

Full Disclosure

Using Technology and Grade School Writing Skills to
Fulfill the Drafters' Intent in Section 1125

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If adequate disclosure is provided to all creditors and stockholders whose rights are to be affected, then they should be able to make an informed judgment of their own ... Therefore, the key to the consolidated chapter is the disclosure section.

Report of the Committee on the Judiciary, House of Representatives, To Accompany H.R. 8200, H.R. Rep. No. 95-595, 95th Cong., 1st Sess. (1977)

INTRODUCTION

Over time, the bankruptcy community has lost sight of the disclosure statement's central statutory role: giving the typical creditor adequate information to decide which way to vote. Disclosure statements today often don't disclose. In some cases, they even do the opposite. Modern technology offers useful, but currently unused, ways to address the problem. But so also does clear and concise writing focused on the statutory purpose – useful disclosure.

I. THE PROBLEM

A. Today, That Typical Creditor Is Hard Pressed To Find Answers In Disclosure Statements To Her Simple Questions:

- How much will I get paid?
- Which class am I in?
- How do I fill out the ballot?
- How do I protect my rights? Do I need a lawyer?
- Will I still have a customer?

B. Today, Disclosure Statements Have Become Less Usable.

- Disclosure statements have become forms, bloated with re-use and recycling
- Written to protect the drafter from perceived but unlikely liability
- Actual, usable information becomes harder to find
- Disclosure statement objections are often strategic: they usually waste the court's time and everybody's money
- Drafting, copying, and mailing printed disclosure statements has become an expensive burden

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