

Form 21-1

The practitioner should use this form to analyze a creditor's initial position in a pending bankruptcy. Note: This checklist represents a preliminary review of a client's position at the beginning of a bankruptcy. It primarily identifies issues under Chapter 7 of the Bankruptcy Code; however, issues regarding Chapters 11 and 13 are addressed where applicable. Postconfirmation issues have not been addressed here. All references to the "Code" refer to the United States Bankruptcy Code, Title 11 of the United States Code. References to "Rule" refer to the Bankruptcy Rules.

Checklist

General Questions

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| <input type="checkbox"/> | 1. Is your client a creditor? Does your client have a claim against the debtor? | See Code § 101(10) and (5) for definitions of "creditor" and "claim." |
| <input type="checkbox"/> | 2. What type of claim does the creditor have (secured/unsecured/administrative)? | See section 21.21 in this chapter for a discussion of the types of claims. |
| <input type="checkbox"/> | 3. Does your client have a priority claim? | See Code § 507(a) for a list of priority claims. See Code §§ 726, 1129(a)(9), and 1322(a)(2) for treatment of priority claims. |
| <input type="checkbox"/> | 4. Was the creditor's claim against the debtor incurred during the bankruptcy? | See Code §§ 507(a)(1) and 503. |
| <input type="checkbox"/> | 5. Did the creditor deliver goods to the debtor? | See Code § 546(c). |
| <input type="checkbox"/> | 6. Is the claim for prepetition wages or commissions earned by the creditor within 180 days of bankruptcy? | See Code § 507(a)(4) for wage claim amount limitations. |
| <input type="checkbox"/> | 7. Is the claim arising from the deposit, before bankruptcy, of money in connection with the purchase, lease, or rental of property or the purchase of services for personal, family, or household use that were not delivered or provided? | See Code § 507(a)(7). |

8. **Is there a claim for debts to a spouse, former spouse, or child of the debtor for domestic support obligations?** See Code § 507(a)(1).
9. **Does your client have a secured claim, consensual lien, or judicial lien or hold a security interest?** See Code § 101(36), (37), and (51) for definitions of “judicial lien,” “lien,” and “security interest.” See Code § 506(a) for the mechanics of determining the value of a secured claim.
10. **Does your client hold a trade claim against the debtor?** See Code § 363(b) if your client continues to do business with the debtor during the bankruptcy.
11. **Has the debtor committed a personal injury, fraud, or intentional tort?** See Code § 523(a)(2), (4), (6), and (15) for dischargeability exemptions for an individual in a Chapter 7 case; see also Code § 523(c). File a dischargeability complaint within sixty days of the first date set for the creditor’s meeting. See Rule 4004(a).
12. **Is your client a financier of the debtor?** See Code §§ 363(b), (c), and 364 for possible effects to a secured position. See Code § 552 for the applicability of a prepetition security interest on postpetition events.
13. **Is your client the single asset real estate mortgage holder?** See Code § 101(51B) for a definition and Code § 362(d)(3) for the applicability of the automatic stay.
14. **Is your client in a landlord-tenant relationship with the debtor?** See Code § 365. See also section 21.25 in this chapter for a discussion on executory contracts and unexpired leases.
15. **Is your client continuing a business relationship with the debtor?** See Code § 365. See also section 21.25 in this chapter for a discussion on executory contracts and unexpired leases.
16. **Is your client subject to a subordination agreement with the debtor? Is your client a target of equitable subordination under state law?** See Code § 510.

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| <input type="checkbox"/> 17. Is your client related to the debtor? | See Code § 101(31) for a definition of “insider.” |
| <input type="checkbox"/> 18. Is your client a spouse or family member of the debtor? | See Code § 1301 regarding the co-debtor stay in Chapter 13 and Code §§ 362(b)(2) and 507(a)(7) for treatment of domestic support obligations. |
| <input type="checkbox"/> 19. Request documentation of the claim from your client for attachment to the proof of claim. | See Rule 3001(c), (d), and (e). |
| <input type="checkbox"/> 20. Retrieve PACER docket sheet on the case. Is there a claims bar date? | If so, prepare and file the claim and serve the claim on the court and debtor’s attorney. See Rules 3001–3005. |
| <input type="checkbox"/> 21. Has the claim’s bar date passed, but your client failed to get a notice of the bankruptcy? | File a motion to extend the claim’s bar date. See Code §§ 502(b)(9) and 726(a)(1). |
| <input type="checkbox"/> 22. Retrieve the local rules for the specific court and judge. | See section 21.2:2 in this chapter for a list of the courts’ Web sites where local rules can be found. |
| <input type="checkbox"/> 23. Review the court’s Web site for updated information. | See section 21.1:2 in this chapter for a list of the courts’ Web sites. |
| <input type="checkbox"/> 24. Has the debtor failed to cooperate with your client prior to bankruptcy? | If so, attend the creditors’ meeting and examine the debtor under oath. Consult the PACER docket sheet for the time and place of the meeting. See Code §§ 341 and 343; see also Rules 2002 and 2003. |

Automatic Stay

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| <input type="checkbox"/> 25. Is your client currently taking legal action against the debtor? | The automatic stay prevents commencement or continuation of most actions against the debtor. See Code § 362(a) and (b). See section 21.13 in this chapter for a discussion of exceptions to the automatic stay. |
| <input type="checkbox"/> 26. If your client is prevented from taking action by the automatic stay, does the stay need to be lifted to allow your client to act? | See Code § 362(d). See form 21-11. |

27. **Is your client a secured creditor of the debtor?** If so, answer numbers 27 through 29. If not, proceed to number 30.
28. **Does the debtor have any equity in your client's collateral?** See Code § 362(d)(2).
29. **Does your client lack adequate protection of his collateral?** See Code § 361 for an explanation of adequate protection; see Code § 362(d)(1) for an explanation of lifting the automatic stay. See also section 21.15 in this chapter for a discussion of adequate protection.
30. **Is your client the secured creditor of real property? Is the real property collateral the only substantial asset of the debtor?** See Code § 362(d)(3).
31. **Has the court lifted the automatic stay as to a specific piece of property or as to a creditor?** Check the PACER sheet for applicable orders.
32. **If the debtor is an individual filing under Chapter 7, has he received his discharge?** See Code § 362(c)(2)(C) (terminating the automatic stay) and § 524 (permanent discharge injunction).
33. **If the debtor is an individual filing under Chapter 13, does your client have a postpetition claim against the debtor? Has confirmation of the Chapter 13 plan occurred?** See Code §§ 362(c)(1) and 1327(b) (terminating the stay).
34. **If the debtor is filing under Chapter 11, does your client have a postpetition claim against the debtor?** If so, the automatic stay no longer applies; see Code §§ 362(c)(1) and 1141(b).
35. **Has the debtor's bankruptcy been dismissed?** See Code §§ 362(c)(2)(B) and 349.
36. **Has the debtor's bankruptcy been converted to a case under another chapter in the Bankruptcy Code?** See Code § 348.
37. **Has the debtor's bankruptcy been closed by the court?** See Code § 350.
38. **Does your client have an interest in the debtor's cash collateral?** See Code § 363 (adequate protection of cash collateral); see also Code § 363(a) (definition of "cash collateral").

39. **Is the debtor trying to use cash collateral in which your client has an interest?** See Code § 363(b) and (c) (creditor's remedies).
40. **Is the debtor seeking postpetition credit from your client?** See Code § 364(a) (postpetition unsecured credit in the ordinary course of business) and § 364(b) (postpetition credit outside the ordinary course of business).

Executory Contracts and Unexpired Leases

41. **Is the client in a continuing contractual relationship with the debtor?** See Code § 365 (executory contracts).
42. **Has the debtor assumed or rejected the client's executory contract or unexpired lease?** See Code § 365(a) and Rule 6006.
43. **Has the deadline passed for the debtor to assume or reject your client's executory contract or unexpired lease?** See Code § 365(d) for applicable deadlines. See section 21.62 in this chapter.
44. **Is there a default in your client's executory contract or unexpired lease?** See Code § 365(b) (curing default); see also section 21.63 in this chapter.
45. **Is your client a landlord of a shopping center in which debtor is a tenant?** See Code § 365(b)(3).

Dischargeability

See generally section 21.33 in this chapter.

46. **Is your client's claim the result of debtor's false representation or fraud?** See Code § 523(a)(2).
47. **Is your client the victim of debtor's fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny?** See Code § 523(a)(4).

48. **Does your client's claim arise out of debtor's willful and malicious injury to another entity or the property of another entity?** See Code § 523(a)(6).
49. **Does your client's claim arise out of a death or personal injury caused by debtor's illegal operation of a motor vehicle while intoxicated or under the influence of drugs?** See Code § 523(a)(9).
50. **Does your client have a claim for a fee or assessment due and payable to the membership association for a condominium or cooperative housing corporation?** See Code § 523(a)(16).

Creditor Issues

51. **Is your client subject to contractual or equitable subordination of his claim?** See Code § 510.
52. **If the debtor has received a discharge, has your client observed the discharge and permanent injunction provisions of Code § 524?** See Code § 524.
53. **Is your client the debtor's employer?** See Code § 525 (discrimination against employees on the basis of bankruptcy).
54. **Does your client possess property that belongs to the debtor?** See Code §§ 541 and 542.
55. **Is your client a custodian of property belonging to the debtor's bankruptcy estate?** See Code § 101(11) (definition of "custodian") and § 543.
56. **Does your client hold an unperfected security interest against the debtor?** See Code § 544 (an unperfected security interest is probably voidable).
57. **Does your client hold a statutory lien against the debtor's property?** See Code § 545 (a statutory lien may be voidable).

Avoidance Actions

58. **Did your client receive any payments from the debtor within ninety days of filing for bankruptcy?** See Code § 547 (avoidable preferences); see also part VI. in this chapter for a discussion of avoidance actions.
59. **If the debtor or bankruptcy trustee has filed an avoidance action against your client, is the action timely?** See Code § 546(a).
60. **Are there other defenses to the avoidance action that are available to your client?** See Code § 546; see also section 21.52 in this chapter for a discussion of defenses to avoidance actions.
61. **Was the preferential transfer intended by the debtor and your client to be a contemporaneous exchange for new value given to the debtor?** See Code § 547(c)(1); see also section 21.52:4 in this chapter.
62. **Was the preferential transfer made in payment of a debt incurred by the debtor in the ordinary course of business between the debtor and your client?** See Code § 547(c)(2); see section 21.52:2 in this chapter.
63. **Did your client give new value to the debtor in exchange for the preferential transfer?** See Code § 547(c)(4); see also section 21.52:4 in this chapter.
64. **Did the preferential transfer create a perfected security interest in inventory or a receivable or the proceeds of either?** See Code § 547(c)(5); see also section 21.52:5 in this chapter.
65. **Did the preferential transfer fix a statutory lien that is not avoidable?** See Code §§ 545 and 547(c)(6); see also section 21.52:6 in this chapter.
66. **Was the preferential transfer a bona fide payment of a debt for a domestic support obligation?** See Code § 547(c)(7); see also section 21.52:7 in this chapter.
67. **Were the debtor's debts primarily consumer debts? Is the aggregate of the property that constitutes or is affected by the transfer less than \$600?** See Code § 547(c)(8); see also section 21.52:8 in this chapter.

68. **Did your client receive a fraudulent transfer within one year of the bankruptcy?** See Code § 548 (fraudulent transfers within one year of filing for bankruptcy can be avoided); see also section 21.54 in this chapter.
69. **Did your client receive fair value for the potentially fraudulent transfer?** See Code § 548(c).
70. **Has your client received any transfers of property from the debtor postbankruptcy filing?** See Code § 549(a) (a transfer of property made after the bankruptcy filing may be avoidable).
71. **Does your client hold a claim against the debtor that can be set off against the debtor's claim against the client?** See Code § 553(a) (mutual debts may be offset).
72. **Has your client offset a mutual debt with the debtor within ninety days prior to the bankruptcy filing?** See Code § 553(b) (some or all of the setoff may be recoverable by the trustee or the debtor in possession).