

## THE ROLE OF THE CHAPTER 7 TRUSTEE

Once a Chapter 7 bankruptcy case is filed, an impartial case trustee is appointed by the office of the United States trustee. (In Alabama and North Carolina, the trustee is appointed by the court). The primary function of the Chapter 7 trustee is to administer the case and liquidate the debtor's non-exempt assets. In most cases, the debtor's assets are completely exempt and there is no property for the trustee to administer. If there does appear to be an asset however, creditors will be given the opportunity to file their required proof of claims so that they can be part of any distribution. The trustee will liquidate the debtor's non-exempt assets in a manner that maximizes the return to debtor's unsecured creditors. The trustee can also pursue causes of action that a debtor may have at the time his bankruptcy case is filed. A common cause of action is one to recover money or property that is owed to the debtor.

The trustee also has strong avoiding powers. This allows a trustee to set aside preferential transfers made to creditors prior to the debtor filing his petition. This avoiding power may result in proceeds being distributed to unsecured creditors.

In addition to liquidating any non-exempt assets, the trustee has the duty of making sure that the debtor has complied with the numerous bankruptcy laws that are encountered throughout the Bankruptcy Code.

The trustee is often a local bankruptcy attorney; however, a trustee is not required to be an attorney. You can rest assured that the trustee will be a person who is very knowledgeable about Chapter 7, the court process and all of the necessary procedures to administer a case.

The trustee is mostly interested in what property you own, whether it can be exempted under the Federal or State laws and whether or not it can be administered for the benefit of creditors. The trustee has a vested interest in the property because he is partially paid on commission. That's right; the trustee may receive 25% of the first \$5,000.00 administered, 10% of any amount between \$5,000.00 and \$50,000.00, and 5% of any additional amounts administered. Although this sounds like the trustee would look to administer everything possible that rarely is the case. Most debtors can protect the majority, if not all of their property. What little that cannot be protected is often overlooked by the trustee as just too burdensome to administer for a very little distribution to creditors.

Many debtors wonder whether or not the trustee will want to search their homes for property. Although this is possible, it is highly unlikely. The trustee would have to believe that the debtor was not being truthful in his schedules or otherwise not complying with the trustee's requests.