administration of the estates of entities that seek or are brought under the jurisdiction of the new U.S. bankruptcy court. Underlying all of those fundamental changes is the increased significance of reliable accounting information and sound financial analyses. The substantial decrease in the bankruptcy judge's involvement in administrative matters and the investigative and reporting requirements of the SEC have greatly expanded the role of the specialized public accountant.

Clearly, skilled public accountants will generally be among the most qualified persons to serve in one or more of the following capacities:

1. U.S. trustee
2. member of the standing panel of private trustees (Chapter 7 cases)
3. standing trustee (Chapter 13 cases)
4. independent trustee
5. examiner
6. accountant for the trustee
7. accountant for a creditors' committee
8. accountant for the debtor
9. agent of a creditor
10. accounting witness

All of these positions require expertise generally associated with CPAs. However, the nature of responsibilities under specific legal requirements is such that even the most competent accountants should become familiar with sound and acceptable procedures before involving themselves in bankruptcy matters. Perhaps accountants who practice in bankruptcies, more than specialists in any other field of professional activity, will find it extremely important to work closely with experienced legal counsel.

The Reform Act neither defines the qualifications required of a U.S. trustee nor limits appointments to attorneys. The U.S. Attorney General, however, has the right to set standards for appointments and to remove U.S. trustees for cause. As a policy matter in making appointments under the present pilot programs, the U.S. Attorney General has decided to restrict U.S. trustee candidates to licensed attorneys. The new law specifically prohibits the limiting of Chapter 13 standing trustees to attorneys.
The following sections in this manual will attempt to deal specifically with matters of particular concern to accountants who serve in one or more of the ten capacities mentioned above. Whatever the role, the individual can perform the job most effectively if the following items are understood:

- the basic rules of the proceeding
- the ultimate objective of the proceeding
- the relationship of the accountant's work to the efforts of other members of the bankruptcy team

Most of the suggested procedures and activities for each job have relevance to all other members of the bankruptcy team, and to anticipated court appearances.

**Compensation.** Levels of compensation were discussed in Section IV of this manual. Rates for the U.S. trustee and private trustees are specifically limited. The amount which may be paid for court-authorized professional assistance, including that of accountants, is subject to court approval and final review, but may be on any reasonable terms, including a retainer, hourly or a contingent fee basis—as long as the basis used does not violate the code of ethics of the profession (see Appendix VI).

The court may approve and authorize the engagement of accountants, attorneys and other professionals. The authorizations may be made retroactive to some earlier date that, in any event, must be after the date of the filing of the petition. However, it is at best risky to proceed on any work without specific advance authorization of the engagement by the court.

Professional persons may normally apply to the court not more than once every 120 days for interim compensation and reimbursement payments. The court may permit more frequent applications if the circumstances warrant—for example, in very large cases in which the work is extensive.
VI. Pre-Bankruptcy Considerations

**Evaluation of financial condition.** Any individual or group of individuals going into a business assumes risks. Anyone extending credit to the enterprise also takes the chance of not being able to collect. Good organization and sound operation reduce these risks. The extent of these risks and the effectiveness of organization and operation can be determined and measured only by good accounting and by realistic forecasts.

All businesses need good accounting, but one that is having difficulty in meeting obligations will find reliable reports even more important. Under the Reform Act it is no longer necessary for a business debtor to commit an “act of bankruptcy” (certain statutory events defined in the old bankruptcy law) for creditors to bring him before bankruptcy court. If the debtor is generally not paying debts as they become due, it may be grounds for creditors to file an involuntary petition to place the debtor in bankruptcy. Therefore, decisions and actions that will determine whether a businessman can retain personal control of his business must now be made even more promptly.

Long before the filing of an involuntary petition seems imminent, the debtor should begin taking steps to get the business back “on course.” The first step toward this should be an honest appraisal, including the preparation of a projection. If successful reorganization appears reasonably possible, the principal creditors who might consider filing an involuntary petition should be informed of the anticipated voluntary program. If liabilities exceed assets, however, and the need for compromises of debts appears unavoidable, then two basic steps should be taken:

1. Present the facts to the creditors and ask for their cooperation in either devising an out-of-court plan for saving the business or liquidating and distributing available assets; or,

2. File a voluntary petition with the bankruptcy court for legal protection while a reorganization (under Chapter 11) or a liquidation (under Chapter 7) is implemented.

**Discussions with large creditors and financial institutions.** A business person who is unable to pay bills as they fall due, or whose liabilities exceed assets, is actually in a partnership with one or more of his creditors or bankers. In all fairness, these informal partners should be informed of the details of their unexpected “marriage.” After all, as investors in the future of this business, they have a right to know what they are getting into.
In the past, accounting reports and forecasts may not have played an important role to the debtor. At this point, however, seeking the assistance of a competent accountant to help gain the confidence and cooperation of creditors and bankers may well be the most critical decision in the entire life of the business. It is essential that everyone concerned have reliable information to make projections, decisions and plans. Therefore, the business must have an accountant that everyone trusts.

The best and least costly reorganizations, or liquidations, are those that can be accomplished with minimum legal and court involvement. Every dollar and every hour spent attempting to work out a reasonable arrangement with creditors before the initiation of any petition can save many times that amount spent in a bankruptcy proceeding. Every innovative idea or procedure for reorganization that can be pursued without pressure from court decisions should be fully explored. The accountant can and should play a leading role in this endeavor.

**Decision by debtor whether to request rehabilitation or liquidation.**

Once it has been determined that the creditors will not accept a voluntary reorganization plan, and that they are likely to continue bringing more pressure, the business debtor may seek the protection offered by the bankruptcy court.

The debtor may choose to wait until an involuntary petition is filed by the creditors; or, the debtor may file a voluntary petition under either Chapter 11 or 7 of the Reform Act. At this point, the debtor should have sufficient accounting information to decide whether (a) it is reasonable to expect that a reorganization plan can be developed or (b) continued operation will only result in a further reduction of remaining assets.

If the debtor files under Chapter 11 (Chapter 13 if the business is a single proprietorship), there is an assumption that a reorganization plan can be developed that would provide more for unsecured creditors than would liquidation. The debtor may not believe this is possible or may not want to attempt a reorganization under court supervision. In such a case, the filing should be under Chapter 7, which provides for liquidation by a trustee who represents the interests of all creditors.
VII. Commencement of a Bankruptcy Case

The filing of the petition. Voluntary cases. When a business debtor decides to seek the protection of bankruptcy court, he may file a voluntary petition for relief under either Chapter 11 or 7 (Chapter 13 if the business is a single proprietorship). The form of petition is relatively simple and requires a sworn statement that:

1. The debtor resides or has had his domicile or principal place of business within the district for the preceding 180 days or for the larger portion of the preceding 180 days than it has been in any other district.

2. The debtor is qualified to file the petition and entitled to the benefits of the 1978 Bankruptcy Code* as a voluntary bankrupt.

The petition must be submitted in triplicate unless local rules provide differently. (The present official form is shown as Appendix VII.)

Involuntary cases. Recognizing that most of the assets of an insolvent business belong to creditors, the Reform Act makes it easier for creditors in general businesses to initiate an order for relief and invoke protection of the court. It is no longer necessary for creditors to prove balance sheet insolvency and that an “act of bankruptcy” had been committed by the debtor.

A petition may be filed and an involuntary case commenced by three or more creditors having at least $5,000 in unsecured claims. If there are fewer than twelve creditors, then any one creditor holding a claim of $5,000 or more may file the petition. The order for relief may be obtained if:

1. the debtor is generally not paying debts as they mature; or

2. a custodian was appointed or took possession during the 120-day period preceding the filing of the petition (creditors are not required to prove that debts are not being paid on a timely basis).

If the involuntary petition is not contested, relief will be granted under the appropriate chapter, with due consideration given to the request of the filing creditors. Otherwise, relief may be granted only after a trial. To discourage frivolous petitions, the court may require the petitioners to file a bond to indemnify the debtor for costs, attorneys’ fees and damages.

The U.S. trustee may determine, and the court may agree, that in order to preserve the property of the estate it is not necessary to make an immediate appointment of an interim trustee to take possession and operate the

*To conform with the 1978 Bankruptcy Code, the term “debtor” must be substituted for “bankrupt” throughout. “180 days” should be substituted for “six months” and “Bankruptcy Code” used instead of “Bankruptcy Act.” The prayer should read “wherefore petition prays for the entry of an order for relief under Chapter (7, 11 or 13) of the Code.”
business. Under such circumstances, the debtor usually will be permitted to continue to operate the business and, in an involuntary case, dispose of assets as if the case had not been commenced—that is, until an order for relief has been entered. If an interim trustee is appointed, and until the order is entered, the debtor may regain possession from the trustee by posting a sufficient bond.

Once the order for relief is entered, the estate is under jurisdiction of the bankruptcy court.

**Preparation of the statement of affairs.** Unless the court orders otherwise, the business debtor is required to file a schedule of assets and liabilities in addition to a statement of financial affairs, in triplicate, within ten days of the filing of a voluntary petition. (The present official forms are shown as Appendices VIII and IX.) The official form has been revised to cover provisions of the 1978 Bankruptcy Code. If the debtor is a partnership, each general partner not adjudicated is also required to file his own statement of assets and liabilities with the trustee of the partnership.

An accountant can assist the debtor and legal counsel in accumulating information and preparing financial schedules. However, legal counsel experienced in the field of bankruptcy should supervise and review the preparation of the formal statement.

The debtor must swear to the accuracy and completeness of the statements. The information provided is intended to be of assistance to the trustee, and to the examiner if one is appointed. Answers to some questions can lead to the discovery of either concealed assets or preferential or fraudulent transfers. Identifying the location of bank accounts, inventories and other assets assists the trustee in timely preservation actions.

**Approval of rehabilitation or liquidation.** In cases under Chapter 11 or 13, the U.S. trustee or the court, in consultation with the creditors' committee, must make an early decision as to whether:

1. it appears reasonable to expect that the debtor can be rehabilitated
2. further operating activity is more likely to result in the depletion of remaining assets.

In making the initial and continuing decisions, it is important to keep in mind whose assets are "on the line" (shareholders', bondholders', general creditors', etc.) if operations are to continue. Bondholders and creditors as well as shareholders have provided the assets and, to that extent, are all
investors in the business. Obviously, management, which represents shareholders' and its own interests, will generally want the operation to continue as long as possible. Once shareholders' equity has been wiped out, the owner or shareholders have little or nothing more to lose and everything to gain. From this point on, management is gambling with assets that actually belong to someone else—namely, bondholders and/or general creditors and, in some cases, secured creditors.

Creditors holding questionable secured positions may also resist the change from a Chapter 11 to a Chapter 7 proceeding because of a possible personal loss of a preferential secured classification in a liquidation proceeding.

The trustee (or the debtor-in-possession, if the court permits operation without an independent trustee) holds the voting power and a substantial part of legal recourse of all investors (shareholders, bondholders and creditors). In making decisions, the trustee should try to stand in the shoes of each of these persons, most particularly those whose assets are at risk. To gain appropriate perspective, the trustee must be provided with current and frequent financial statements, as described on page 39.

The balance sheet, operating statement and financial forecasts should indicate the probable results of continued efforts toward rehabilitation. The liquidating balance sheet should provide a picture of likely payments to claimants if the business is liquidated. Like road maps, the reliability of these financial statements is determined by the degree of care with which they are prepared.

It is incumbent on the trustee to insist on trustworthy tools appropriate to his work. The trustee's own credibility and judgment must be measured in his selection and use of these tools. Each choice of direction must represent the best interests of the group of investors who, at that point, stand to gain or lose by the chosen course of action. In most cases, the trustee can perform competently only if he relies upon a qualified accountant who is skilled in bankruptcy matters.

While the trustee must, and does, have sufficient freedom to make difficult choices, he will be well advised to establish and make effective use of creditors' committees, which are described on page 25. The function of these committees is basically restricted to retaining legal counsel, accountants and advisors, and to selecting or accepting the trustee. However, the future recovery and development or disappearance of the assets that belong to the creditors is at stake.

The thoughts and support of these committees on the question of continued efforts toward rehabilitation or liquidation should be of particular importance to the trustee. The trustee needs the assistance of an accountant who is accepted by these committees and who can be trusted to provide facts and information that the creditors can rely upon.
If the debtor remains in possession under a Chapter 11 case, he should be called upon to designate the responsible individuals who will be held personally accountable. If indicated by the situation, a bond equivalent to that which would be established for an independent trustee can and should be required. The responsible individuals are held to the same standards of performance and accountability as independent trustees.

In these situations, assistants to the U.S. trustees will find it particularly important to receive and evaluate monthly financial statements prepared by an independent accountant, and to submit recommendations regarding continued possession by the debtor.

If no logical plan of reorganization can be developed within a reasonable period of time and continued operation is leading only toward a reduction in net assets available for claimants, relief should be promptly sought under Chapter 7.

Appointment of examiner and/or trustee. Once the petition for relief has been filed, all of the debtor’s property becomes property of the estate. Until returned to the unrestricted control of the debtor or distributed to creditors, custodianship of these assets must be determined by the bankruptcy court.

The debtor may continue to retain possession of estate assets and operate the business until a trustee has been elected or appointed. During this period, the debtor becomes the debtor-in-possession and is given the rights, powers and responsibilities, but not the investigative duties (see page 50), of a Chapter 11 trustee.

In a Chapter 11 case, the U.S. trustee or the court (in districts in which there is no trustee) may, with court approval, request permission to appoint an examiner and/or trustee. Such an appointment may take place only after the U.S. trustee (or the court) has consulted with the parties-in-interest, and after the case has commenced, but before a plan for reorganization has been confirmed. After a notice and hearing, any or all of the rights and powers concerning administration of the estate may be taken from the debtor-in-possession and given to the examiner or trustee. Unless the court orders otherwise, a Chapter 11 trustee may continue to operate the business.

There is no requirement that either the examiner or trustee in a Chapter 11 case be selected from the court’s standing panel of private trustees, nor is there a restriction against such an appointment, providing he otherwise qualifies. An examiner may not, however, become trustee, or be retained by the trustee in the same case.

In a Chapter 7 case (which may follow a Chapter 11 proceeding), an interim trustee must be appointed promptly after the order for relief has been entered. Appointment is by the U.S. trustee or by the court (in dis-
stricts in which there is no U.S. trustee). The interim trustee must be a disinterested person who is either a member of the standing panel of private trustees or who served as trustee in the Chapter 11 case immediately before the order for relief was entered. If no such persons are willing to serve as interim trustee, then the U.S. trustee is required to serve as interim trustee.

Creditors have the right to select a trustee (see Appendix V). If they do not make a selection, then the interim trustee continues to serve as trustee.

**Financial statements.** As soon as possible after appointment, the examiner, trustee or the creditors' committee should obtain copies of the most recent financial statements prepared by the debtor. These may be available from the statement of affairs submitted by the debtor (see Appendices VIII and IX). A complete report should include balance sheets, operating statements, budgets and any supporting schedules.

In addition, it is important that an independent accountant retained on behalf of the estate develop a tentative balance sheet as of the date the entity was placed under jurisdiction of the bankruptcy court. Assets should be stated at liquidating values (as accepted by the U.S. trustee), and liabilities are the claims as filed (after obvious duplications and erroneously filed claims have been eliminated).

If it is intended that the entity is to be permitted to continue operating under Chapter 11, then the independent accountant should prepare or review a management forecast that covers the period required to improve the equity position. This forecast should show a projection on a monthly, as well as annual, basis.

Using the balance sheet and monthly comparisons of actual results with projections, periodic evaluations and reports must be submitted to the U.S. trustee regarding the probability of improvement in the position of creditors. If, at any point, the forecast indicates that no improvement can be reasonably expected, immediate steps will need to be taken to terminate further operating activity and have the entity placed in liquidation under Chapter 7.

A balance sheet prepared by an independent accountant should also be prepared as of the date the entity is placed under Chapter 7. Again, assets should be stated at the new liquidating values and liabilities must include all claims up to the date of the beginning of Chapter 7 proceedings.

Each balance sheet will be used as the foundation for evaluating the activities of the debtor-in-possession and/or the trustee. The position of a general creditor is measured by the percentage of assets to total allowed claims that are available at any given time for liquidation and distribution to him.
Investigation of transactions preceding the filing of the petition. A study of the history of business bankruptcies will reveal very few cases in which there have been no questionable transactions during the months immediately preceding the filing of a petition. Too often during this critical period a businessperson, together with some of the creditors, will resort to measures that would never be considered under normal circumstances. Once it is apparent that the business is heading downhill, it becomes a game of "looking out for Number One." The discovery, reporting and correction of abuses of the rights of all creditors that may have occurred during this crucial period become important not only for evaluating the integrity and intentions of the debtor, who is seeking protection by the bankruptcy court, but also for initiating timely recovery actions.

The creditors whose assets are now at stake are entitled to an early and complete report covering questionable activities. The accountant, whether he is the examiner appointed by the U.S. trustee (or the court) or an independent accountant retained by the trustee or the creditors' committee, must single-mindedly address himself to protecting the interests of these creditors.

Section IX in this manual, "Liquidation Proceedings (Chapter 7)," deals with actions that should be taken by the trustee, accountant and attorney in a Chapter 7 proceeding to develop maximum recovery and payments to claimants. To the extent that those procedures are applicable in a Chapter 11 case, they should be applied by the examiner, trustee or the accountant retained by the creditors' committee to preserve assets of the estate. Many of the suggested actions involve transactions that may have occurred during the period that preceded the filing of the debtor's initial petition. If not handled during the Chapter 11 proceeding, it may be too late to check them out by the time the case comes under Chapter 7.

In addition to the actions described in Section IX, the following specific areas should be explored by one or more of the accountants and reported upon as soon as possible:

1. Review corporate minutes and correspondence, noting significant financial transactions since the entity first showed signs of insolvency.

2. Prepare schedules listing all officers, directors, attorneys, accountants, bankers and insurance agents since the entity first showed signs of insolvency. Indicate beginning and ending dates of service.
3. From accounting records covering the period since the entity first showed signs of insolvency, prepare schedules of all payments of large amounts (perhaps $1,000 or more) to:
   a. officers and board members
   b. partners
   c. shareholders
   d. attorneys
   e. accountants
   f. banks or bankers
   g. insurance agents

4. Prepare schedules of large payments to all creditors during the year preceding the filing, which were not on current obligations incurred in the ordinary course of business.

5. Prepare a report of all significant transfers of assets, or creations of new liabilities, since the debtor first became insolvent.

6. Prepare reports and schedules of any other questionable transactions since the debtor first became insolvent.

These reports and schedules should become the foundation of recovery actions described on page 59. Therefore, it is important that they be prepared as soon as possible after the filing of the Chapter 11 petition, to help the U.S. trustee and the court determine whether, in good faith, the debtor is entitled to the rights, privileges and protection conferred on him by the Chapter 11 law and rules, or whether the debtor’s actions indicate a lack of genuine concern for the creditors who have made it possible for him to stay in business. It is equally important that restoration, recovery and setoff actions be initiated within the very short time limitations of the law. If discovery is delayed until this becomes a Chapter 7 case, it may be too late to undo the damage to creditors.

The investigation of transactions preceding the filing of the petition becomes one of the most critical activities requiring competent accounting assistance. As in other business investigations, the accountant cannot be expected to uncover every cleverly concealed manipulation. In most cases, too, the estate cannot afford a “detailed audit.” Nevertheless, it is incumbent upon the accountant to develop a sufficiently comprehensive program to produce a meaningful report to guide the trustee and legal counsel in their representation of the creditors’ interests. To guard against unreasonable assumptions of personal liability, the accountant should prepare a written outline of proposed procedures that are acceptable to the U.S. trustee or the court.
Detection of fraud and reports of possible criminal violations. In addition to his responsibilities to creditors, the trustee has the further obligation to report to the appropriate United States Attorney whenever he has reasonable grounds for believing that there has been a violation of bankruptcy laws or other related laws of the United States, or that there should be an investigation.

(A statement of possible criminal violations and reporting requirements, as provided in Title 18 of the United States Code is given in Appendix X. As indicated in the Appendix, the report of possible violations must contain all of the known facts and circumstances of the case, the names of witnesses and the offense or offenses believed to have been committed.)

To a great extent, the trustee will rely upon information provided by the accountant (i.e., the examiner, trustee’s accountant or creditors’ accountant) or the attorney for guidance in forming an opinion regarding possible fraud or criminal violations. He will also rely on professional assistance in the preparation of his report to the U.S. Attorney.
VIII. Chapter 11 Reorganization Plans

Purpose of reorganization proceeding. When a debtor seeks or is brought involuntarily under the protection and jurisdiction of the bankruptcy court, and there is no request for a liquidation proceeding, there is a general assumption that a reasonable and logical plan for reorganization will be developed. Basic to this assumption is the belief that continuation of the business under a reorganization plan will, in most cases, ultimately provide more for the creditors than liquidation.

Chapters 11 and 13 of the Reform Act provide a pattern to help the debtor continue, but reorganize, the failing business. In order to qualify for Chapter 11 or 13 status, the debtor must persuade the court that continuation of the business is in the best interests of creditors as well as employees and others in the business community.

At any point, upon a petition initiated by the U.S. trustee or any party-in-interest, the court may, after a notice and hearing, determine that reasonable reorganization is not feasible. In the interests of the creditors, the court will then terminate the Chapter 11 proceeding and transfer the estate to a Chapter 7 (liquidating) case.

Rights of creditors. In a Chapter 11 proceeding, the court may approve the appointment of an examiner or an independent trustee. Until this occurs, all of the assets of the estate continue under control of the debtor, subject to limitations or conditions prescribed by the court. The debtor, in effect, is expected to serve as the trustee of assets that belong to the creditors.

The interests of creditors are represented through legal counsel and one or more committees appointed by the U.S. trustee or the court (in districts in which there is no U.S. trustee) (see pages 25-28). The primary function of creditors’ committees is to consult with the debtor-in-possession, and with the examiner or trustee if one is appointed. These committees, with the assistance of an accountant, may investigate the operation of the debtor’s business and the desirability of continuing the business. A committee may review any plan for reorganization submitted by the debtor or participate in the formulation of a plan if a trustee has been appointed. The committee may also request the appointment of a trustee or examiner.

Most importantly, the committee may, with court approval, select and authorize the employment of accountants, attorneys or other agents to perform services in behalf of the creditors. If properly authorized, payment for these services will be from assets of the estate. These professional representatives can be of considerable importance in representing the interests of creditors, and may also be of genuine assistance to the trustee, the court and everyone else involved in the case.
Each creditor is a party-in-interest in the case and, accordingly, may exercise individual rights to call for certain hearings before the court. Also, each creditor may cast a vote on any proposed plan of reorganization. Under certain conditions, listed below, a creditor may file his own plan—which may call for liquidation.

**Proposals for reorganization.** As long as the court permits the debtor to remain in possession of the business, the debtor has the exclusive right to file a plan of reorganization—with two exceptions. Any party-in-interest, or any indenture trustee, may file a plan for reorganization if:

1. The debtor does not file a plan within 120 days after the order for relief, or within such increased or decreased time limitation as the court may order following notice of hearing.

2. The debtor files a plan within 120 days but fails to obtain the required consents within 180 days after the order for relief, or within such increased or decreased time limitation as the court may order.

If a trustee is appointed, possession is taken from the debtor and, from that point on, any party-in-interest may file a proposed plan for reorganization or liquidation.

**Contents of a plan.** Considerable flexibility is permitted in the development of a plan for reorganization. There are, however, certain specific requirements and permissive provisions in the Bankruptcy law. Accordingly, the plan:

1. Must designate classes of claims and interests, including certain kinds of priority claims.

2. Must identify any class of claims or interest not impaired under the plan, and specify the treatment of claims or interests that are impaired under the plan.

3. Must provide the same treatment for each claim or interest of a particular class unless the holder agrees to less favorable treatment.

4. Must provide adequate means for the plan’s execution. This may include retention by the debtor of all or part of the property of the estate, satisfaction or modification of any lien, the curing or waiving of any default and merger or consolidation of the debtor with one or more persons.

5. Must prohibit the issuance of nonvoting securities and provide for an appropriate distribution of voting power among the various classes of equity securities.
6. May impair, or leave unimpaired, any class of claims (secured or unsecured) or interests.

7. May provide for the assumption or rejection of executory contracts not previously rejected.

8. May include other appropriate provisions that are not inconsistent with the Bankruptcy law.

9. May simply propose complete liquidation and distribution to claimants.

**Disclosure of adequate information.** The keystone to a Chapter 11 proceeding under the Reform Act is the requirement that adequate information be disclosed before there can be any solicitation of acceptance or rejection of a plan of reorganization. Section 1125 of the Act defines “adequate information” as

information of a kind and in sufficient detail...that would enable a hypothetical reasonable investor typical of holders of claims of interest of the relevant class to make an informed judgment about the plan.

The expertise of a competent, independent accountant is called for to assist in the preparation or review of reports to be used in disclosure statements.

The Reform Act specifically eliminates the automatic requirement that certain reorganization plans be submitted to the SEC for evaluation and advice. It is left to the courts to determine the adequacy of information submitted on all cases. Such a determination must be based upon documents and reports presented for consideration that are generally evaluated by expert accounting witnesses or others retained by the debtor, trustee or the creditors’ committee.

Just what constitutes adequate information will depend upon many undefined factors. Accountants can be of considerable assistance to the courts by helping to develop standards that are flexible enough to accommodate the needs and circumstances of the case at hand—without causing undue delay or adding excessive costs. The Act, in Section 1125(b), authorizes the court to determine in certain specific cases that a disclosure statement is adequate, even though there is no valuation of the debtor nor appraisal of the debtor’s assets.
Standards of reporting established by the SEC may be applied to the extent that the court, after hearing expert testimony, determines necessary in the case. The SEC and other securities regulatory agencies may appear and be heard on any issue, including the adequacy of disclosure statements; however, they may not appeal any determination by the court. These agencies may, however, join in an appeal by a true party-in-interest.

Liability. To make the exemption from antifraud sections effective, the Reform Act provides a "safe harbor" from potential liability for those persons who solicit acceptance or rejection of a plan for reorganization under court supervision. Section 1125(e) is as follows:

a person that solicits, in good faith and in compliance with the applicable provisions of this title, or that participates, in good faith and in compliance with the applicable provisions of this title, in the offer, issuance, sale, or purchase of a security, offered or sold under the plan, of the debtor, of an affiliate participating in a joint plan with the debtor, or of a newly organized successor to the debtor under the plan, is not liable, on account of such solicitation or participation, for violation of any applicable law, rule, or regulation governing the offer, issuance, sale, or purchase of [a] security.

It should be noted that protection is provided only to persons who solicit in good faith and in compliance with the applicable provisions of Chapter 11.

For a more complete explanation of congressional intention concerning this very important change in the United States Code, see Appendix XI.

Acceptance and confirmation of plan for reorganization. In order to be confirmed by the court, a reorganization plan must receive the acceptance of a sufficient number of the members in each class of creditors.

1. If a given class is not impaired under the plan, the plan is deemed to be accepted by that class.

2. Each class (other than equity security holders) that may be impaired under the plan accepts the plan if at least two-thirds in amount and more than one-half in number of the allowed claims of the class that are voted are cast in favor of the plan.

3. A class of equity security holders accepts a plan if at least two-thirds in amount of the outstanding securities actually voted are cast in favor of the plan.
The court is required to confirm the plan only if all requirements of Section 1129(a) are met (see Appendix XII). In accordance with this rule, each holder of a claim or interest must either

- accept the plan or
- receive (or retain), under the plan, property whose value is not less than the amount that the claim holder would receive or retain were the debtor liquidated on the effective date of the plan.

Before confirming the plan, however, the court must be certain that liquidation or a need for further reorganization is very unlikely—that is, unless such liquidation or reorganization is proposed in the plan.

"Cram-down" provision. Even though an impaired class may fail to accept the plan, it may still be confirmed under the "cram-down" provision of Section 1129(b) (see Appendix XIII). Using this test, the court must first determine that the plan:

1. Does not discriminate unfairly.
2. Is fair and equitable with respect to each class that is impaired under and has not accepted the plan.
3. No senior class may receive more than 100 percent of the amount of its claims, and the dissenting class must be paid in full before any junior class may share under the plan.
IX. Chapter 7 Liquidation Proceedings

**Purpose of liquidation proceeding.** Publications and lecturers on bankruptcy frequently refer to trustees in a Chapter 7 (liquidating) proceeding as "undertakers" and those in a Chapter 11 (rehabilitation) proceeding as "doctors." While these concepts may have some validity when taken from the stockholders' point of view, they do violence to the rights of creditors. The contrasting descriptions have undoubtedly been a major factor in developing the prevailing attitude that once an entity enters "straight bankruptcy," it's time to divide up what can easily be seized, bury the remains, and forget about it.

As a matter of fact, there may be, and generally are, substantial actual and potential assets that rightfully belong to creditors. The trustee, along with the accountant and lawyer, can manifest competence and integrity by recognizing his serious responsibility to those persons whose assets are placed in his custody, and by conducting himself accordingly.

Unfortunately, the Reform Act itself fosters a misconception by limiting the title of Chapter 7 to "Liquidation." To describe more adequately the purpose of the Act, and the scope of responsibilities placed on the trustee, the proceeding should be designated as one to bring about the "recovery, preservation, liquidation and orderly distribution of creditors' assets." The following pages will deal with each of these elements in the normal sequence of actions.

The compensation allowed trustees is discussed on page 22. While the compensation may be generous if the trustee concentrates exclusively on "liquidating" procedures, the "percentage of moneys disbursed" formula provides neither the incentive nor appropriate pay for complex investigations, efforts toward reasonable offsetting settlements or lengthy court appearances. It therefore becomes essential that substantially all recovery and preservation efforts on behalf of creditors be conducted and performed by the accountant and/or attorney for the trustee.

While the initiation and supervision of procedures and actions described in the following sections of this manual are the responsibility of the trustee, many, if not most, of these procedures can be conducted and implemented more effectively by the trustee's accountant, attorney and other professional assistants and advisors.

**Selection of the trustee.** As emphasized in the discussion of a choice between liquidation and rehabilitation (see page 36), substantially all assets remaining in the estate under Title 11 belong to the creditors. In a very real sense, these creditors have made a personal involuntary investment in these assets, and they are entitled to assurances that their interests in these assets are being handled carefully and competently. The law recognizes this relationship and responsibility by permitting the
unsecured creditors to elect a trustee to handle these assets on their behalf. (Procedures regarding the election of a trustee are described in Appendix V.)

If the unsecured creditors do not elect a trustee who can qualify and post a bond within the prescribed time, then the interim trustee becomes the trustee. This occurs quite frequently because unsecured creditors usually are not sufficiently prepared or organized to make a decision that would result in the election of a trustee of their own choice.

The interim trustee, who becomes trustee if none is elected by the unsecured creditors, is appointed to that temporary position by the U.S. trustee or the court (in districts in which there is no U.S. trustee). Unless he has already served as trustee in a preceding Chapter 11 case, the interim trustee must be selected from the standing panel of private trustees. In any case, the trustee is obligated to perform as if he was selected by the creditors, for his primary responsibility is to act on behalf of these owners of the assets.

As has been stated, the trustee selects the accountant, attorney and other professional personnel. The performance of these persons will be even more important to the creditors than the performance of the trustee. This is because the trustee, operating within the pay limitations placed upon his office, is concerned primarily with relatively routine liquidating procedures while the accountant and attorney must do most of the work on complex recovery proceedings and counter claims. Accordingly, it is important that the creditors have a trustee who will select an accountant and an attorney who will also work aggressively on their behalf.

"Take charge" responsibilities of the trustee. Immediately after qualifying for appointment, the trustee (assisted by his accountant, attorney and others), takes full charge of the debtor's assets or business. Where called for, this includes the following steps:

1. Changing locks and moving all assets and records to locations that are controlled by the trustee.

2. Posting notices that all contents are in possession of the U.S. trustee and that any tampering and removal are violations of federal laws. The name, address and telephone number of the administrating trustee is to appear on such notices.

3. Preparing sufficient signed or conformed copies of the appointment of the trustee to be sent to anyone who must rely on that document to carry out official notices and requests from the trustee.

4. Notifying the post office that all mail is to be sent to the address or box indicated by the trustee (send a copy of the appointment).
5. Opening a new bank account in the name of the trustee, and notifying all banks that hold funds belonging to the business that no withdrawals, except by the trustee, are authorized (send a copy of the appointment to each bank).

6. Sending copies of the appointment to the company’s accountant and to the independent accountant responsible for previous financial reports or income tax returns. Compiling all financial and accounting records, and placing them in the custody of the trustee’s accountant. Requesting that all company-related information contained in the independent accountant’s file and working papers be released to the trustee’s accountant.

7. Sending copies of the appointment to the company’s attorney, and immediately obtaining possession of any corporate records in the attorney’s possession, including minute books and any official documents. Requesting release of, and authorization to copy, all company-related information contained in the attorney’s files.

8. Sending copies of the appointment to each officer, board member and executive of the company and to every employee who may possibly hold company assets, documents, files or other records. Requesting the immediate delivery of such company assets or records to the trustee.

9. Preparing a notice describing the nature and effect of the trustee’s appointment. This is to be delivered to all employees or posted on a bulletin board. It should outline the effect of the bankruptcy on each of them and their obligations and responsibilities under the law.

10. Sending notices to each insurance agent and insurance company, asking for an immediate report on all insurance coverage. Also, requesting a comprehensive calculation of earned and unearned premiums as of the date jurisdiction was assumed by the bankruptcy court.

11. Sending notices to each creditor, landlord or supplier with whom the trustee expects to continue doing business, or whose future services are needed, describing the past and future relationship as a result of assumption of jurisdiction by the bankruptcy court.

12. Making early arrangements for inspection of the company’s assets. This can be done by the trustee or his representative. Unless it is neither warranted nor in the best interests of the creditors, the trustee should request the appointment of an appraiser(s) if the assets are in various locations. Such an appraisal will provide a realistic and independent opinion regarding the value of assets to be liquidated (see page 39).
Insurance coverage. The trustee must be satisfied that all risks that need to be insured are appropriately covered.

If there is reason to question the reliability of past actions or the existing relationship between the company and its insurance agent, immediate coverage should be sought through another agent. Where there is such a change in representation, specific details showing dates of change to the new coverage should be sent to the prior agent so that there will be no overlap or gap in coverage.

If past insurance service appears satisfactory, there may be no reason to change insurance agencies or companies. Normally, it would be best to continue coverage under existing policies. Otherwise, if the policyholder (trustee) initiates termination of the policy, the short-rate formula in calculating return premiums may be applied by the insurance company.

Regardless of which course of action is taken, it is important to ask the agent(s) involved for a prompt written report of all active insurance coverage. If any insurance policies are missing from the debtor's files, the agent should be requested to provide duplicates.

Accountants for the trustee should prepare complete insurance schedules so that the trustee may add or cancel existing coverage and, if necessary, take steps to recover unearned premiums.

An appraisal should also be made of any existing or potential claims against insurance coverage. One of the most important areas concerns fidelity bonds. If there is any possibility of liability on the part of an insurance company, a notice should be sent to the company as soon as possible. Statutes of limitations and policy restrictions are typical defenses raised by many insurance companies. To develop the best legal posture possible for future court actions, it is vital that written notification be sent by certified mail to the insuring company and to the agent. Copies should be retained.

Timetable for Actions. As soon as possible after qualifying for the appointment, and periodically thereafter, the trustee, together with his accountant and attorney, should prepare a timetable for important actions. Since there are so many things to do, and all of them must be done as soon as possible, it is essential that priorities are determined and a schedule is prepared for orderly attention. Unless this is done, there is apt to be a tendency to work on matters that are most pressing and obvious, and so neglect actions that may have far more ultimate significance to the creditors.

Following the "take charge" actions outlined on pages 50 and 51 and the provisions for insurance described above, the trustee should arrange with his accountants for early preparation of a liquidating balance sheet.
together with detailed schedules of assets (both actual and potential). Operating statements and forecasts should also be prepared for any units within the estate that may have potential operating value.

Using these accounting statements as a foundation, all assets (including estimated potential recoveries from legal actions and net disposal value of operating units) should be listed according to dollar values. Starting with the one having the greatest potential value, each asset should be reviewed. Agreement should be reached on each item regarding:

- any statutory, contractual or other legal time limitations
- any deterioration, depletion or depreciation problems relating to delays
- any potential reduction of goodwill relating to severable operating entities
- any potential loss of essential operating or custodial personnel
- any other factors which would significantly reduce or destroy value in the asset—or potential asset

The resulting timetable should then give appropriate recognition to each necessary deadline for action.

**Executory contracts.** Under the Reform Act the trustee is given certain rights to assume or reject executory contracts or unexpired leases:

1. In a Chapter 7 (liquidation) case the trustee may, with approval of the court, either assume or reject such contracts or leases. If the trustee does not act within sixty days after the order for relief, or within such greater time as the court fixes before expiration, the contract is deemed rejected.

2. In a Chapter 11 or 13 (rehabilitation) case the trustee may, with approval of the court, either assume or reject such contracts or leases at any time prior to, or as part of, the confirmation of a plan. At the request of any party to such contract or lease, however, the court may place a time limit within which the trustee must act.

3. Even though a contract does not specifically prohibit assignment, the trustee may not assume or assign a contract under certain circumstances:
   a. Where nonbankruptcy law would excuse the other party from accepting performance from or rendering performance to any assignee—unless the other party consents to the assumption or assignment.
   b. Where the purpose of the contract is to make a loan or extend credit to the debtor, or to issue a security of the debtor.
4. Provisions in contracts and leases or in nonbankruptcy law that forbid assignments or provide for termination because of the financial condition of the debtor, commencement of a case under the Bankruptcy Act, or appointment of a bankruptcy trustee or custodian, are unenforceable against the trustee.

5. Regardless of any breaching of time limits or default-curing rights specified in the contract or lease or of nonbankruptcy laws, by either the debtor or trustee, the other party is not entitled to terminate the agreement if the trustee makes appropriate provision for covering damages and provides adequate assurance of future performance. If there has been a default, the trustee may not require a lessor to continue providing services or supplies covered by the lease unless the lessor is compensated under the terms of the lease.

6. If the trustee, as a lessor of real property, rejects a lease, the lessee has the option to treat the lease as terminated or to remain in possession for the balance of the term. If the lessee elects to remain in possession, he may offset against the rent due any damages resulting from nonperformance of obligations of the debtor after the date of rejection. Damages are limited to this right of offset against rent.

7. If the trustee rejects an executory contract to sell real property that is occupied by the purchaser, the purchaser has the option to treat the contract as terminated or to remain in possession.

   a. If the purchaser elects to remain in possession, he must make all payments due; however, he may offset against any payments due any damages resulting from nonperformance of any obligation of the debtor after the date of rejection. Damages are limited to this right of offset against payments due on the contract.

   b. The trustee must make delivery of title in accordance with terms of the contract, but is relieved of all other obligations to perform under such contract.

8. If the purchaser of real property elects to have the contract treated as terminated, or if he is not in possession of the real property, he has a lien against the property to the extent of any purchase price paid by him.

9. If the trustee assigns the right to performance under a contract or lease, the trustee and estate are relieved of liability for any breach of such contract or lease occurring after such assignment.

10. A utility may not terminate or reduce service to the estate because of previous unpaid bills. However, within twenty days after the order for relief, the trustee or debtor must either make a deposit or furnish other adequate assurance of payment for services after the date of the order for relief.
**Priority of claims.** After the liquidation of assets in a Chapter 7 case, distribution of cash will be to creditors holding allowed claims in accordance with a priority sequence. This sequence can be likened to fourteen rungs of a ladder, with each group of claims representing a rung. All claims of the higher preference groups must be paid in full before the next group can be considered. If there are enough assets to make a partial distribution to a given group, there must be a pro-rata sharing by this group. This same priority ladder must be used for classifying claims in Chapter 11 and 13 proceedings.

The order of priority is as follows:

**Preferential priority**

1. Assets held in trust and unavoidable liens. The holders of such liens may require that specific assets be turned over or that sufficient cash be received from the liquidation of these assets to satisfy these liens.

2. Administrative expenses. These comprise the costs of preserving and liquidating the estate, including all appropriate expenses of the trustee, his attorney, accountant and other authorized consultants and court costs. Within this group, a higher priority is given to repayment of borrowings by the trustee and to payments for restoration of destroyed assets that are subject to liens.

3. Claims arising during the period between the date the estate came under jurisdiction of the bankruptcy court and the appointment of a trustee. These become another group of administrative expenses.

4. Certain claims for wages, salaries or commissions, including vacations, severance and sick leave pay. This fourth priority is limited to $2,000 for each claimant, and is further restricted to compensation, vacation, sick leave or other pay earned during the ninety days preceding the filing of the petition or the cessation of the debtor’s business, whichever occurs first.

5. Claims covering commitments to make contributions to employee benefit plans. This fifth priority is limited to a total of $2,000 to all plans for each covered employee, after taking into account amounts allowed for other forms of salary claims, and is further restricted to amounts arising from services rendered within 180 days before the filing of the petition or the cessation of the debtor’s business, whichever occurs first.
6. Unsecured claims of individuals who, in consumer credit transactions, made deposits to purchase property or services or to lease property. This sixth priority is limited to $900 for each claimant, and covers undelivered or unprovided property or services.

7. Tax claims secured by unavoidable liens against the debtor’s property.

8. Tax and custom claims that are unsecured.

**General unsecured**

9. All other unsecured claims that have been timely filed, or tardily filed if the late filing was due to lack of notice or actual knowledge of the case, and which are not subordinated.

**Subordinated**

10. Tardily filed claims that, because the late filing was without excuse by reason of lack of notice or knowledge of the case, have lost a higher priority standing.

11. Claims for fines; penalties; forfeitures; or for multiple, exemplary or punitive damages. These do not include claims for actual pecuniary loss. The subordination of penalties or damages is limited to claims which arose before entry of the order for relief or the appointment of the trustee. Claims arising after that date are classified as administrative expenses.

12. Claims for interest on administrative expenses or on unsecured claims.

13. Claims that are required to be or may be subordinated under Title 11 USC Section 510. These include claims for recision of, or damages arising from, the sale or purchase of a security. The court has the authority to subordinate a claim on equitable principles.

14. Any remaining assets go to the debtor.

Obligation to repay a Section 364 loan (an approved loan to the trustee) would take a super-priority position within rung two of the ladder, as would the expense for restoration of the value of an asset covered by a lien.

If the claims represented on any rung of this ladder exceed available assets, there must be a pro-rata distribution within that rung.
An individual or other entity that has received the subrogated rights to a claim for compensation, contributions to employee benefit plans, deposits for merchandise, services or rent, taxes or custom duties is not entitled to the preferential priority belonging to the original holder of the claim. However, priority classification of administrative expense claims (including rungs 2 and 3) passes to the subrogated holder of these claims.

**Setoffs.** Under certain conditions a creditor has the right to set off a pre-petition debt against a pre-petition claim. There is an automatic stay, however, against exercising the right if the creditor is adequately protected.

- If a claim covers cash or equivalent collateral deposits advanced by a creditor, until this claim is satisfied or disallowed, the cash or deposits cannot be used or disposed of by the trustee or debtor without the creditor’s consent, or without approval by the court given after a notice and hearing.

- A claim may be reduced or disallowed to the extent of an allowed setoff. A creditor may not, however, set off a debt to the debtor against a claim that is disallowed for any other reason.

- A pre-petition claim may not be set off against a debt to the bankrupt estate incurred after the filing of the petition.

- A claim acquired from someone other than the debtor, within the ninety-day period preceding the filing of the petition, cannot be set off.

- If the claim is for a debt incurred by the debtor within the ninety-day period preceding the filing of the petition, and while the debtor was insolvent, the setoff will not be allowed if the creditor’s purpose was to obtain the benefit of a setoff.

- If the claim is for a cumulative debt that changed in amount during the ninety-day period preceding the filing of the petition, the setoff will not be allowed to the extent that the creditor would obtain a larger credit than he would have obtained at the inception of the period. If the total debt was reduced below the amount of setoff at any time during the ninety-day period, the setoff can be no greater than the balance due on the first date on which the insufficiency occurred.

**Objection to discharge.** As a result of information that has been made available to him, the trustee may believe that the debtor, or related individuals who have filed bankruptcy, may not be entitled to discharge. As the designated representative of the interests of all creditors, he is charged with the responsibility to act in their behalf by filing an objection.
to the discharge. Any creditor, or the U.S. trustee, may also file an objection. The court may then order the U.S. trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

Grounds for objections are provided in Section 727 of the Reform Act (see Appendix XIV).

It is important that any objection to discharge be filed promptly and, in any event, within time limits set by the court. Even though a discharge has been granted, it may be revoked by the court if:

1. such discharge was obtained through fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;

2. the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of, or entitlement to, such property or to deliver or surrender such property to the trustee; or

3. the debtor committed an act specified in Section 727(a)(6) (see Appendix XIV).

Any request for revocation of a discharge must be initiated within one year after such discharge was granted.
X. Development of Maximum Recovery and Payments to Claimants

Actions for recovery of assets. We have discussed the trustee’s responsibilities pertaining to those assets that have come into his possession without special efforts on his part. The trustee is also charged with the responsibility of exercising every right granted to him under the law to expand the total assets available to each legitimate claimant. The trustee’s effectiveness in this area is the most important measurement of his competence and value to the creditors whose interests he represents and to the bankruptcy system.

Some of the most productive ways in which net payments to claimants may be increased include the following:

- recoveries through “avoidance of transfers”
- filing of insurance claims and tax refund claims
- elimination of improper claims, filing of counterclaims and negotiating settlements
- maximizing liquidation values of all assets

This section of the manual outlines possible activities in these areas. The nature of a particular case may suggest other special efforts on the part of the trustee, the accountant and legal counsel.

Fraudulent conveyances—avoidance of transfers. The trustee in bankruptcy has certain special powers to avoid (or void) the transfer of assets.

1. As of the date of the filing of the petition, the trustee is vested with the status of a creditor who obtained a judicial lien and an unsatisfied writ of execution as of that date, covering all unencumbered assets belonging to the estate. He is expected to exercise his rights according to this status.

2. The trustee may avoid any transfers after bankruptcy to creditors holding unsecured claims.

3. The trustee may restore assets by voiding certain preferential transfers made within one year before bankruptcy.
   a. The one-year limitation covers assets transferred to insiders, affiliates or persons in control who, at the time of transfer, had reasonable cause to believe that the debtor was insolvent.
b. Other transfers may be voided if they were made within ninety days before bankruptcy and were in payment of an earlier debt.

c. The trustee may not void transfers that fall into the following exceptions:

(1) Where it was intended by both parties that it be, and in fact was, a substantially contemporaneous exchange for "new value."

(2) Where payment was made on a debt incurred according to ordinary business terms, in the ordinary course of business, and no later than forty-five days after the debt was incurred.

(3) Where there was an "enabling loan" for a security interest covering:
   (a) property acquired
   (b) new value given by the creditor at or after the signing of a security agreement that describes the collateral
   (c) collateral actually acquired as a result of new value being given

(4) As an offset, a creditor may retain that portion of an asset subject to recovery by the trustee that represents new value added in a transaction not subject to avoidance.

(5) Where a creditor holds a Uniform Commercial Code financing statement on inventory and receivables that was filed at the time of the loan and more than ninety days (or one year if the creditor was an insider) before bankruptcy. After-acquired collateral cannot be reached by the trustee, unless there was an unsecured deficiency in collateral ninety days (or one year) before bankruptcy. And, even in that case, the creditor will be protected if the addition of collateral to the security interest is not "to the prejudice of other creditors holding unsecured claims."

(6) The fixing of a statutory lien not voidable under Section 545 cannot be avoided by the trustee.

4. The trustee may proceed under Section 548 of the Reform Act dealing with fraudulent conveyances (see Appendix XVI), where the transfer was made (or obligation was incurred) within one year before the date of the filing of the petition.
Fraudulent conveyances can take on many forms. Transactions that might go unnoticed and unchallenged in an audit or investigation of a normal, healthy business must be viewed from a completely different perspective in a bankruptcy situation.

In many cases, it all boils down to a matter of attitudes.

- **The attitude of the debtor:**
  He has been going through a trying period of desperation. Usually, the most important thing to him after saving himself is salvaging the business. Even an otherwise honorable individual may rationalize improper actions and outright violations of law.

- **The attitude of individual creditors:**
  Once it becomes apparent that someone is due to take a loss, many creditors decide it’s “every man for himself.” They take whatever they can, and run. Even if a transaction is later challenged (which may never happen), they know it’s much easier to hang on to an advantage already obtained.

- **The attitude of bankruptcy “wolves”:**
  These individuals seek out cripples or inattentive members in the herd of businesses. They watch for opportunities to use, abuse or consume them. Some of the most flagrant abuses of the bankruptcy system are in conveyances to these outside (or inside) “wolves” who originally had little or nothing at stake, but use the sheep’s clothing of bankruptcy laws to prey on and rob the legitimate owners of the assets of a business.

Every major transfer of assets since the debtor first became insolvent (and particularly those made during the year preceding filing of the petition) is a potential for review as a possible fraudulent conveyance. Therefore, in a Chapter 7 case, the attitude of the trustee, accountant and attorney must lead them to view each transaction with suspicion. They must do everything possible to recover every removed asset that rightfully belongs to the creditors.

This is an important area in which the accountant can serve most effectively in investigating and discovering facts. Legal interpretations and the planning of recovery procedures become matters to be handled and directed by the attorney, in close cooperation with the accountant. The accountant will usually become a principal witness in any resulting court action.

**Filing of insurance and tax refund claims.** It is not unusual to discover that a company in financial difficulty has also developed unsettled or unfiled insurance claims. In the statement of affairs, the debtor is required
to list any losses within the past year that may be covered by his insurance policies. The trustee and his accountant should also watch for any potential unreported claims, which can be recovered under fidelity bond coverage. Procedures described on page 40 regarding investigation of transactions that preceded the filing of a petition will be important in the development of an insurance claim under a fidelity policy.

Insurance companies are generally financially able to meet their established obligations. Therefore, provided such claims are filed as soon as possible, the debtor may receive some urgently needed cash during the early stages of the proceeding.

Insurance claims should be as complete and specific as time and available information permit. If necessary, details to support such claims can be submitted later on, when the trustee and accountant have become more familiar with the facts. In any event, claims should be filed without delay.

Any possibilities for tax refunds, including federal and state income tax net operating loss carryovers and carrybacks, should be reviewed by the trustee's accountant and claimed.

Elimination of improper claims, filing of counterclaims and negotiation of settlements. Every claim filed in a bankruptcy proceeding must be examined by the trustee or his representative to determine whether it is to share in the net assets of the estate; by how much; and at what level of priority.

Every dollar paid on an improper or doubtful claim is taken from the funds otherwise available to creditors holding valid claims. Therefore, the elimination or reclassification of undeserving or misclassified claims often has a more important effect on the amount available for payout to creditors (particularly to unsecured creditors) than the recovery and liquidation of assets.

The fact that a claim has been filed in a proceeding also provides the basis for the trustee's filing of a counterclaim. Once the claim has been received by the court, the claimant has voluntarily subjected himself to the jurisdiction of the bankruptcy court, and a counterclaim may be filed at any time, without regard to most statutes of limitation, until that claim has been fully resolved. Once filed, the claim cannot even be withdrawn without authorization of the court.

If a justified counterclaim has been filed by the trustee, it not only provides the possibility of cash recovery but also opens the way for negotiated settlement and elimination or reduction of claims. Since the trustee's fee for services is limited by a formula that measures cash flow but gives
no recognition or credit for "savings" made through elimination or settlement of claims, there may be little or no incentive for the trustee to devote much of his own time or effort in this area. To assure maximum attention on behalf of creditors, the accountant or attorney should conduct most of the activity relating to reduction and settlement of claims. These representatives may be appropriately paid for their efforts.

Maximizing liquidation values of all assets. Although the prevailing atmosphere in a Chapter 7 case tends to create heavy depreciation of all assets remaining in the estate, aggressive effort on the part of the trustee and his assistants can generally result in a more favorable return to the claimants. These assets are the principal product of the trustee, and he should make the most of them.

The first requirement is that the trustee and his assistants skillfully identify the values as promptly as possible; next, discover the best market for each asset. Then, they must negotiate the most favorable disposition.

Timing is of paramount importance. Separable operating entities, leases, executory contracts and other similar assets may have values that actually exceed book values. However, these intangible assets, like those of perishable commodities, will rapidly disappear if they are not sold to someone who can make use of their fragile values while they can still be realized and developed.

More obvious physical assets should also be handled with the care they deserve, and not be viewed simply as scrap to be disposed of with the least possible effort.

If the potential result justifies it, an appraiser(s) should be called upon to determine the reasonable value of assets. Then, good business judgment and tactics should be used to obtain the best possible cash recovery.

Local rules regarding court approval of the sale or transfer of assets of the estate must be carefully and completely observed.
Although the Reform Act deals with the treatment of taxes in a number of its categories or sections, there is very little substantive guidance on treating the effect of bankruptcy on income tax matters at the federal level. The Bankruptcy Tax Act of 1979 (HR 5043), when passed, will represent an extensive revision of the tax law provisions of bankruptcy. The Tax Act, although beyond the scope of this manual, will encompass the following sections of the Reform Act that refer to tax matters:

Sec. 505 Jurisdiction of the bankruptcy court over tax claims
Sec. 362 Effect of the Reform Act's automatic stay on enforcement of tax claims
Sec. 507 Priority treatment of tax claims.
Sec. 523 Dischargeability
Sec. 522 Exemptions
Sec. 547 Preferences
Sec. 724 Priority of tax claims subject to superior or conflicting liens
Sec. 704 and 1106 Duty of debtor or trustee to file tax returns and reports
Sec. 1141 Requires that plan of reorganization contain provisions for payment of taxes entitled to priority
Sec. 1129 Provides for installment arrangement to pay pre-petition taxes in plan of reorganization

In addition, Sections 346, 728 and 1146 contain a number of special tax provisions relating primarily to state and local taxes. These sections cover:

- income tax filing requirements
- determination of taxable years or periods of the debtor's estate
- right and extent of use of certain tax attributes such as net operating loss carryovers
- tax treatment of discharge or forgiveness of indebtedness

Extensive Congressional action and/or development of case law appear necessary before there will be definitive answers in the application of the Reform Act as it relates to federal income taxes.
A business bankruptcy proceeding is actually one major court case consisting of many separate hearings and appearances before the judge assigned to the case or before appeal panels. Persons involved in each of these appearances will vary and could include from one or two parties-in-interest to a very large number of individuals and/or their attorneys. In every appearance the estate will be represented by the attorney for the trustee; on virtually every issue the trustee, creditors and the court will be looking for information and guidance on financial and accounting matters that can be presented most effectively by a qualified accountant.

The accountant whose expert testimony will be relied upon may be retained by the trustee, examiner, debtor, creditors or any other party-in-interest. If the accountant conducts himself according to the accepted standards of the profession and establishes his credibility in the eyes of the court and the various parties involved he will usually be the only accounting witness—and often the only witness. Accordingly, his description of the facts and his statement of opinion are crucial to the outcome of each of these hearings, as well as to the entire proceeding.

At the beginning of each appearance on the witness stand, the accountant will be asked questions regarding his educational and professional background that qualifies him as an expert witness. These questions and the accountant's answers will be put "on the record." Once it is established that the accountant is an expert witness, he will have considerably more latitude in his responses to the attorneys' questions. Like any other witness, the accountant may ask for clarification if a question seems vague; unlike fact witnesses, though, the accountant will generally be permitted to expand his answers beyond a "yes" or "no." As an expert, the accountant is expected to clarify and explain his answers.

Unless he is an accountant for the debtor, the accounting witness will generally not have been involved in transactions that are the subject of the hearing. He is viewed as an independent and objective observer and evaluator of available facts—a "friend of the court." If he has properly prepared himself, he will also have a much more detailed and complete picture than the attorneys who will be examining or cross-examining him. A competent accountant can proceed with confidence and be much more at ease than in an adversary proceeding where he may be one of the defendants or a self-concerned plaintiff.

If he is to carry out his responsibility effectively, the accountant must conduct all of his work with the awareness that everything he does leads up to the testimony he will be giving in one or more court appearances. It is imperative that the accountant work closely with legal counsel, both in
planning investigative activities and in accumulating information that will later become part of the official court record.

Beyond this, the accountant should familiarize himself with courtroom procedures and the techniques for serving as an effective witness.
XIII. Reports to the Court and to the U.S. Trustee

Each trustee, examiner and debtor-in-possession is required to file "such reports as are necessary or as the court orders." Specifically, when called upon, each of these parties must:

1. Account for all properties received
2. Furnish such information as may be requested by a party-in-interest
3. File with the court and with any taxing authority, periodic operating statements and other information required
4. Make a final report and file a final account with the court and with the U.S. trustee (in districts where there is one)

In addition, in a Chapter 11 case the debtor-in-possession must, within time limits set by the court, file a plan of reorganization or a report of why none will be filed. If the plan submitted is confirmed, the debtor-in-possession must continue to file such reports as the court orders.

The examiner is also required to file a report on his investigation, covering any facts discovered pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement or irregularity. He must send copies of this report to the court, to the U.S. trustee and to any parties-in-interest that the court designates.

In the past there have been no specific guidelines or forms used in the preparation of these reports. The referee (judge) has been required to file a final accounting on each case, however, and has requested reports from trustees who will provide the facts needed. A copy of the present official form is given as Appendix XVI.

It is quite likely that more definite requirements will be developed under the new U.S. trustee program. Meanwhile, the form of reporting will continue to be left up to individual trustees and their accountants, subject to court and U.S. trustee approval and acceptance.
XIV. Conclusion

The bankruptcy procedure is intended to provide a shelter, a haven from the rough waters a debtor has encountered. It is also intended to prevent the complete disintegration and destruction of whatever assets remain in the debtor’s possession. These assets were “loaned” to him by his creditors, so it is their assets that are in danger of being lost. Employees and everyone else on the debtor’s boat also have much at stake, as do customers and suppliers who depend upon the orderly continuation of the debtor’s business.

In a very real sense, the bankruptcy court and all of the individuals involved in a case are called upon to serve as economic and financial “Good Samaritans.” The debtor has found himself helpless against the pressures of normal business relationships and unable to work out a reasonable compromise or distribution of assets to his creditors. So, the law provides that this special group of individuals, who make up the bankruptcy “team,” are given special privileges and protection while they take over and do whatever is necessary to make repairs, rearrange the cargo, recover assets that have been improperly removed or, if future progress seems unlikely, convert the assets to cash and make a fair distribution to legitimate creditors.

Few activities in our business world call for such intensive financial and accounting analysis and appraisal, or require such prompt action. Yet, in the past, the involvement of skilled accountants in most business bankruptcies has been minimal.

The Bankruptcy Reform Act of 1978 relies heavily on financial analyses and investigative reports for timely actions. New doors are being opened for accountants to serve alongside attorneys at many levels. Whether judges and attorneys will recognize the help they need and can receive from accountants will have much to do with whether the new law becomes a mere continuation of the “unproductive process” that the Brookings Institution report claims has existed under the old law, or whether the intended objectives of fair and equitable treatment for everyone concerned can be achieved.

In turn, if accountants are to serve effectively, they must assume a more aggressive role in offering their services, in preparing themselves to serve in various capacities in a bankruptcy proceeding and in recognizing and representing the interests of those whose assets are at stake.
Appendix I

Bankruptcy Rules as of Passage of 1978 Bankruptcy Reform Act

Part I. Petition and Proceedings Relating Thereto and to Adjudication

101. Commencement of Bankruptcy Cases
102. Reference of Cases; Withdrawal of Reference and Assignment
103. Voluntary Petition
104. Involuntary Petition
105. Partnership Bankruptcy
106. Caption of Petition
107. Filing Fees
108. Schedules and Statements of Affairs
109. Verification of Petitions and Accompanying Papers
110. Amendments of Voluntary Petitions, Schedules, and Statements of Affairs
111. Service of Petition and Process
112. Responsive Pleading or Motion
113. Affirmative Defense of Solvency
114. Examination of Bankrupt on Issue of Insolvency or Inability to Pay Debts as They Mature
115. Hearing and Disposition of Petition
116. Venue and Transfer
117. Consolidation or Joint Administration of Cases Pending in Same Court
118. Death or Insanity of Bankrupt
119. Bankrupt Involved in Foreign Proceeding
120. Dismissal of Case Without Determination of Merits
121. Applicability of Rules in Part VII
122. Conversion of a Chapter Case to Bankruptcy

Part II. Officers for Administering the Estate; Notices to Creditors: Creditors’ Meetings: Examinations: Elections: Attorneys and Accountants

201. Appointment and Duties of Receivers
202. Appointment of Marshall in Lieu of Receiver; His Duties
203. Notices to Creditors and the United States
204. Meetings of Creditors
205. Examination
206. Apprehension and Removal of Bankrupt to Compel Attendance for Examination
207. Voting at Creditors’ Meetings
208. Solicitation and Voting of Proxies
209. Selection of Trustee
210. Trustees for Estates When Joint Administration Ordered
211. Trustee Not Appointed in Certain Cases
212. Qualification by Trustee and Receiver
213. Limitation on Appointment of Receivers and Trustees
214. Creditors' Committee
215. Employment of Attorneys and Accountants
216. Authorization of Trustee to Conduct Business of Bankrupt
217. Ancillary Proceedings
218. Duty of Trustee to Keep Records, Make Reports, and Furnish Information
219. Compensation for Services Rendered and Reimbursement of Expenses Incurred in a Bankruptcy Case
220. Examination of Bankrupt's Transactions with His Attorney
221. Removal of Trustee or Receiver; Substitution of Successor

Part III. Claims and Distribution to Creditors

301. Proof of Claim
302. Filing Proof of Claim
303. Filing of Tax and Wage Claims by Bankrupt
304. Claim by Codebtor
305. Withdrawal of Claim
306. Objections to and Allowance of Claims for Purposes of Distribution; Valuation of Security
307. Reconsideration of Claims
308. Declaration of Payment of Dividends
309. Small Dividends
310. Unclaimed Funds

Part IV. The Bankrupt: Duties and Benefits

401. Petition as Automatic Stay of Certain Actions on Unsecured Debts
402. Duties of Bankrupt
403. Exemptions
404. Grant or Denial of Discharge
405. Waiver of Discharge
406. Implied Waiver of Discharge
407. Burden of Proof in Objecting to Discharge
408. Notice of Nondischarge
409. Determination of Dischargeability of a Debt; Judgment on Nondischargeable Debt; Jury Trial
Part V. Courts of Bankruptcy: Officers and Personnel: Their Duties

501. Courts of Bankruptcy and Referees' Offices
502. Referees' Bonds not Required
503. Restrictions on Referees
504. Books, Records, and Reports of Referees
505. Nepotism, Influence, and Interest
506. Delegation of Ministerial Functions
507. Books and Records Kept by Clerks
508. Public Access to Records and Papers in Bankruptcy Cases
509. Filing of Papers
510. Issuance and Certification of Copies of Papers
511. Recording and Reporting of Proceedings
512. Designated Depositories
513. Special Masters
514. Closing Cases
515. Reopening Cases

Part VI. Collection and Liquidation of the Estate

601. Petition as Automatic Stay Against Lien Enforcement
602. Duty of Trustee or Receiver to Give Notice of Bankruptcy
603. Burden of Proof as to Validity of Post-Bankruptcy Transfer
604. Accounting by Prior Custodian of Property of the Estate
605. Money of the Estate: Collection, Deposit, and Disbursement
606. Appraisal and Sale of Property; Compensation and Eligibility of Appraisers and Auctioneers
607. Assumption, Rejection, and Assignment of Executory Contracts
608. Abandonment of Property
609. Redemption of Property from Lien or Sale
610. Prosecution and Defense of Proceedings by Trustee or Receiver
611. Preservation of Voidable Transfer
612. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

Part VII. Adversary Proceedings

701. Scope of Rules of Part VII
702. Commencement of Adversary Proceeding
704. Process; Service of Summons, Complaint, and Notice of Trial or Pre-Trial Conference
705. Service and Filing of Pleading and Other Papers
707. Pleadings Allowed
708. General Rules of Pleading
709. Pleading Special Matters
710. Form of Pleadings
712. Defenses and Objections
713. Counterclaim and Cross-Claim
714. Third-Party Practice
715. Amended and Supplemental Pleadings
716. Pre-Trial Procedure; Formulating Issues
717. Parties Plaintiff and Defendant; Capacity
718. Joinder of Claims and Remedies
719. Joinder of Persons Needed for Just Determinations
720. Permissive Joinder of Parties
721. Misjoinder and Non-Joinder of Parties
722. Interpleader
723. Class Proceedings
723.1 Derivative Proceedings by Shareholders
723.2 Adversary Proceedings Relating to Unincorporated Associations
724. Intervention
725. Substitution of Parties
726. General Provisions Governing Discovery
727. Depositions Before Adversary Proceeding or Pending Appeal
728. Persons Before Whom Depositions May Be Taken
729. Stipulations Regarding Discovery Procedure
730. Depositions upon Oral Examination
731. Depositions upon Written Questions
732. Use of Depositions in Court Proceedings
733. Interrogatories to Parties
734. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes
735. Physical and Mental Examination of Persons
736. Requests for Admission
737. Failure to Make Discovery: Sanctions
741. Dismissal of Adversary Proceedings
742. Consolidation of Adversary Proceedings; Separate Trials
744.1 Determination of Foreign Law
752. Findings by the Court
754. Judgments; Costs
755. Default
756. Summary Judgment
762. Stay of Proceedings to Enforce a Judgment
764. Seizure of Person or Property
765. Injunctions
767. Deposit in Court
768. Offer of Judgment
769. Execution
770. Judgments for Specific Acts; Vesting Title
771. Process in Behalf of and Against Persons Not Parties
782. Transfer of Adversary Proceeding
Part VIII. Appeal to District Court

801. Manner of Taking Appeal; Voluntary Dismissal
802. Time for Filing Notice of Appeal
803. Finality of Referee's Judgment or Order
804. Service of the Notice of Appeal
805. Stay Pending Appeal
806. Record and Issues on Appeal
807. Transmission of the Record; Docketing of the Appeal
808. Filing and Service of Briefs
809. Oral Argument
810. Disposition of Appeal; Weight Accorded Referee's Findings
811. Costs
812. Motion for Rehearing
813. Duties of Clerk on Disposition of Appeal
814. Suspension of Rules in Part VIII

Part IX. General Provisions

901. General Definitions
902. Meanings of Words in the Federal Rules of Civil Procedure When Applicable in Bankruptcy Cases
903. Rule of Construction
904. General Requirements of Form
905. Harmless Error
906. Time
907. General Authority to Regulate Notices
908. Publication
909. Forms
910. Representation and Appearances; Powers of Attorney
911. Signing and Verification of Pleadings and Other Papers
912. Oaths and Affirmations
913. Habeas Corpus
914. Procedure in Contested Matters Not Otherwise Provided for
915. Objection to Jurisdiction of Court of Bankruptcy
916. Subpoena
917. Evidence
918. Secret, Confidential, Scandalous, or Defamatory Matter
919. Compromise and Arbitration
920. Contempt Proceedings
921. Entry of Judgment; District Court Record of Referee's Judgment
922. Notice of Judgment or Order
923. New Trials; Amendment of Judgments
924. Relief from Judgment or Order
925. Security: Proceedings Against Sureties
926. Exceptions Unnecessary
927. Local Bankruptcy Rules
928. Jurisdiction Unaffected
Appendix II

Code Definition of Specific Terms

"affiliate" means —
(A) entity that directly or indirectly owns, controls or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities —
   (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
   (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
(B) corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities —
   (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
   (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote;
(C) person whose business is operated under a lease or operating agreement by a debtor, or person substantially all of whose property is operated under an operating agreement with the debtor; or
(D) entity that operates the business or all or substantially all of the property of the debtor under a lease or operating agreement;

"corporation"—
(A) includes —
   (i) association having a power or privilege that a private corporation, but not an individual or a partnership, possesses;
   (ii) partnership association organized under a law that makes only the capital subscribed responsible for the debts of such association;
   (iii) joint-stock company;
   (iv) unincorporated company or association; or
   (v) business trust; but
(B) does not include limited partnership;

"disinterested person" means person that —
(A) is not a creditor, an equity security holder, or an insider;
(B) is not and was not an investment banker for any outstanding security of the debtor;
(C) has not been, within three years before the date of the filing of the petition, an investment banker for a security of the debtor, or an attorney for such an investment banker in connection with the offer, sale, or issuance of a security of the debtor;

(D) is not and was not, within two years before the date of the filing of the petition, a director, officer, or employee of the debtor or of an investment banker specified in subparagraph (B) or (C) of this paragraph; and

(E) does not have an interest materially adverse to the interest of the estate or any direct or indirect relationship to, connection with, or interest in, the debtor or an investment banker specified in subparagraph (B) or (C) of this paragraph, or for any other reason;

"insider" includes —

(A) if the debtor is an individual —

(i) relative of the debtor or of a general partner of the debtor;

(ii) partnership in which the debtor is a general partner;

(iii) general partner of the debtor; or

(iv) corporation of which the debtor is a director, officer, or person in control;

(B) if the debtor is a corporation —

(i) director of the debtor;

(ii) officer of the debtor;

(iii) person in control of the debtor;

(iv) partnership in which the debtor is a general partner;

(v) general partner of the debtor; or

(vi) relative of a general partner, director, officer, or person in control of the debtor;

(C) if the debtor is a partnership —

(i) general partner in the debtor;

(ii) relative of a general partner in, general partner of, or person in control of the debtor;

(iii) partnership in which the debtor is a general partner;

(iv) general partner of the debtor; or

(v) person in control of the debtor;

(D) if the debtor is a municipality, elected official of the debtor or relative of an elected official of the debtor;

(E) affiliate, or insider of an affiliate as if such affiliate were the debtor, and

(F) managing agent of the debtor;
"insolvent" means —

(A) with reference to an entity other than a partnership, financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of —

(i) property transferred, concealed, or removed with intent to hinder, delay, or defraud such entity's creditors; and

(ii) property that may be exempted from property of the estate under section 522 of this title; and

(B) with reference to a partnership, financial condition such that the sum of such partnership's debts is greater than the aggregate of, at a fair valuation —

(i) all of such partnership's property, exclusive of property of the kind specified in subparagraph (A)(i) of this paragraph; and

(ii) the sum of the excess of the value of each general partner's separate property, exclusive of property of the kind specified in subparagraph (A)(ii) of this paragraph, over such partner's separate debts;

"security" —

(A) includes —

(i) note;
(ii) stock;
(iii) treasury stock;
(iv) bond;
(v) debenture;
(vi) collateral trust certificate;
(vii) pre-organization certificate or subscription;
(viii) transferable share;
(ix) voting-trust certificate
(x) certificate of deposit;
(xi) certificate of deposit for security;
(xii) investment contract or certificate of interest or participation in a profit-sharing agreement or in an oil, gas, or mineral royalty or lease, if such contract or interest is the subject of a registration statement filed with the Securities and Exchange Commission under the provisions of the Securities Act of 1933 (15 U.S.C. 77a et seq.), or is exempt under section 3(b) of such Act (15 U.S.C. 77c(b)) from the requirement to file such a statement;
(xiii) interest of a limited partner in a limited partnership;
(xiv) other claim or interest commonly known as "security"; and
(xv) certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase or sell, a security; but
(B) does not include —

(i) currency, check, draft, bill of exchange, or bank letter of credit;
(ii) leverage transaction, as defined in section 761 (13) of this title;
(iii) commodity futures contract or forward commodity contract;
(iv) option, warrant, or right to subscribe to or purchase or sell a commodity futures contract;
(v) option to purchase or sell a commodity;
(vi) contract or certificate specified in clause (xii) of subparagraph (A) of this paragraph that is not the subject of such a registration statement filed with the Securities and Exchange Commission and is not exempt under section 3(b) of the Securities Act of 1933 (15 U.S.C. 77c(b)) from the requirement to file such a statement; or
(vii) debt or evidence of indebtedness for goods sold and delivered or services rendered;…
Appendix III

Bankruptcy Trustees

Former Attorney General Griffin Bell nominated ten persons to serve in the experimental position of U.S. trustee to handle the day-to-day administration of bankruptcy cases.

The named trustees, and the districts they will serve in the pilot program, were:

- **Irving H. Picard**, 38, of Washington, D.C., assistant general counsel of the Securities and Exchange Commission; southern district of New York State.
- **Hugh M. Leonard**, 44, of North Haledon, N.J., a member of a Paterson, N.J., law firm; Delaware and New Jersey.
- **Francis Dicello**, 38, of Washington, D.C., assistant chief of the review section of the Justice Department’s tax division; Washington, D.C., and the eastern district of Virginia.
- **Billy Jack Rivers**, 40, of Birmingham, Ala., assistant U.S. attorney for the northern district of Alabama; the northern district of Alabama.
- **Arnaldo N. Cavazos, Jr.**, 31, of Dallas, assistant U.S. attorney for the northern district of Texas; the northern district of Texas.
- **David H. Coar**, 36, of Chicago, assistant professor of law at DePaul University’s College of Law; the northern district of Illinois.
- **William P. Westphal, Sr.**, 57, of McLean, Va., special assistant to the administrator of the Law Enforcement Assistance Administration; Minnesota, North Dakota and South Dakota.
- **James T. Eichstaedt**, 37, of Chevy Chase, Md., chief counsel of the SEC’s division of corporate regulation; the central district of California.
- **Mrs. Dolores B. Kopel**, 48, of Denver, lawyer; Colorado and Kansas.
Appendix IV

Money of Estate — Deposits or Investments (Section 15345)

Except with respect to a deposit or investment that is insured or
guaranteed by the United States or by a department, agency, or instru-
mentality of the United States or backed by the full faith and credit
of the United States, the trustee shall require from an entity with which
such money is deposited or invested —

(1) a bond —
   (A) in favor of the United States;
   (B) secured by the undertaking of a corporate surety approved by
       the United States trustee for the district in which the case is
       pending; and
   (C) conditioned on —
       (i) a proper accounting for all money so deposited or invested
           and for any return on such money;
       (ii) prompt repayment of such money and return; and
       (iii) faithful performance of duties as a depository; or

(2) the deposit of securities of the kind specified in section 15 of title 6.

In judicial districts where there is no U.S. trustee to supervise the trust,
the following additional provision applies to trustees (Section 345):

A trustee in a case under this title may make such deposit or investment
of the money of the estate for which such trustee serves as will yield the
maximum reasonable net return on such money, taking into account the
safety of such deposit or investment.
Appendix V

Election of Trustee (Section 702)

(a) A creditor may vote for a candidate for trustee only if such creditor —

(1) holds an allowable, undisputed, fixed, liquidated, unsecured claim of a kind entitled to distribution under section 726(a)(2), 726(a)(3), or 726 (a)(4) of this title;

(2) does not have an interest materially adverse, other than an equity interest that is not substantial in relation to such creditor’s interest as a creditor, to the interest of creditors entitled to such distribution; and

(3) is not an insider.

(b) At the meeting of creditors under section 341 of this title, creditors may elect one person to serve as trustee in the case if election of a trustee is requested by creditors that may vote under subsection (a) of this section, and that hold at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section.

(c) A candidate for trustee is elected trustee if —

(1) creditors holding at least 20 percent in amount of the claims specified in subsection (a)(1) of this section that are held by creditors that may vote under subsection (a) of this section vote; and

(2) such candidate receives the votes of creditors holding a majority in amount of claims specified in subsection (a)(1) of this section that are held by creditors that vote for trustee.

(d) If a trustee is not elected under subsection (c) of this section, then the interim trustee shall serve as trustee in the case.
Appendix VI

House Committee Report

Re: Limitation of Compensation of Professional Persons (Section 328)

This section, which is parallel to section 326, fixes the maximum compensation allowable to a professional person employed under section 327. It authorizes the trustee, with the court's approval, to employ professional persons on any reasonable terms, including on a retainer, on an hourly, or on a contingent fee basis. Subsection (a) further permits the court to allow compensation different from the compensation provided under the trustee's agreement if the prior agreement proves to have been improvident in light of developments unanticipatable at the time of the agreement. The court's power includes the power to increase as well as decrease the agreed upon compensation. This provision is permissive, not mandatory, and should not be used by the court if to do so would violate the code of ethics of the professional involved, such as an accountant.

Subsection (b) limits a trustee who has been authorized to serve as his own counsel to only one fee for each service. The purpose of permitting the trustee to serve as his own counsel is to reduce costs. It is not included to provide the trustee with a bonus by permitting him to receive two fees for the same service or to avoid the maxima fixed in section 326. Thus, this subsection requires the court to differentiate between the trustee's services as trustee, and his services as trustee's counsel, and to fix compensation accordingly. Services that a trustee normally performs for an estate without assistance of counsel are to be compensated under the limits fixed in section 326. Only services that he performs that are normally performed by trustee's counsel may be compensated under the maxima imposed by this section.

Re: Compensation of Officers (Section 330)

Section 330 authorizes compensation for services and reimbursement of expenses of officers of the estate. It also prescribes the standards on which the amount of compensation is to be determined. As noted above, the compensation allowable under this section is subject to the maxima set out in sections 326, 328, and 329. The compensation is to be reasonable, for actual necessary services rendered, based on the time, the nature, the extent, and the value of the services rendered, and on the cost of comparable services other than in a case under the bankruptcy code. The effect of the last provision is to overrule In re Beverly Crest Convalescent Hospital, Inc., 548 F. 2d 817 (9th Cir. 1976, as
amended 1977), which set an arbitrary limit on fees payable, based on the amount of a district judge's salary, and other, similar cases that require fees to be determined based on notions of conservation of the estate and economy of administration.

If that case were allowed to stand, attorneys who could earn much higher incomes in other fields would leave the bankruptcy arena. Bankruptcy specialists, who enable the system to operate smoothly, efficiently, and expeditiously, would be driven elsewhere, and the bankruptcy field would be occupied by those who could not find other work and those who practice bankruptcy law only occasionally almost as a public service. Bankruptcy fees that are lower than fees in other areas of the legal profession may operate properly when the attorneys appearing in bankruptcy cases do so intermittently, because a low fee in a small segment of a practice can be absorbed by other work. Bankruptcy specialists, however, if required to accept fees in all of their cases that are consistently lower than fees they could receive elsewhere, will not remain in the bankruptcy field.

This subsection provides for reimbursement of actual, necessary expenses. It further provides for compensation of paraprofessionals employed by professional persons employed by the estate of the debtor. The provision is included to reduce the cost of administering bankruptcy cases. In nonbankruptcy areas, attorneys are able to charge for a paraprofessional's time on an hourly basis, and not include it in overhead. If a similar practice does not pertain in bankruptcy cases, then the attorney will be less inclined to use paraprofessionals even where the work involved could easily be handled by an attorney's assistant, at much lower cost to the estate. This provision is designed to encourage attorneys to use paraprofessional assistance where possible, and to insure that the estate, not the attorney, will bear the cost, to the benefit of both the estate and the attorneys involved.
FORM NO. 1
PETITION FOR VOLUNTARY BANKRUPTCY
United States District Court

for the ........................................ District of ........................................

In re ........................................

Bankrupt [include here all names used by bankrupt within last 6 years]

Bankruptcy No. ........................................

Voluntary Petition

1. Petitioner's post-office address is ........................................

2. Petitioner has resided [or has had his domicile or has had his principal place of business] within this district for the preceding 6 months [or for a longer portion of the preceding 6 months than in any other district].

3. Petitioner is qualified to file this petition and is entitled to the benefits of the Bankruptcy Act as a voluntary bankrupt.

Wherefore petitioner prays for relief as a voluntary bankrupt under the Act.

Signed: ........................................

Attorney for Petitioner.

Address: ........................................

[Petitioner signs if not represented by attorney.]

Petitioner.

State of ........................................

County of ........................................

I, ........................................, the petitioner named in the foregoing petition, do hereby swear that the statements contained therein are true according to the best of my knowledge, information, and belief.

Petitioner.

Subscribed and sworn to before me on ........................................

[Official character]

[Unless further time is granted by the court pursuant to Rule 108, this petition must be accompanied by a schedule of the petitioner's debts and property, his claim for such exemptions as he may be entitled to, and a statement of his affairs. These additional statements shall be submitted on official forms, shall include the information about the petitioner's property and debts required by the Bankruptcy Rules and by the forms, and shall be verified under oath.]

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FORM NO. 6

SCHEDULES
[Caption, other than designation, as in Form No. 1]

SCHEDULE A.—Statement of All Debts of Bankrupt

Schedules A-1, A-2, and A-3 must include all the claims against the bankrupt or his property as of the date of the filing of the petition by or against him.

Schedule A-1.—Creditors having priority.

<table>
<thead>
<tr>
<th>Nature of claim</th>
<th>Name of creditor and complete mailing address including zip code [if unknown, so state]</th>
<th>Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, or subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt</th>
<th>Amount of claim</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Wages and commissions owing to workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not working exclusively for the bankrupt, not exceeding $600 to each, earned within 3 months before filing of petition</td>
<td></td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>b. Taxes owing [itemize by type of tax and taxing authority]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(1) To the United States</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) To any state</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(3) To any other taxing authority</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. (1) Debts owing to any person, including United States, entitled to priority by laws of United States [itemize by type]</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2) Rent owing to a landlord entitled to priority by laws of any state accrued within 3 months before filing of petition, for actual use and occupancy</td>
<td></td>
<td>Total</td>
<td></td>
</tr>
</tbody>
</table>
**Schedule A-2.—Creditors holding security.**

<table>
<thead>
<tr>
<th>Name of creditor and complete mailing address including zip code [if unknown, so state]</th>
<th>Description of security and date when obtained by creditor</th>
<th>Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt</th>
<th>Market value Amount of claim without deduction of value of security</th>
</tr>
</thead>
</table>

<p>| | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

Total ................................

**Schedule A-3.—Creditors having unsecured claims without priority.**

<table>
<thead>
<tr>
<th>Name of creditor [including last known holder of any negotiable instrument] and complete mailing address including zip code [if unknown, so state]</th>
<th>Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt</th>
<th>Amount of claim</th>
</tr>
</thead>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
</table>

Total ................................
Appendix VIII

SCHEDULE B.—Statement of All Property of Bankrupt

Schedules B-1, B-2, B-3, and B-4 must include all property of the bankrupt as of the date of the filing of the petition by or against him.

**Schedule B-1.—Real property.**

<table>
<thead>
<tr>
<th>Description and location of all real property in which bankrupt has an interest (including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit)</th>
<th>Nature of interest [specify all deeds and written instruments relating thereto]</th>
<th>Market value of bankrupt's interest without deduction for secured claims listed in Schedule A-2 or exemptions claimed in Schedule B-4</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Schedule B-2.—Personal Property.**

<table>
<thead>
<tr>
<th>Type of property</th>
<th>Description and location</th>
<th>Market value of bankrupt's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Cash on hand</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b. Deposits of money with banking institutions, savings and loan associations, credit unions, public utility companies, landlords, and others</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. Household goods, supplies, and furnishings</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d. Books, pictures, and other art objects; stamp, coin, and other collections</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Wearing apparel, jewelry, firearms, sports equipment, and other personal possessions</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f. Automobiles, trucks, trailers, and other vehicles</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g. Boats, motors, and their accessories</td>
<td></td>
<td></td>
</tr>
<tr>
<td>h. Livestock, poultry, and other animals</td>
<td></td>
<td></td>
</tr>
<tr>
<td>i. Farming supplies and implements</td>
<td></td>
<td></td>
</tr>
<tr>
<td>j. Office equipment, furnishings, and supplies</td>
<td></td>
<td></td>
</tr>
<tr>
<td>k. Machinery, fixtures, equipment, and supplies [other than those listed in Items j and l] used in business</td>
<td></td>
<td></td>
</tr>
<tr>
<td>l. Inventory</td>
<td></td>
<td></td>
</tr>
<tr>
<td>m. Tangible personal property of any other description</td>
<td></td>
<td></td>
</tr>
<tr>
<td>n. Patents, copyrights, franchises, and other general intangibles [specify all documents and writings relating thereto]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>o. Government and corporate bonds and other negotiable and nonnegotiable instruments</td>
<td></td>
<td></td>
</tr>
<tr>
<td>p. Other liquidated debts owing bankrupt or debtor</td>
<td></td>
<td></td>
</tr>
<tr>
<td>q. Contingent and unliquidated claims of every nature, including counterclaims of the bankrupt or debtor [give estimated value of each]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>r. Interests in insurance policies [itemize surrender or refund values of each]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>s. Annuities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>t. Stocks and interests in incorporated and unincorporated companies [itemize separately]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>u. Interests in partnerships</td>
<td></td>
<td></td>
</tr>
<tr>
<td>v. Equitable and future interests, life estates, and rights or powers exercisable for the benefit of the bankrupt or debtor [specify all written instruments relating thereto]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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### Schedule B-3.—Property not otherwise scheduled.

<table>
<thead>
<tr>
<th>Type of property</th>
<th>Description and location</th>
<th>Market value of bankrupt's interest without deduction for secured claims listed in Schedule A-2 or exemptions claimed in Schedule B-4</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Property transferred under assignment for benefit of creditors, within 4 months prior to filing of petition</td>
<td>[specify date of assignment, name and address of assignee, amount realized therefrom by the assignee, and disposition of proceeds so far as known to bankrupt]</td>
<td>$</td>
</tr>
<tr>
<td>b. Property of any kind not otherwise scheduled</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total**

### Schedule B-4.—Property claimed as exempt.

<table>
<thead>
<tr>
<th>Type of property</th>
<th>Location, description, and, so far as relevant to the claim of exemption, present use of property</th>
<th>Reference to statute creating the exemption</th>
<th>Value claimed exempt</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>

**Total**

### Summary of debts and property

[From the statements of the bankrupt in Schedules A and B]

<table>
<thead>
<tr>
<th>Schedule</th>
<th>DEBTS</th>
<th>PROPERTY</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1/a</td>
<td>Wages having priority</td>
<td>B-1 Real property [total value]</td>
</tr>
<tr>
<td>A-1/b(1)</td>
<td>Taxes owing United States</td>
<td>B-2/a Cash on hand</td>
</tr>
<tr>
<td>A-1/b(2)</td>
<td>Taxes owing states</td>
<td>B-2/b Deposits</td>
</tr>
<tr>
<td>A-1/b(3)</td>
<td>Taxes owing other taxing authorities</td>
<td>B-2/c Household goods</td>
</tr>
<tr>
<td>A-1/c(1)</td>
<td>Debts having priority by laws of United States</td>
<td>B-2/d Books, pictures, and collections</td>
</tr>
<tr>
<td>A-1/c(2)</td>
<td>Rent having priority under state law</td>
<td>B-2/e Wearing apparel and personal possessions</td>
</tr>
<tr>
<td>A-2</td>
<td>Secured claims</td>
<td></td>
</tr>
<tr>
<td>A-3</td>
<td>Unsecured claims without priority</td>
<td></td>
</tr>
</tbody>
</table>

**Schedule A total**
PROPERTY—Continued

<table>
<thead>
<tr>
<th>Code</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>B-2/l</td>
<td>Automobiles and other vehicles</td>
</tr>
<tr>
<td>B-2/g</td>
<td>Boats, motors, and accessories</td>
</tr>
<tr>
<td>B-2/h</td>
<td>Livestock and other animals</td>
</tr>
<tr>
<td>B-2/i</td>
<td>Farming supplies and implements</td>
</tr>
<tr>
<td>B-2/j</td>
<td>Office equipment and supplies</td>
</tr>
<tr>
<td>B-2/k</td>
<td>Machinery, equipment, and supplies used in business</td>
</tr>
<tr>
<td>B-2/l</td>
<td>Inventory</td>
</tr>
<tr>
<td>B-2/m</td>
<td>Other tangible personal property</td>
</tr>
<tr>
<td>B-2/n</td>
<td>Patents and other general intangibles</td>
</tr>
<tr>
<td>B-2/o</td>
<td>Bonds and other instruments</td>
</tr>
<tr>
<td>B-2/p</td>
<td>Other liquidated debts</td>
</tr>
<tr>
<td>B-2/q</td>
<td>Contingent and unliquidated claims</td>
</tr>
<tr>
<td>B-2/r</td>
<td>Interests in insurance policies</td>
</tr>
<tr>
<td>B-2/s</td>
<td>Annuities</td>
</tr>
<tr>
<td>B-2/t</td>
<td>Interests in corporations and unincorporated companies</td>
</tr>
<tr>
<td>B-2/u</td>
<td>Interests in partnerships</td>
</tr>
<tr>
<td>B-2/v</td>
<td>Equitable and future interests, rights, and powers in personalty</td>
</tr>
<tr>
<td>B-3/a</td>
<td>Property assigned for benefit of creditors</td>
</tr>
<tr>
<td>B-3/b</td>
<td>Property not otherwise scheduled</td>
</tr>
<tr>
<td>B-4</td>
<td>Property claimed as exempt</td>
</tr>
</tbody>
</table>

Schedule B total $
OATH OF INDIVIDUAL TO SCHEDULES A AND B

State of .............................................
County of .............................................

1. I, ............................................., do hereby swear that I have read the foregoing schedules, consisting of ............................................. sheets, and that they are a statement of all my debts and all my property in accordance with the Bankruptcy Act, to the best of my knowledge, information, and belief.

Signed: .............................................

Subscribed and sworn to before me on .............................................

[Official character]

OATH ON BEHALF OF CORPORATION TO SCHEDULES A AND B

State of .............................................
County of .............................................

I, the president [or other officer or an authorized agent] of the corporation named as bankrupt in this proceeding, do hereby swear that I have read the foregoing schedules, consisting of ............................................. sheets, and that they are a statement of all the debts and all the property of the corporation in accordance with the Bankruptcy Act, to the best of my knowledge, information, and belief.

Signed: .............................................

Subscribed and sworn to before me on .............................................

[Official character]

OATH ON BEHALF OF PARTNERSHIP TO SCHEDULES A AND B

State of .............................................
County of .............................................

I, ............................................., a member [or an authorized agent] of the partnership named as bankrupt in this proceeding, do hereby swear that I have read the foregoing schedules, consisting of ............................................. sheets, and that they are a statement of all the debts and all the property of the partnership in accordance with the Bankruptcy Act, to the best of my knowledge, and belief.

Signed: .............................................

Subscribed and sworn to before me on .............................................

[Official character]
Appendix IX

Official Forms in Bankruptcy

FORM NO. 8
STATEMENT OF AFFAIRS FOR BANKRUPT ENGAGED IN BUSINESS

[Caption, other than designation, as in Form No. 1]

Statement of Affairs for Bankrupt Engaged in Business

[Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the bankrupt is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be verified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," as used in the following questions, shall mean the petition filed under Bankruptcy Rule 103, 104, or 105.]

   a. Under what name and where do you carry on your business?
   b. In what business are you engaged? (If business operations have been terminated, give the date of such termination.)
   c. When did you commence such business?
   d. Where else, and under what other names, have you carried on business within the 6 years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)
   e. What is your employer identification number? Your social security number?

2. Books and records.
   a. By whom, or under whose supervision, have your books of account and records been kept during the 2 years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)
   b. By whom have your books of account and records been audited during the 2 years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)
   c. In whose possession are your books of account and records? (Give names and addresses.)
   d. If any of these books or records are not available, explain.
   e. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the 2 years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

3. Financial statements.
   Have you issued any written financial statements within the 2 years immediately preceding the filing of the original petition herein? (Give dates, and the names and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories.
   a. When was the last inventory of your property taken?
   b. By whom, or under whose supervision, was this inventory taken?
   c. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)
   d. When was the next prior inventory of your property taken?
   e. By whom, or under whose supervision, was this inventory taken?
   f. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

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g. In whose possession are the records of the 2 inventories above referred to? (Give names and addresses.)

5. Income other than from operation of business.

What amount of income, other than from operation of your business, have you received during each of the 2 years immediately preceding the filing of the original petition herein? (Give particulars, including each source, and the amount received therefrom.)

6. Tax returns and refunds.

a. In whose possession are copies of your federal and state income tax returns for the 3 years immediately preceding the filing of the original petition herein?

b. What tax refunds (income or other) have you received during the 2 years immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

7. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name and address of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the 2 years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every person who had the right of access thereto, a description of the contents thereof, and, if the box has been surrendered, state when surrendered or, if transferred, when transferred and the name and address of the transferee.)

8. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, the amount or value thereof and all writings relating thereto.)


What proceedings under the Bankruptcy Act have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of proceeding, and whether a discharge was granted or refused, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

10. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property and the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court and the nature of the proceeding.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the 2 years immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

11. Property in hands of third person.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

12. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)
b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the 4 months immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

13. Payments on loans and installment purchases.

What repayments on loans in whole or in part, and what payments on installment purchases of goods and services, have you made during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons receiving payment, the amounts of the loans and of the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments, and, if any of the payees are your relatives, the relationship; if the bankrupt is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the bankrupt is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

14. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition which was not in the ordinary course of business during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and state whether the transferee is a relative, partner, shareholder, officer, or director, the consideration, if any, received for the property, and the disposition of such consideration.)

15. Accounts and other receivables.

Have you assigned, either absolutely or as security, any of your accounts or other receivables during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

16. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)


If you are a tenant of business property, what are the name and address of your landlord, the amount of your rental, the date to which rent had been paid at the time of the filing of the original petition herein, and the amount of security held by the landlord?

18. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

19. Withdrawals.

a. If you are an individual proprietor of your business, what personal withdrawals of any kind have you made from the business during the year immediately preceding the filing of the original petition herein?

b. If the bankrupt is a partnership or corporation, what withdrawals, in any form (including compensation or loans), have been made by any member of the partnership, or by any officer, director, managing executive, or shareholder of the corporation, during the year immediately preceding the filing of the original petition herein? (Give the name and designation or relationship to the bankrupt of each person, the dates and amounts of withdrawals, and the nature or purpose thereof.)
20. Payments or transfers to attorneys
   a. Have you consulted an attorney during the year immediately preceding or since
      the filing of the original petition herein? (Give date, name, and address.)
   b. Have you during the year immediately preceding or since the filing of the
      original petition herein paid any money or transferred any property to the
      attorney, or to any other person on his behalf? (If so, give particulars, including
      amount paid or value of property transferred and date of payment or transfer.)
   c. Have you, either during the year immediately preceding or since the filing of the
      original petition herein, agreed to pay any money or transfer any property to an
      attorney at law, or to any other person on his behalf? (If so, give particulars, including
      amount and terms of obligation.)
   (If the bankrupt is a partnership or corporation, the following additional questions
   should be answered.)

21. Members of partnership; officers, directors, managers, and principal stockholders of
    corporation.
   a. What is the name and address of each member of the partnership, or the name,
      title, and address of each officer, director, and managing executive, and of each
      stockholder holding 25 per cent or more of the issued and outstanding stock, of the
      corporation?
   b. During the year immediately preceding the filing of the original petition herein,
      has any member withdrawn from the partnership, or any officer, director, or
      managing executive of the corporation terminated his relationship, or any stockholder
      holding 25 per cent or more of the issued stock disposed of more than 50 per cent of
      his holdings? (If so, give name and address and reason for withdrawal, termination,
      or disposition, if known.)
   c. Has any person acquired or disposed of 25 per cent or more of the stock of
      the corporation during the year immediately preceding the filing of the petition? (If so,
      give name and address and particulars.)

State of ............................................
County of .............................................

I, ............................................., do hereby swear that I have read the answers contained
in the foregoing statement of affairs and that they are true and complete to the best
of my knowledge, information, and belief.

Bankrupt.

Subscribed and sworn to before me on ............................................

[Official character]

[Person verifying for partnership or corporation should indicate position or relationship to
bankrupt.]
Appendix X

Reports of Possible Criminal Violations

Concealment of assets; false oaths and claims; bribery (Title 18, Sec. 152)

Whoever knowingly and fraudulently conceals from the receiver, custodian, trustee, marshall, or other officer of the court charged with the control or custody of property, or from creditors in any bankruptcy proceeding, any property belonging to the estate of a bankrupt; or

Whoever knowingly and fraudulently makes a false oath or account in or in relation to any bankruptcy proceeding; or

Whoever knowingly and fraudulently presents any false claim for proof against the estate of a bankrupt, or uses any such claim in any bankruptcy proceeding, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or

Whoever knowingly and fraudulently receives any material amount of property from a bankrupt after the filing of a bankruptcy proceeding, with intent to defeat the bankruptcy law; or

Whoever 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 bankruptcy proceeding; or

Whoever, either individually or as an agent or officer of any person or corporation, in contemplation of a bankruptcy proceeding by or against him or any other person or corporation, or with intent to defeat the bankruptcy law, knowingly and fraudulently transfers or conceals any of his property or the property of such other person or corporation; or

Whoever, after the filing of a bankruptcy proceeding or in contemplation thereof, knowingly and fraudulently conceals, destroys, mutilates, falsifies, or makes a false entry in any document affecting or relating to the property or affairs of a bankrupt; or

Whoever, after the filing of a bankruptcy proceeding, knowingly and fraudulently withholds from the receiver, custodian, trustee, marshall, or other officer of the court entitled to its possession, any document affecting or relating to the property or affairs of a bankrupt

Shall be fined not more than $5,000 or imprisoned not more than five years, or both.
Bankruptcy Investigations (Title 18, Sec. 3057)

(a) Any referee, receiver, or trustee having reasonable grounds for believing that any violations of the bankruptcy laws 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 referee, 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.
Appendix XI

House Committee Report

Re: *Postpetition disclosure and solicitation (Section 1125)*

This section is new. It is the heart of the consolidation of the various reorganization chapters found in current law. It requires disclosure before solicitation of acceptances of a plan of reorganization.

Subsection (a) contains two definitions. First, "adequate information" is defined to mean information of a kind, and in sufficient detail, as far as is reasonably practical in light of the nature and history of the debtor and the condition of the debtor's books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan. Second, "investor typical of holders of claims or interests of the relevant class" is defined to mean an investor having a claim or interest of the relevant class, having such a relationship with the debtor as the holders of other claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have, and having such ability to obtain information from sources other than the disclosure statement as holders of claims or interests of the relevant class have. That is, the hypothetical investor against which the disclosure is measured must not be an insider if other members of the class are not insiders, and so on. In other words, the adequacy of disclosure is measured against the typical investor, not an extraordinary one.

The Supreme Court's rulemaking power will not extend to rulemaking that will prescribe what constitutes adequate information. That standard is a substantive standard. Precisely what constitutes adequate information in any particular instance will develop on a case-by-case basis. Courts will take a practical approach as to what is necessary under the circumstances of each case, such as the cost of preparation of the statements, the need for relative speed in solicitation and confirmation, and, of course, the need for investor protection. There will be a balancing of interests in each case. In reorganization cases, there is frequently great uncertainty. Therefore the need for flexibility is greatest.

Subsection (b) is the operative subsection. It prohibits solicitation of acceptances or rejections of a plan after the commencement of the case unless, at the time of the solicitation or before, there is transmitted to the solicitee the plan or a summary of the plan, and a written disclosure statement approved by the court as containing adequate information. The subsection permits approval of the statement without the necessity of a valuation of the debtor or an appraisal of the debtor's assets.
However, in some cases, a valuation or appraisal will be necessary to develop adequate information. The court will be able to determine what is necessary in light of the facts and circumstances of each particular case.

Subsection (c) requires that the same disclosure statement go to all members of a particular class, but permits different disclosure to different classes.

Subsection (d) excepts the disclosure statements from the requirements of the securities laws (such as section 14 of the 1934 Act and section 5 of the 1933 Act), and from similar State securities laws (blue sky laws, for example). The subsection permits an agency or official whose duty is to administer or enforce such laws (such as the Securities and Exchange Commission or State Corporation Commissioners) to appear and be heard on the issue of whether a disclosure statement contains adequate information, but the agencies and officials are not granted the right of appeal from an adverse determination in any capacity. They may join in an appeal by a true party in interest, however.

Subsection (e) is a safe harbor provision, and is necessary to make the exemption provided by subsection (d) effective. Without it, a creditor that solicited an acceptance or rejection in reliance on the court’s approval of a disclosure statement would be potentially liable under antifraud sections designed to enforce the very sections of the securities laws from which subsection (d) excuses compliance. The subsection protects only persons that solicit in good faith and in compliance with the applicable provisions of the reorganization chapter. It provides protection from legal liability as well as from equitable liability based on an injunctive action by the SEC or other agency or official.
Appendix XII

Confirmation of Plan (Section 1129)

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this chapter.

(2) The proponent of the plan complies with the applicable provisions of this chapter.

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) (A) Any payment made or promised by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in, or in connection with, the case, or in connection with the plan and incident to the case, has been disclosed to the court; and

(B) (i) any such payment made before confirmation of the plan is reasonable; or

(ii) if such payment is to be fixed after confirmation of the plan, such payment is subject to the approval of the court as reasonable.

(5) (A) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy.

(B) The proponent of the plan has disclosed the identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider.

(6) Any regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each class—

(A) each holder of a claim or interest of such class—

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date; or

(B) if section 1111 (b) (2) of this title applies to the claims of such class, each holder of a claim of such class will receive
or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such creditor’s interest in the estate’s interest in the property that secures such claims.

(8) With respect to each class—
   (A) such class has accepted the plan; or
   (B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—

   (A) with respect to a claim of a kind specified in section 507 (a) (1) or 507 (a) (2) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim;
   (B) with respect to a class of claims of a kind specified in section 507 (a) (3), 507 (a) (4), or 507 (a) (5) of this title, each holder of a claim of such class will receive—
      (i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or
      (ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and
   (C) with respect to a claim of a kind specified in section 507 (a) (6) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

(10) At least one class of claims has accepted the plan, determined without including any acceptance of the plan by any insider holding a claim of such class.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.
Appendix XIII

“Cram down” Provision (Section 1129)

(b) (1) Notwithstanding section 510 (a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides—

(i) (I) that the holders of such claims retain the lien securing such claims, whether the property subject to such lien is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder’s interest in the estate’s interest in such property;

(ii) for the sale, subject to section 363 (k) of this title, of any property that is subject to the lien securing such claims, free and clear of such lien, with such lien to attach to the proceeds of such sale, and the treatment of such lien on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims—

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain on account of such junior claim or interest any property.

(C) With respect to a class of interests—

(i) the plan provides that each holder of an interest of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation prefer-
ence to which such holder is entitled, any fixed redemption
price to which such holder is entitled, and the value of
such interest; or

(iii) the holder of any interest that is junior to the interests of
such class will not receive or retain under the plan on account
of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except
as provided in section 1127 (b) of this title, the court may confirm only
one plan, unless the order of confirmation in the case has been revoked
under section 1144 of this title. If the requirements of subsections (a)
and (b) of this section are met with respect to more than one plan, the
court shall consider the preferences of creditors and equity security
holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of
a party in interest that is a governmental unit, the court may not confirm
a plan if the principal purpose of the plan is the avoidance of taxes or the
Appendix XIV

Grounds for Denying Discharge of Debtor (Section 727)

(a) The court shall grant the debtor a discharge, unless —

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed — (A) property of the debtor, within one year before the date of the filing of the petition; or (B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case — (A) made a false oath or account; (B) presented or used a false claim; (C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise of money, property, or advantage, for acting or forebearing to act; or (D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case — (A) to obey any lawful order of the court, other than an order to respond to a material question or to testify; (B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or (C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;
(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14371 or 476 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least —
   (A) 100 percent of the allowed unsecured claims in such case; or
   (B) (i) 70 percent of such claims; and
       (ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort; or

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter.

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

(c) (1) The trustee or a creditor may object to discharge under subsection (a) of this section.

(2) On request of a party in interest, the court may order the trustee to examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge.

(d) On request of the trustee or a creditor, and after notice and a hearing, the court shall revoke a discharge granted under subsection (a) of this section if —

(1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
Appendix XV

Fraudulent transfers and obligations (Section 548)

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor —

(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer occurred or such obligation was incurred, indebted;

(2) (A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

(B)

(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

(ii) was engaged in business, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital; or

(iii) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

(b) The trustee of a partnership debtor may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, to a general partner in the debtor, if the debtor was insolvent on the date such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation.

(c) Except to the extent that a transfer or obligation voidable under this section is voidable under section 544, 545, or 547 of this title, a transferee or obligee of such a transfer or obligation that takes for value and in good faith has a lien on any interest transferred, may retain any lien transferred, or may enforce any obligation incurred, as the case may be, to the extent that such transferee or obligee gave value to the debtor in exchange for such transfer or obligation.

(d) (1) For the purposes of this section, a transfer is made when such transfer becomes so far perfected that a bona fide purchaser from the debtor against whom such transfer could have been perfected cannot acquire an interest in the property trans-
ferred that is superior to the interest in such property of the transferee, but if such transfer is not so perfected before the commencement of the case, such transfer occurs immediately before the date of the filing of the petition.

(2) In this section —

(A) “value” means property, or satisfaction or securing of a present or antecedent debt of the debtor, but does not include an unperformed promise to furnish support to the debtor or to a relative of the debtor; and

(B) a commodity broker or forward contract merchant that receives a margin payment, as defined in section 761(15) of this title, takes for value.
Appendix XVI

REPORT OF BANKRUPTCY JUDGE ON ASSET AND NOMINAL ASSET CASES TERMINATED IN STRAIGHT BANKRUPTCY

FILED UNDER: Straight Bankruptcy or Relief Chapter No. ____________________________________________
Date converted to Straight Bankruptcy (if applicable) ____________________________________________
Date case reopened (if applicable) _____________________________________________________________
CONSOLIDATION:
List Case Numbers of all cases consolidated with this case: ____________________________ Date of Consolidation ______
Has any part of the claims against bankrupt, or distribution shown on this JS-19 been included in another JS-19?  
Yes  No  If “Yes”, explain on reverse.

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CONSOLIDATION:
List Case Numbers of all cases consolidated with this case:

OBLIGATIONS OF BANKRUPT

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<tr>
<td>1</td>
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<td>+ $</td>
<td>$</td>
</tr>
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RECEIVER'S COMMISSIONS

| 2 | $       | RECEIVER'S EXPENSES | + $   |
|   |         | TRUSTEE'S COMMISSIONS |   |
|   |         | REFEREE'S SALARY AND EXPENSE FUND | + $   |
|   |         | SPECIAL CHARGES | + $   |

REPORTING FEES

| 3 | $       | ACCOUNTANT'S FEES | + $   |
|   |         | AUCTIONEER'S FEES |   |
|   |         | APPRAISER'S FEES | + $   |
|   |         | ATTORNEY FEES FOR CREDITORS | + $   |

ATTORNEY FEES FOR TRUSTEE

| 4 | $       | ATTORNEY FEES FOR RECEIVER | + $   |
|   |         | ATTORNEY FEES FOR BANKRUPT |   |
|   |         | OTHER ATTORNEY FEES | + $   |
|   |         | RENTAL EXPENSES | + $   |

TRUSTEE'S OTHER EXPENSES

| 5 | $       | TOTAL COSTS & EXPENSES OF LIQUIDATION | + $   |
|   |         | WAGES | + $   |
|   |         | TAXES | + $   |
|   |         | OTHER | + $   |

SECURED PAYMENTS

| 6 | $       | UNSECURED PAYMENTS | + $   |
|   |         | OTHER DISTRIBUTIONS |   |
|   |         | NET PROCEEDS REALIZED | + $   |

NET PROCEEDS REALIZED

| 7 | $       | AMOUNT PAID: BANKRUPT IN LIEU OF EXEMPTION | + $   |
|   |         | STRAIGHT BANKRUPTCY OPERATING EXPENSES | + $   |
|   |         | OTHER DISBURSEMENTS | + $   |
|   |         | TOTAL DISTRIBUTION | + $   |

*Itemize on reverse side


Bankruptcy Judge

FPI-MAR 1.9.78