

II. Trustee Manual Volume 2: Chapter 7 Case Administration

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CHAPTER 7 CASE ADMINISTRATION

CHAPTER 2-2: ADMINISTRATION OF CHAPTER 7 ESTATES

2-2.1 INTRODUCTION

Pursuant to 28 U.S.C. § 586(a), the United States Trustee must supervise the actions of trustees in the performance of their responsibilities. **The principal duty** of the trustee is to **collect and liquidate** the property of the estate and to distribute the proceeds to creditors. The trustee is a **fiduciary** charged with **protecting** the interests of **the various parties** in the estate. (emphasis added)

A chapter 7 case should be administered to **maximize and expedite dividends to creditors** and facilitate a fresh start for the debtors entitled to a discharge. A trustee should not administer an estate or an asset in an estate where the proceeds of liquidation will primarily benefit the trustee or the professionals, or unduly delay the resolution of the case. Chapter 7 trustees must be guided by this fundamental principle when acting as trustee. Accordingly, the United States Trustee must verify that a trustee considers whether sufficient funds will be generated to make a meaningful distribution to creditors **before** administering a case **as an asset case**. (emphasis added)

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2-2.2.1 Collection and Liquidation of Assets, § 704(1)

A trustee has a duty to ensure that a **debtor files** all schedules and statements required under § 521 and Fed. R. Bankr. P. 1007. A trustee must also ensure that a debtor surrenders non-exempt property of the estate to the trustee, **and that records and books are properly turned over to the trustee**. (emphasis added)

The trustee should be familiar with the definition of property of the estate as set forth in § 541. Under § 541, all legal and equitable interests of the debtor, wherever located and by whomever held, are property of the estate. Property of the estate also includes any property that the debtor acquires or becomes entitled to acquire within 180 days after the petition date by way of inheritance, property settlement or divorce decree, or life insurance.

Property of the estate is defined more broadly in chapter 13 cases under § 1306 to include property and earnings acquired postpetition. However, if a chapter 13 case is converted to a chapter 7 case, the § 1306 definition does not apply. Upon conversion, property of the chapter 7 estate consists of property of the estate, as of the date of the chapter 13 petition, that remains in the possession of or is under the control of the debtor on the date of conversion, unless the case was converted in bad faith. § 348(f).

In reviewing the schedules, the trustee should make a preliminary determination as to whether there appear to be assets in the case or areas warranting further inquiry at the section 341 meeting. The trustee should not rely upon the designation by the clerk of the bankruptcy court as to whether the case is an asset or no-asset case. The trustee should conduct an independent investigation to make this determination. A trustee should refrain from administering an estate where the proceeds of liquidation will solely benefit the trustee and the trustee's professionals, i.e., the trustee should consider whether sufficient funds will be generated to make a meaningful distribution to creditors, prior to administering the case as an asset case.

A trustee performs the duty of collecting and reducing to money property of the estate in a variety of ways. For example, the trustee may object to improper exemptions, seek disgorgement of unreasonable attorney fees paid to the debtor's counsel, compel the turnover of non-exempt property, and use the avoidance powers of § 544, *et seq.*, to recover assets. After a trustee has collected all assets of an estate, the assets must be reduced to cash for eventual distribution to creditors under § 726.