



Proposed Change to Form 101 Line 11 - Make Disclosure of Judgment for Possession of Debtor's Residence Apply Even if the Debtor Does Not Wish to Stay in the Residence

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1. Line 11 of Official Form 101 reads:

Do you rent your residence?

- No. Go to line 12.
- Yes. Has your landlord obtained an eviction judgment against you and do you want to stay in your residence?
 - No. Go to line 12.
 - Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it with this bankruptcy petition.

The result is that a debtor, who has suffered a prepetition eviction judgment regarding the debtor's residence, fills out Form 101A only if the debtor wants to stay in the residence. **This is contrary to the statute, which requires a disclosure of a judgment for possession even if the debtor does not wish to stay in the residence.** And it is inconsistent with Form 101A itself, which makes no exception for a debtor who does not wish to stay in the residence.

2. Under 11 U.S.C. § 362(1)(5)(A):

Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that prepetition judgment on the petition and on any certification filed under this subsection.

[Emphasis added.] In turn, § 362(1)(4) specifies the consequences of a debtor's having made such a disclosure on the petition. If the debtor has failed to file a certification under § 362(1)(1) (regarding having a right to cure and regarding depositing rent that would come due in the 30-day period after the filing of the petition), which will be the case if the debtor does not want to stay in the residence, § 362(1)(4)(A) provides that the § 362(b)(22) exception to the automatic stay "shall apply immediately" and § 362(1)(4)(B) provides:

the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket

indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b) (22).

That statutory mandate is frustrated if the debtor has not filled out Form 101A because he does not wish to stay in the residence for which the landlord has obtained a judgment. It deprives the landlord of a clerk's certification under § 362(1)(4)(B) that the stay has expired under § 362(b)(22), which the landlord can file in the state court to show that no stay is in place. And it generates extra work for bankruptcy courts (because landlords end up filing motions to declare that the exception of § 362(b)(22) to the automatic stay does not apply).

3. I propose that Line 11 of Official Form 101 read:

Do you rent your residence?

- No. Go to line 12.
- Yes. Has your landlord obtained an eviction judgment against you?
 - No. Go to line 12.
 - Yes. Fill out *Initial Statement About an Eviction Judgment Against You* (Form 101A) and file it **as part of this bankruptcy petition.**

[Emphasis added.] By making Form 101A "part of this bankruptcy petition," the Form 101A satisfies the requirement of § 362(1)(5)(A) that the debtor "shall provide the name and address of the lessor that obtained that prepetition judgment **on the petition**" (emphasis added).

4. I note that Form 101A already calls for the debtor to supply the information required by § 362(1)(5)(A) and indicates that the following *Certification About Applicable Law and Deposit of Rent* on Form 101A is to be completed "[i]f you want to stay in your rented residence after you file your case for bankruptcy," thereby accomplishing the goal of requiring the filing of such a *Certification* only if the debtor wishes to stay in the residence.

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