

5-10.7.1.3 Transfer of Assets Prepetition

A debtor transfers assets, with little or no consideration to third parties, with the agreement that after the case is closed the property will be returned to the debtor. The relationship to the debtor or the agreement with the transferee is not disclosed.

5-10.7.1.4 Transfer of Assets Postpetition

A debtor sells or transfers assets without court approval. If the debtor does seek court approval, the debtor does not disclose his/her relationship to or agreements with the purchaser. For example, the debtor sells property below its value to a straw buyer who agrees to convey it back to him/her. A similar situation is where the purchaser agrees to give the debtor part of the purchase price "under" the table and court approval is sought for the purchase at a lower price to allow for the transfer.

5-10.7.2 **Red Flags/Common Characteristics in Cases of Concealment and False Statements**

1. Claims of theft or large gambling losses just before bankruptcy.
2. Inability to account for property listed on insurance policies or personal financial statements in existence before bankruptcy.
3. Incomplete schedules--frequent amendments in response to creditor questions.
4. Unexplained change in financial circumstances.
5. Debtor shows no ownership interest in residence.
6. Tax returns not filed for the relevant years.
7. Debtor "confused" about his/her assets and financial affairs.
8. Unsecured debt does not reconcile with assets listed, e.g., large number of medical bills, but no lawsuit listed.

9. Failure to list prior bankruptcies.
10. Significant amendments to list of creditors after section 341 meeting.
11. Complaints by ex-employees, ex-spouses, or ex-partners about hidden or omitted assets.
12. Fifth Amendment claimed on any issue.
13. Fire or other disaster occurs (of particular importance if arson is suspected).
14. Transfer of property to relatives or friends just before bankruptcy.
15. Sudden appearance of loans or loan repayments to friends or relatives with little or no documentation.
16. Sudden change of attorney for no apparent reason.

5-10.8

COLLUSIVE INVOLUNTARY BANKRUPTCY

There has been an increase in collusive involuntary bankruptcies in which creditors file an involuntary bankruptcy case at the debtor's direction or with his/her approval. The collusive bankruptcy is often part of a larger scheme, frequently involving real estate foreclosures.

In the typical collusive involuntary, the perpetrator has co-conspirators file an involuntary for him/her or his/her corporate entity. The involuntary is used by the debtor if he/she has been prohibited from filing for a period of time. A bustout or bleedout perpetrator uses the involuntary to conceal his/her involvement in the case, where he/she is involved in a number of pending corporate bankruptcies. The bankruptcy system is used to gain the benefit of the automatic stay without information having to be disclosed about the debtor during the involuntary period.