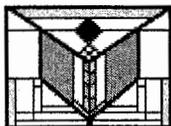


07-BK-005



Henley
Hunter/LAWB/05/USCOURTS

(Bankr Judge)

10/29/2007 03:15 PM

To James Ishida/DCA/AO/USCOURTS@USCOURTS

cc

Subject Comment to Proposed Revision of Form 8

Thanks for the opportunity to comment on the proposed revision to Official Form 8-the Chapter 7 Individual Debtor's Statement of Intention

This form simply attempts to do too much. First, it allows the debtor to elect an "other" treatment in the fourth column. There is no such option in Section 521.

The exemption issue clouds the purpose of the form. Debtors will seek to claim exemptions on property that is the subject of a purchase money security interest or that is otherwise unavoidable by the debtors. There is a purpose in claiming exemptions on Schedule C vis-a-vis the trustee, as opposed to creditors where the loan documents may waive the exemption or the exemption is not allowable under the law (as in the case of a purchase money security interest).

The stated goal in the comments of conforming the form to section 362(h) is laudable but the time periods in which the debtor must comply with section 521(a)(2) or the property is no longer protected by the stay (absent an objection by the trustee) must lapse before the latter is effective. Since the statement of intention is due within the time required by Section 521(a)(2) and FRBP 1007(b)(2) and the debtor has 30 days from the filing of the first date set for the meeting of creditors (unless extended) to perform his intention, compliance or non-compliance with these sections is not foreseeable at the time of filing. Moreover, there is a question as to how the non-compliance can be demonstrated as a matter of record. The better practice would appear to be to obtain a comfort order after the period has elapsed.