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## CHAPTER THIRTEEN INS AND OUTS

***This publication is designed as a resource for use by the public. The contents are not intended to be specific legal advice with regard to any particular matter. Users of the publication are advised to perform their own independent study of issues covered.***

I am honored that you have selected our office for the purpose of working with you to help resolve a financial crisis in your life. The concern, worry and frustration that come from not knowing what to do to resolve a particular problem can create an extremely critical and fragile time in your life, one to which I am very sensitive. Thus, I will always attempt to make myself available to respond to your questions, provide information that may be needed; give legal advice or just be a friend, if that would be of any help.

While I realize that these pages may be lengthy, I urge you to take the time to read them and let me know of any questions that may arise. I am not presenting these pages to you as a substitute for legal advice and counseling, but only as an attempt to fill the gaps, if any exist. It will become evidence that certain parts of this are more relevant to you than others; however, if you believe any part of this discussion is relevant and has not been covered when we meet to discuss your individual situation. I urge you to bring it to my attention.

First, a word about legal fees. The fee that we set is based upon the projected total amount of time that it will take us to effectively represent you through the four critical stages of your Chapter 13 bankruptcy.

The first stage is referred to as the information gathering and documentation stage. The second stage involves our reviewing of claims, amending of your plan and joint attendance at the meeting of creditors or what is usually nothing more than the meeting with your Court selected Trustee. The third stage is the plan confirmation stage, which signals the Court's approval of your bankruptcy proceeding. The Bankruptcy Judge will enter your order of confirmation upon receiving sufficient documentation that you have complied with the terms of the Bankruptcy Code. The fourth stage is the payment stage wherein you simply pay according to the terms of your plan.

The legal fee that I quote you is a complete fee covering all the applicable stages of a Chapter 13. It also includes any necessary phone conversations and office consultation after you have made a decision to file for relief under Chapter 13. I am happy to respond to any inquiries from creditors or third parties' contacts; this also is included in your flat fee.

I urge you to read your Fee Agreement. It should be noted that, although extremely rare, it may be necessary in certain bankruptcies to perform additional services for you, such as interacting with the Trustee in the event the Trustee may determine that your exemptions exceed the maximum amount provided for by law, responding on your behalf if a creditor moves to modify the

stay, regaining possession of property which has been pledged to secure that payment of a debt, you need Court permission to sell assets or incur a debt, responding if someone objects to confirmation of the plan, or any other services which do not involve preparation and filing of the necessary documents and attendance at the meeting of creditors or plan confirmation hearing. If such events occur, we will and can discuss the flat or hourly fee if applicable. These rates are typically fixed and we have a fee schedule you may review.

Any time there is a question as to what a fee covers or does not cover, I urge you to bring that question to my attention so that we may discuss it personally. Remember that we are a team, partners working together in order to achieve a meaningful result, and that is a fresh financial start for you. This can never be achieved if one partner is not aware of the concerns of another. I will assume at all times that you understand what services are covered by the legal fees which you have agreed to and paid, unless you instruct me to the contrary.

The remainder of this paper is divided into subject headings based upon questions that are frequently asked and my own past observations.

### **IF I ELECT TO FILE UNDER CHAPTER 13 WHAT IS MY ROLE AND WHAT IS YOURS?**

I view your role as that of someone earnestly and honestly seeking relief as a Debtor under Chapter 13; thus, you have two very distinct responsibilities to yourself, your family and me as your attorney:

1. Educate yourself.

You simply cannot approach Chapter 13 without having a basic knowledge as to how it works. This can only occur if you take the time to read this booklet, ask questions and be willing to tell me frankly when you do not understand. My fee is based upon completing the job, not the amount of time involved. The reason for this is to urge you to take the time to provide yourself with basic knowledge about the process.

As you will see, the concepts are amazingly simply and easy to understand if you take the time. Unless you inform me to the contrary, I will assume that you have the necessary knowledge to truly benefit from Chapter 13.

Please avoid “curbstone” advice. This is the type of advice a person receives from well-intended friends, relatives or just bystanders who have a story to tell about that happened to them or what happened to their second cousin. While there is not question that these people mean well, my experience has repeatedly shown that such advice is wrong or slanted because of some prejudice. If you feel inclined to act upon any such advice, please discuss it first with me to determine if it fits your particular situation.

2. Provide me with complete, accurate and honest information.

As we begin it is absolutely necessary for you to provide me irrefutable information. In addition to your moral obligation, you must provide accurate information for the following reasons:

- All documents that I prepare for you for filing under Chapter 13 will be signed by you under oath (you will swear to their accuracy).
- Failure to provide accurate information may result in your plan not being confirmed. It should be noted, however, that unintentional, honest mistakes can usually be corrected.

- Intentional misstatements in bankruptcy documents or false testimony may be a violation of Federal criminal laws that could result in a Federal indictment, prosecution, conviction and imprisonment.

I will at all times assume that all bankruptcy information you provide me is totally accurate unless you advise me that a mistake has been made. Otherwise, I must decline to represent you.

My job is to educate you and to perform the mechanical functions necessary to accomplish your objective; your discharge and fresh financial start. I agree to do so as quickly as possible in order to protect you from loss of assets, harassment or anything that represents an impediment to you in reaching your goal.

### **WHY IS BANKRUPTCY NECESSARY FOR ME?**

Bankruptcy under Chapter 13 is the beginning of a new time for you. It is a fresh financial start and a process for financial restructuring of your debts. It is however, to be used only when no other remedies are available to resolve an economic problem. I would never recommend filing a Chapter 13 when there is sufficient disposable income for a plan to be structured to pay your creditors without the necessity of such drastic action.

While the action is drastic, it should never be considered an event so traumatic that it will leave a permanent scar or a stigma of any kind. There is nothing negative, in my opinion, about Chapter 13. To the contrary, it represents a positive statement by you of your concern about your present condition and your willingness to allow a new financial day to be born so that, free from the monumental load which comes with financial problems, you can again handle your affairs with confidence.

I only urge you to make a positive statement about your life and make a decision to resolve your financial problem, as opposed to doing what our friend the ostrich does quite well, and that is to stick his head in the sand when the enemy surrounds him and pretend the problem does not exist.

To determine if Chapter 13 bankruptcy is necessary, you must review your budget and first determine the amount of your disposable income. Disposable income is computed very simply. You must add up the net take home pay, the net dollars coming into the family from all sources, such as wages of the husband, wife, child support received, alimony received, interest on savings and the like. Then, after very careful budgeting the monthly outgo of the family, label that outgo "cost of living."

Cost of living should include rent or mortgage payment, car payment, food expense, utility expense, automobile maintenance and upkeep, personal living costs, such as clothing, laundry and the like, taxes, if the same are not deducted from your wages, insurance premiums, a modest amount for entertainment and pleasures (in a tight budget situation, this should never exceed 3% of your net monthly take home pay) and any other expenses which are peculiar to your family and occur on a monthly or regular basis.

If the expenses occur quarterly, biyearly, or yearly, you should attempt to annualize those expenses so that a true monthly cost of living can be determined. After that total is arrived at, simply subtract that figure from the monthly take home pay. What remains is the disposable income.

If you find it difficult to determine your cost of living, a very rough rule of thumb can be used. For a middle class living expense I would urge you to factor \$1,600.00 per month for the first person in the family and \$700.00 per month for each additional person. Thus, for a family of four, we can say that the cost of living each month is approximately \$3,700.00. If the number of people in the

family exceeds four, for each additional person in the family, you should add \$500.00 instead of \$700.00 to this projected formula. This is simply an easy way of coming up with a reasonably accurate cost of living figure. Notice however that the median income for a family of four in Houston, Texas is \$4,689.84 a number higher than our estimation so don't be concerned if your actual number is different as there normally is a wide variation between families so just beware that nothing, is a good substitute for actual calculation and computations.

If your remaining disposable income does not allow you to protect the repayment of all unsecured debts, those are debts which do not involve pledges of properties to secure the payment of them (for example, homes, automobiles, and the like), within a period of two, and not to exceed three years at the present income level, then, relief under Chapter 13 should be contemplated as a possibility.

Never, however, accept projected formulas as a way of conclusively determining that your financial circumstances justify Chapter 13. You must first not only look at these analogies but also secure competent and detailed counseling, which I would personally be honored to provide.

### **WHAT IS THE BASIC CONCEPT OF CHAPTER 13**

The Bankruptcy Code calls Chapter 13 an adjustment of debt of an individual with regular income. This means that you will keep enough of your wages to pay all reasonable living expenses. What remains is sent to a court-appointed Trustee who distributes it to your creditors in small installments until the debts are paid. The Judge will approve a repayment plan that your creditors must accept. A Chapter 13 plan typically lasts from 3-5 years.

### **HOW MUCH WILL IT COST TO FILE A CHAPTER 13 BANKRUPTCY CASE**

Attorney's fees are monitored by the Court. The fee depends on customary charges in your geographical area and on the complexity of your case. You do not need to pay the lawyer's fee completely in advance. It is deducted in installments from money you pay to the trustee.

There is a filing fee to be paid to the Court Clerk when a case is filed. During the Chapter 13 plan, the trustee receives a commission for overseeing your case and paying your creditors monthly over 3-5 years. The commission usually works out to be approximately 6 to 10% of your total plan payments. The cost may seem high to you at a time when you are experiencing the most financial difficulty. Remember that they are necessary because of the considerable amount of time it takes to construct a Chapter 13 plan and manage it.

Recognize also that a credit card company adds anywhere from 12%-21% annual interest as a finance charge on existing balances. Interest on credit cards and other unsecured debt stops when your Chapter 13 case is filed. In the end, a bankruptcy case usually costs you less in real money than you would pay to creditors without Chapter 13 protection.

### **WILL I LOSE ANY OF MY PROPERTY?**

The bankruptcy laws are not intended to take away from you the things necessary to continue your normal lifestyle. Everyone needs housing, food, clothing, transportation and enough money for the miscellaneous expenses that arise from time to time.

Practically speaking, it is rare that a Chapter 13 debtor loses any property or possessions owned on the date of filing. The Chapter 13 trustee is not in the business of taking a debtor's assets to satisfy creditor claims. You did that when you promised to pay through the Chapter 13 plan.

The assets that are protected in a bankruptcy are called "exempt" or "homestead" assets. Only people are entitled to a homestead exemption. Corporations receive no exemptions. Individuals can select exemptions from one of two lists: state exemptions or federal exemptions.

Since October 17, 2005 your choice of exemptions is governed by and perhaps limited by how long you have lived in your state of domicile and how long you have owned your home (for real estate only). If you have been a domiciliary of the State of Texas for at least the last 30 months you may claim a Texas or a Federal Exemption, if you have lived in Texas less than this time your choice of exemptions is complex and is determined by the State(s) of your domicile during the 24<sup>th</sup> – 30<sup>th</sup> month period prior to your filing and that State's applicable State Law. In simple terms your exemption choice is provided by State law of the State that you have been domiciled in for the greater portion of the 180 days (six months) between the 24<sup>th</sup> to 30<sup>th</sup> month prior to your Chapter 7 filing. So again by example if you have lived in Texas for two years but in the six months prior to that two years you had been a resident of California then your exemption choices would be governed by California law. This may include your choice of that State's Exemption or a Federal Exemption. It could also provide for no choice that is just that State's Exemption or just a Federal Exemption but you would always be allowed at least some exemption choice. Please remember that domicile and residence are not the same. You may be in the armed forces and/or travel for work and be a resident of Iraq but your domicile will still be the State to which you will return.

In summary form, the Texas state exemption involve the ability of the Debtor to own and maintain a home, regardless of value (but only if you have owned the property for 1215 days or rolled over equity from a prior home and your combined ownership totals 1215 days), that is located on ten acres or less and land in a city, town, or village, or urban area (an area which is not necessarily a part of the city but which receives city services and effectively operates as if it were in a city) or if in a rural area (generally in an area where agriculture, mining, timber operations, farming, ranching, etc. are carried out), the Debtor is entitled to a homestead exemption of 100 acres if not married and 200 acres if married. In addition an exemption is allowed for burial lots for you and your family. You will be limited to \$125,000.00 per debtor, \$250,000.00 in a case with a husband and wife if you have owned the property for less than 1215 days but this is your equity interest that is the difference between value and what is owed and not the value of the property. So by example a property worth \$400,000.00 that has a \$350,000.00 mortgage has equity of \$50,000.00.

In addition to the real property exemption, a Debtor who is single is entitled to a personal property exemption for things used by the Debtor and or members of the Debtor's family as long as the aggregate fair market value at disposal (what the items could be sold for) is no more than \$30,000.00. If the Debtor is a married person, the limit is \$60,000.00.

These assets include home furnishings, provisions for consumption, farming or ranching vehicles and implements, tools, equipment, books, apparatus used in a profession or trade, wearing apparel, jewelry not to exceed 25% of the allowed exemption, two firearms, athletic and sporting equipment, a motor vehicle for each person who holds a license, two horses, 12 head of cattle, 60 head of other livestock, 120 fowl, household pets.

In addition retirement plans including most every type of plan which includes but are not limited to 401k, IRA, Roth IRA, 403b are also exempt in addition annuities are also exempt.

The primary benefit of the federal exemption package to a Debtor is that it allows the Debtor to partially exempt some cash or liquid assets. While the state exemptions do not permit a cash asset exemption, it is possible to exempt cash or other liquid assets under federal exemptions up to a maximum of \$9,650.00 if the individual is not married, or up to a maximum of \$19,300.00 if married and filing jointly.

The exemptions however are limited in other regards. The exemption under federal exemption is limited to the following (these exemptions can be doubled for a couple filing a joint petition):

1. The debtor's equity interest in real property used as a residence not to exceed \$18,450.00.

2. The federal exemptions consist of items kept primarily for personal or family use:

- Motor vehicles
- Real property (house and/or land)
- Household goods and furnishings
- Clothing
- Books and musical instruments
- Pets and animals producing family use products
- Crops such as garden produce
- Burial plots
- Tools or books necessary to make a living
- Cash value on life insurance policies
- Social security, unemployment, public assistance, veterans or disability benefits
- Pension, profit sharing, 401(K), IRA or other similar plan
- Alimony or child support necessary for support
- Certain personal injury settlements

### **WHAT ARE THE PRIMARY ADVANTAGES OF CHAPTER 13**

There are really three advantages of a Chapter 13 filing. All advantages are yours immediately upon filing.

First is the imposition of the automatic stay. The automatic stay is provided for under the Bankruptcy Code and stays any of your creditors from collecting or attempting to collect any debt that might be otherwise owed to them. This stay is perpetual if you are discharged; however, upon earlier order of the Court or upon validation of a lien on certain property that you hold (such as an automobile, computer, home, or the like) a creditor may exercise that lien and recover that property if payments are not properly made. Please note however that the automatic stay is limited if you file more than one case in a year. The automatic stay exists for only 30 days in a second case, unless extended by the Court and there is no automatic stay if you file a third or more cases in a year.

Since October 17, 2005 there are new exceptions to the automatic stay. These include divorces, child support matters, landlords who have obtained a judgment for possession. In addition the automatic stay does not stay criminal prosecution at any stage. Thus, if someone is charged with a crime because of some act occurring before or after filing a bankruptcy Code, generally the filing of a petition under any of the chapters of the Bankruptcy Code simply does not stop or stay such prosecution. The most frequent type of prosecution involves hot checks.

Second is the advantage of a fresh financial start. Fresh financial start means that you will not be labored by oppressive debt and obligation but may take that deep breath of fresh air and begin your credit or economic life all over again. I have been told by innumerable former clients that this is a type of relief that is hard to describe. One person said, "It is like being born all over again."

Third is the ability to "restructure" debts that is to change payment terms on debts. This includes the ability to restructure house, car and other secured debt payments with interest; priority tax claims without interest and to discharge (forgive) secured debts in full or in part depending on means testing.

### **WHAT ARE THE DISADVANTAGES OF A CHAPTER 13**

There are a number of disadvantages, some of which we may discuss later in this booklet in more depth, but the following are the six major disadvantages:

1. Impact on credit

We are a nation that thrives on credit. We know more how to use a credit card that to pay for goods and services with cash. This “credit happiness” has been ingrained in us, usually not by our parents, but by the proliferation of media hype, by fellow workers, and by numerous requests from banks, savings and loans and similar institutions to enjoy the many benefits that come from using one of their cards.

When credit grantors check credit status, they consider four factors: history, disposable income, evidence of financial solvency (dollars in a bank account) and stability. Let’s consider these factors:

a. History

This involves what you have done in the past with your life from a credit perspective, as well as such things as number of jobs held and the like. Your history will probably be bad because of what has occurred, including filing bankruptcy. It is considered by many credit grantors that a notation on your credit record that bankruptcy has been filed is a negative statement.

From what we have been told by the credit community, the history element usually represents only about 25% of the credit equation, or decision to grant you new credit.

b. Disposable income

Disposable income is the amount of income available for your family over and above the necessary cost of living as well as the amount of money that you have on deposit in financial institutions, which is referred to as evidence of financial solvency.

Usually credit problems after bankruptcy evolve because of low or non-existing disposable income or no evidence of financial solvency. I would suggest that you use the rule of thumb for cost of living mentioned earlier (net take-home pay minus cost of living equals disposable income), as well as accept a mandatory commitment to get at least \$3,000 on deposit in any financial institution is some type of committed investment before applying for credit.

c. Financial solvency

The most important factor in the entire credit equation is evidence of financial solvency, or monies that are not pledged to any credit grantor to secure the payment of debt. While past history may be 25% of the decision to give you credit, disposable income and evidence of financial solvency are the remaining 75%.

d. Stability

Stability or lack thereof, is a negative factor only and applies only in cases where a person may have moved repeatedly and, thus, might have received the designation of a person who is not stable. This designation might also be achieved if a person has frequently changed jobs and had a job for more than a month or so.

If stability is a negative factor, there may well be a reasonable explanation that could be placed in a credit bureau file to lessen the effect of any such report.

Credit grantors, of course, are free to consider any of the four factors (history, disposable income, evidence of financial solvency, and stability) with any weight they wish to give. Some credit grantors believe that history is 90% of the credit equation and substantially others believe it is much less.

## 2. Tax obligations and Tax Returns

Tax obligations (obligations owed to federal, state, or county taxing authorities) are generally not forgiven or discharged in bankruptcy, but income taxes may be generally discharged if for a tax assessed more than three years prior to filing if no tax lien has been filed and tax returns have been filed for at least a two year period. A Chapter 13 plan must provide for full payment of all nondischargeable tax obligations. In addition a Chapter 13 filing will require that you file all outstanding tax returns for nondischargeable taxes within 2 months of the filing of your case (so that we can determine the amount of your nondischargeable tax claims and provide for payment in the plan).

Taxes are a very complex issue, and the dischargeability of taxes can only be determined after we have had an opportunity to review thoroughly all of the factual elements concerning your individual tax situation.

Again you are required in a Chapter 13 to restructure your non-dischargeable tax obligations. This is normally done by paying the debt over the life of your plan. In addition you will file all required tax returns to be eligible for Chapter 13 relief.

## 3. Federally Guaranteed Student Loans

Generally, loans for education at the college, university, or grade school level or even special education loans are not dischargeable in a Chapter 13 bankruptcy. Student loans are typically not paid in a Chapter 13 plan but not discharged either. They are in effect in a forced deferment where there is no payment and you cannot be forced to pay but interest continues to accrue. You will owe these debts after your Chapter 13 ends.

An exception to the rule is that student loans may be discharged if the nondischargeability of the loans would be undue hardship on the Debtor. Again this issue is very complex, and the dischargeability of taxes can only be determined after a thorough factual review.

Again payments on student loans are typically deferred in a Chapter 13 but the underlying debt is not dischargeable.

## 4. Inheritances

In a Chapter 7 case, the date of filing of the petition determines what property is included in the Bankruptcy Estate. All property acquired prior to the filing is property of the estate. Property acquired after the filing is **not** property of the estate with three exceptions: insurance proceeds, proceeds from a divorce settlement and anything inherited (date of death of the testator) are part of the Bankruptcy Estate if received within 6 months of filing the Chapter 7 case.

In a Chapter 13, all property received prior to, and/or during, the bankruptcy term is property of the Bankruptcy Estate. Remember that you may be able to keep the property if it is exempt under either the Federal or State Exemptions. In a Chapter 13, these assets received may be used in determining your plan payment.

5. Debts that relate to child support, alimony, spousal support or marital property debts are not forgiven

This simply means that these types of debts are non-dischargeable and must be repaid. Child support arrears (what is past due at the time of your Chapter 13 filing) must like taxes be paid in full in a Chapter 13 plan.

6. Criminal action growing out of certain indebtedness usually not affected by filing

The automatic stay does not stay criminal prosecution at any stage. Thus, if someone is charged with a crime because of some act occurring before or after filing a bankruptcy, generally the filing of a petition under any of the chapters of the Bankruptcy Code simply does not stop or stay such prosecution. The most frequent type of prosecution in Chapter 13 involves hot checks.

### **WHAT ARE THE MAJOR STAGES IN A CHAPTER 13 AND THE TIME BETWEEN EACH?**

There are four major stages to a Chapter 13, and they are referred to as follows:

1. The Documentary Phase

This phase involves preparing and filing all the necessary statements and schedules. This phase normally takes as long as you require to obtain the required credit counseling, complete our bankruptcy questionnaire and obtain any other necessary documents. Your schedules and statements can be prepared, signed and filed within a day of the date we are retained, and your documents are complete sooner if we have an emergency such as a foreclosure or pending car repossession.

2. The Meeting of Creditors

As soon as your case is filed we begin preparing for the Meeting of Creditors. This involves verifying your claims and amending your plan and schedules if necessary. Thereafter typically about 45 days after the case is filed you meet the Court appointed Trustee, whose job is primarily to make sure that all of the provisions of the law have been complied with, and, as such, the Debtor is entitled to confirm a plan. The Trustee then makes a recommendation to the Court that your plan be confirmed or in the case where you have not taken all of the appropriate steps to confirm a plan that your plan not be confirmed and that your case be dismissed.

3. The Confirmation Phase

This is when the Court enters the Order of Confirmation. This normally occurs three to four months after the filing.

4. The Payment Stage

This is where you simply pay according to the terms of your confirmed Chapter 13 plan.

The usual time between stages one and two is five weeks and between stages two and three about nine weeks and the final stage lasts until you make your last plan payment, the entire time frame from stage one to stage four is the length of your plan typically between 36 and 60 months. In reviewing the stages, you should remember that Chapter 13 bankruptcy is totally retrospective in nature, all pegged upon the date of filing. The date of filing, by reason of the imposition of the automatic stay, effectively terminates any legal obligation to pay dischargeable debts, which, as we have said, are all debts except debts provided for by law as non-dischargeable.

## I CAN'T PULL MONEY OUT OF A HAT, SO HOW DOES CHAPTER 13 WORK?

We will assist you make a monthly budget in order that all regular bills can be paid. It is important to know what you are spending. Look at the following example budget:

### MY BUDGET

Mortgage or Rent	\$500
Home Repairs & Upkeep	25
Food	400
Utilities	125
Car Payment	235
Insurance (Life, Health, Auto)	150
Gasoline & Car Repairs	75
Child Care	200
Recreation & Entertainment	20
Medical Expenses	50
Clothing	35
Taxes	0
Installment Payments	80
Alimony, Support to Others	<u>140</u>
	<b>\$2,035</b>

Now you know how much you need to continue living in a reasonable life style.

Next, we determine your Chapter 13 plan payment and this calculation unfortunately however since the enactment of the new 2005 bankruptcy law has become complex. Payment term that is the Chapter 13 plan length or commitment period is based on a "means test" and is based from a defined term called "current monthly income" or "CMI". If CMI is below "median income" as defined by the federal government then your Chapter 13 plan will be at a minimum 36 months long however you may extend your plan if you choose to up to 60 months, if CMI is above "median income" then your Chapter 13 plan will be 60 months long. Unfortunately CMI is neither current or sometimes even actual income but a six month average ending at the month before you file of most (but not all) funds derived from all sources that you have received in the last six months. It however does not include social security or social security disability income. It also, does not also include sporadic income such as gifts from parents or loans from a retirement plan. If your CMI is below "median income" then you qualify for a plan of not less than 36 months. If you're CMI is above "median income" then your plan payment must be for 60 months.

Current "median income" is as follows:

#### **MEDIAN INCOME BY TIME PERIOD AND FAMILY SIZE FOR TEXAS (Cases filed on and after October 1, 2008)**

Family Size	Annual Income	Six Month Income	Monthly Income
1	\$37,120.00	\$18,560.00	\$3,093.33
2	\$52,878.00	\$26,439.00	\$4,406.50
3	\$54,943.00	\$27,471.50	\$4,578.58
4	\$63,945.00	\$31,972.50	\$5,328.75
5	\$70,845.00	\$35,442.50	\$5,903.75
6	\$77,745.00	\$38,872.50	\$6,478.75
7	\$84,645.00	\$42,322.50	\$7,053.75
8	\$91,545.00	\$45,772.50	\$7,628.75

9	\$98,445.00	\$49,222.40	\$8,203.75
10	\$105,345.00	\$52,672.50	\$8,778.75

If your CMI is below “median income” as listed above then you qualify to file a Chapter 13 with a plan payment of not less than 36 months. If you’re CMI is above “median income” you can still file a Chapter 13, but your plan payment must be for 60 months and in addition your plan payment must pay your unsecured creditors any positive amount shown in the means test, if after deduction of allowed expenses and an allowance for expenses (allowed by the Internal Revenue Code) you have funds remaining. Actual expenses that are allowed expenses (that is totally deductible in the means test) include but are limited to all of the following: income taxes, social security taxes, Medicare taxes, health insurance (includes health, dental, vision and HSA accounts), disability insurance, life insurance (most mandatory deductions from your pay check), payments for secured debts including a house and cars, health care (either an allowance or actual expenditures whichever are more), child care, support of elderly parents or disabled children, child support, alimony, payments for protection against family violence, involuntary deductions for employment (union dues, uniform, etc) as well as limited educational expenses for children less than 18 (up to \$137.50 per month per child), charitable giving including tithing to your church, telecommunication services including call waiting, caller id, special long distance and internet service, home energy costs in excess of the amount allowed and up to 5% of the allowed expense for food and clothing if you actually spend more than allowed. In a Chapter 13 only allowed expenses also include voluntary retirement contributions and retirement loans (includes 401k loans) amortized over the life of your plan. Allowance expenses come from tables provided by the Internal Revenue Service (available at [www.irs.gov](http://www.irs.gov)) they include allowance for food, clothing, and other items (subject to the additional 5% listed above), health care (you get the greater of the allowance or actual expenses), a housing and utilities non mortgage expense (utilities , repair, upkeep), a housing allowance (you get the greater of your allowance or actual secured house payment including taxes, insurance and HOA dues), a vehicle operation and public transportation expense (gas and repairs), a ownership expense for your car(s) (car payment or future replacement cost) and recreation.

Just however to give you some idea of its complexity, the exact steps for means testing are detailed below but again let me remind you that you do not need to understand or even grasp this difficult subject as I will personally perform this calculation on your case but for you who are gluttons for punishment you may do the calculation as follows (the official form for means testing is an invaluable tool and is available on the United States Trustee web site. Use Google, Yahoo or the like and search “United States Trustee”):

1. Calculate Current Monthly Income, called CMI pursuant to § 101(10A) of the Bankruptcy Code.
2. Compare Current Monthly Income (CMI) to Median State Income, if CMI is above Median State Income go to step 3, if not stop you are below median income and may have a 36 month plan.
3. Subtract Monthly Expenses (both allowed and allowance expenses) per the Bankruptcy Code from CMI (again this is currently monthly income) these expenses are limited by IRS national standards for allowable living expenses, allowable living expenses for transportation and IRS local standards for housing and utilities.

**Again we will do a “means test” calculation as part of your Chapter 7 case. Should you fail to qualify we will advise you of this fact at that time. You do not need to understand this calculation.**

The attorney then designs a Chapter 13 plan that informs the Court what and how delinquent obligations will be paid. The plan is filed at the same time as your bankruptcy case. You must make the first payment to the Chapter 13 trustee within 30 days of the case filing.

The Judge will approve your Chapter 13 plan. The approval is called "confirmation of plan". The trustee begins dividing your funds and mailing checks to creditors after the very first payment.

### **WHAT DOCUMENTS MUST BE FILED WHEN I FILE A CHAPTER 13?**

There are a number of documents that must be filed all of which we will prepare for you and make ready for your signature. These documents are generally referred to as disclosure documents that are designed to provide information to the Court concerning a particular case. Generally these documents are:

1. A petition requesting relief under Chapter 13
2. A list of all debts that are secured debts and the proposed disposition of these debts
3. A list of monthly expenses and income on the date of filing
4. A "means test calculation"
4. A statement as to the attorney's fees that are being paid to me and how they are paid
5. A statement of affairs, which is a questionnaire having many questions concerning your past
6. Applicable schedules  
The schedules are lists of debts what are owed as well as assets that are owned. There is also a place for the Debtor to sign the statements and schedules. They are signed under oath or verified as if an oath were orally administered.

There is no penalty for simple inadvertence to list an asset or liability. However, if there is a purposeful cover-up, or failure to disclose relevant information deliberately, prosecution could be had in the federal Courts by the United States Attorney.

7. A Chapter 13 Plan  
There may be additional papers that would have to signed depending upon the type and complexity of the case.
8. Tax transcripts
9. A Wage Order

Your Chapter 13 plan payment will be deducted from your wages unless you are self employed.

### **WHAT IS THE AUTOMATIC STAY?**

The automatic stay applies not only in a Chapter 13 bankruptcy but also in all other types of bankruptcy, and it is a stay against the commencement or continuation of all action of any type to collect a debt and obligation by a creditor. Specifically it prevents:

1. The commencement or continuation, including the issuance or employment of process if there is a lawsuit of any type to recover a claim of any nature.
2. The enforcement against the Debtor or property of the Debtor of a judgment obtained before the commencement of the case.
3. Any act to obtain possession of property of the estate, or to exercise control of the property of the estate.
5. Any setoff of any debt owed by the Debtor that arose before the filing of the case. (Generally "setoff" refers to actions by depositories or lending institutions to attempt to charge a debt against property that might be on deposit, for example, a bank account balance.)
6. The commencement or continuation of any proceeding in the United States Tax Court concerning the Debtor.

There are several points that should be remembered concerning the automatic stay. The automatic stay under Chapter 13 generally does not aid or protect a third party, or person obligated with the Chapter 13 Debtor, on an obligation except in the case of a cosigned consumer debt. Thus, if a person is obligated with the Chapter 13 Debtor on a consumer debt, that that obligation cannot be collected during the pendency of the Chapter 13.

The automatic stay relates only to debts or actions that arose on or before the commencement of the bankruptcy proceeding. Thus, if the debt was incurred subsequent to the filing of the bankruptcy, the automatic stay would offer no protection, nor would that debt be discharged.

In addition, it is important to remember that the automatic stay does not stay certain other defined actions:

1. Commencement or continuation of any criminal action. (This also can involve action to collect on a hot check.)
2. Collection of any alimony, maintenance, or support from property that is not property of the estate. Actions for divorce, child support or modification of custody or child support that do not effect property of the estate are also not stayed.
3. Enforcement of a governmental unit's police or regulatory power, including enforcement of a judgment that does not involve the payment of money, such as an injunction or cease and desist order obtained in an action or proceeding by a governmental unit.
4. The tax issuance to the Debtor by a governmental unit of a notice of a tax deficiency.
5. Action by a lessor to obtain possession of leased real property after a Court has entered judgment for possession.

There are other specific provisions relating to the continuation of the automatic stay and qualifications for the automatic stay that may apply in certain business situations; however, these points generally cover the ways in which a consumer will be affected by the automatic stay.

A consumer may see a secured creditor, such as a mortgage holder on a home, automobile or the like, file a motion to modify the stay to permit recovery of such property during the term of the

bankruptcy proceeding. It is very important for an individual filing under Chapter 13 to understand the options concerning, and if plan payments are not current, they will likely do so.

Remember that there is an automatic stay only in the first case you file in any given 12 month period. On a second case filed within that twelve months the stay only lasts for 30 days unless extended by the Court upon timely filed motion and signed Order. There is no automatic stay on any case after the second case filed within a year.

The automatic stay relates only to debts or actions that arose on or before the commencement of the bankruptcy proceeding. Thus, if the debt was incurred subsequent to the filing of the bankruptcy, the automatic stay would offer no protection, nor would that debt be discharged.

### **WHAT OPTIONS EXIST AS TO SECURED DEBT?**

First, it must be understood what secured debt is. Secured debt is a situation where a security interest has been retained by a creditor to permit that creditor to foreclose on certain described property or to recover possession if payments are not made. Secured debts include debts for cars, homes, furniture, and like debts.

As to secured debt, there are three possibilities that exist under Chapter 13. The Debtor may:

1. Agree to surrender the property and thus seek a discharge of this debt.

The surrender of, or loss, of the property should usually be contemplated within 90 to 150 days after filing the bankruptcy action and involves a giving back of the property by the debtor. A creditor may ask that the period of time to give it back be shortened, but the filing of the Chapter 13 gives to the debtor a minimum period of time in order to make arrangements to substitute some other property for that being surrendered. Even if the motion to modify stay is filed immediately after the debtor's petition, the minimum period of post petition use of the property should still be 30 to 60 days.

2. Pay the debt direct

On most secured debts you may simply make the payments as they come due and payable and retain the property. This option exists only if the debt is current and not in default.

3. To restructure the debt

The process of restructuring the entire debt of a creditor (typically on secured debt like a car, furniture, jewelry or electronics) provides a Debtor the right to pay to the creditor the debt at the date the bankruptcy action was filed with interest. The debt is paid in monthly time payments over a period not to exceed sixty months plus interest typically at two points over the prime rate as of the day of the bankruptcy filing.

You may also restructure an arrearage on a home or car over the same period of time with interest at the same rate. This typically occurs with a house or other real property or any other debt where the restructuring of the debt (as above) would lead to a higher monthly payment than the normal contractual payment amount. These are typically debts payable over a period of greater than 60 months like a home or mobile home. In addition to curing the arrearage you must also make the regular monthly contractual payments to the creditor. Beginning on October 17, 2005 these direct home payments become part of your Chapter 13 plan and are paid to the Chapter 13 Trustee.

### **WILL THE COURT REQUIRE A WAGE ORDER OR AUTOMATIC BANK DRAFT OF MY PLAN PAYMENT AND MORTGAGE PAYMENT**

The answer is unfortunately yes by local rule effective October 17, 2005 your plan payment and mortgage payment (if applicable) must either be deducted from your wages by wage order or deducted directly from your checking account by a preauthorized draft. Preauthorized drafts are required for the self employed or those not paid by an employer.

### **WILL MY NEIGHBORS FIND OUT THE DETAILS OF MY PERSONAL FINANCES?**

Neighbors do not generally bother to go to the Courthouse just to learn how much you earn or how much you owe. Be aware however your filing will be a public record and anyone can obtain a copy of your filing.

Whether or not this is the case, you should still be prepared to give a full and honest account of all your financial affairs to our office. These items must be listed on the Chapter 13 filing papers.

So that no information of importance is overlooked, we will provide an inventory of your current assets and property prior to any bankruptcy filing. Be thorough! Things to write on the list, along with estimated market values are:

- House, mobile home or land
- Bank and credit union checking and savings accounts
- Furniture and appliances (some districts require an itemization)
- Automobiles, trucks, or any titled vehicle
- Boats, motors and accessories
- Furs and jewelry
- Collections (coins, stamps, records, tapes and others of value)
- Deposits you have given to utility companies, landlords, or others
- Sports and hobby equipment
- Computers or any type of office equipment
- Firearms
- Insurance policies (along with the amount of any cash surrender values)
- Annuities, 401(K), IRA and pension or profit sharing plans
- Stock in incorporated companies or interests in partnerships or joint ventures
- Savings or any kind of government bonds or notes
- Debts owing to you by someone else
- Refunds due you, including income tax refunds
- Any future trust fund receipts
- Patents, copyrights or other intellectual property
- Licenses or franchises
- Animals
- Tools used in a trade or business

If you are a farmer or operate a business, you will also need to provide a register of the items specifically used in your occupation.

If significant items are accidentally omitted from the list, the trustee and creditors may have opportunity to object to confirmation of your Chapter 13 plan, especially if you fail to list any property on which a creditor holds a lien.

The more detailed information you are able to give our office, the better representation you will receive.

### **IS A CHAPTER 13 PLAN ALWAYS APPROVED BY THE COURT?**

The Bankruptcy Code is specific about what can and what cannot be included in a Chapter 13. We are familiar with the bankruptcy laws and work with you to devise a plan that satisfies legal requirements.

On occasion a creditor may disagree with the way a particular debt is to be paid. The creditor may file an objection to confirmation of the Chapter 13 plan. A court hearing on the objection will be scheduled. You will be asked to attend the hearing. Objections to confirmation are the exception rather than the rule.

#### **WHO SEES THAT MY CREDITORS RECEIVE REGULAR PAYMENTS?**

As soon as your Chapter 13 is filed, the Court appoints a trustee to oversee your case, collect the money and divide it in small shares each month between your creditors.

The trustee obtains a wage withhold order from the Judge and sends it to your employer or you can volunteer for a preauthorized debt from your bank account. The employer is then responsible for deducting the plan payment and other required payment from your paycheck and sending the money to the trustee. This method is used to make sure the funds reach the trustee on time. It is also a good way to avoid the temptation to spend it first. This is unfortunately required in all cases as of October 17, 2005.

#### **ARE MY CREDITORS FORCED TO ACCEPT THE CHAPTER 13 PLAN?**

Yes. Once the plan is confirmed, no creditor may make its own rules regarding your debt. The Court frowns on any attempt to handle a debt in a manner that is different from those accepted by other similar creditors. In fact, the Judge may file or penalize any creditor that operates outside the bankruptcy laws.

#### **IS EVERY DEBT PAID THROUGH THE CHAPTER 13 PLAN?**

No not always, if you are not in default you may make your house and car payments direct. If you are in default then typically all of your debts are paid in the plan until it ends. The plan lasts only 3-5 years. As most house payments have 30-year mortgages you will at the end of your plan resume making this payment. Some vehicle contracts today are set up on a 5-8 year installment. These payments can extend past your plan. Most but not all priority debts are paid in the plan those paid in the plan include taxes and child support however student loans are typically not paid in a Chapter 13 plan. Unsecured debts including credit card and similar accounts, however, are paid based on your means test meaning that unsecured creditors can receive none, some or full payment (without interest) depending on your CMI and allowable expenses.

#### **HOW SHOULD I HANDLE CREDITORS WHO CONTINUE TO HARASS ME WITH PHONE CALLS AND MAIL IMMEDIATELY AFTER I HAVE FILED FOR BANKRUPTCY AND LATER ON EVEN AFTER MY DISCHARGE HAS BECOME FINAL?**

I have always felt that the best way to resolve any of the problems of life is with a sympathetic, understanding approach to an issue. It is often better to deal with an entity that may hold an adverse or antagonistic interest directly, positively, and with a very friendly attitude. With this in mind, I would recommend the following:

##### **1. Calls from creditors**

In calls from creditors, collection agencies, or representatives of creditors concerning past due payments, if the property interests which they are calling about are to be surrendered, or the debt is unsecured (where no property interest is pledged for the payment of it), I would recommend that you simply give them your case number and date

of filing and state very clearly and succinctly, "UNDER ADVICE OF COUNSEL, I HAVE BEEN INSTRUCTED NOT TO DISCUSS THE MATTER WITH YOU FURTHER. I HAVE FILED FOR BANKRUPTCY. PLEASE CALL MY COUNSEL, JEFFREY P. NORMAN FOR FURTHER INFORMATION. HIS PHONE NUMBER IS 281-332-4800." If any persistence is noted, then the creditor should be referred to my office for further inquiry and response.

If the call concerns a secured debt, or one where the creditor holds a security interest in property which you, the Debtor intend to keep, my recommendation is that the caller be treated with dignity and, in addition to providing the information which would be provided to an unsecured creditor, that the caller be told that payment will be forthcoming and when such payment can be anticipated.

It may be necessary to deal with a secured creditor to try to work out some type of an extension of payment terms or rearrangement of debt in order to make the payments easier to handle. I urge you to discuss with your secured creditors, who hold a security interest on properties that you wish to maintain, your present economic situation and what payment arrangement would be better as opposed to the ones currently in existence.

It should, however, be underscored that if any creditor is persistent, antagonistic, rude, or makes direct or veiled threats of any kind, the conversation should be halted and the creditor referred to my office. In no event should the conversation with an unsecured creditor be given more information than the bankruptcy "name, rank and serial number."

## 2. Correspondence from creditors.

It is extremely important that creditors secure the basic background information, case number, name of case, date of filing and my name and address. When a statement, delinquent notice or the like is received, simply mark on the envelope: Delivery Refused Return to Sender - In Bankruptcy, Case No. (Insert Case Number), Filed in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, on (date), Chapter 13.

If you are not certain as to the contents of a letter or otherwise do not know what may be occurring, you should open such correspondence and simply drop the creditor a note, giving the same information as I have recommended above. Only if creditors have that information can we be sure they will not comply with the law.

## 3. Harassment by creditors

In the unlikely event that a creditor may persist in efforts to contact you and demand payment for a debt which was owed by you at the date of filing bankruptcy, you should make note all such conversations, determine the name of the representative (not just the company involved), make careful written record of the day, date and time of any such antagonistic communication and, as clearly as you can recall, state word for word what was said by both of you.

It is possible to seek judicial sanctions for the antagonistic actions of creditors in attempting to collect debt, but it can only be done if we can prove what actually occurred. Sanctions are tantamount to civil contempt penalties that can be used by judges to protect people who are in bankruptcy and have the protection of the automatic stay.

If problems exist concerning persistent phone communications, please don't hesitate to let me know. I will try to intercede in your behalf before we reach the possibility of sanctions and try to prevent you from having to suffer any additional harassment. Please

understand that it is my continuing desire to assist you, and only if I am aware of a problem can I do so.

### **WILL MY EMPLOYER DEMOTE ME OR FIRE ME BECAUSE I HAVE FILED BANKRUPTCY**

The Bankruptcy Code as amended, specifically prohibits job action against you because you have been a Debtor under to provisions of Chapter 13. If a creditor is who is your employer does take such job action against you, you have the right to file a suit to secure a temporary injunction or permanent injunction in Federal Court, plus the right to seek sanctions, penalties and damages for willful violation of the anti-discrimination provisions of the Bankruptcy Code.

Most Employers are aware of these provisions and will not take action against you. If you sense that you are being mistreated on the job or someone is acting differently to you and believe that it is due to you filing bankruptcy, you should keep careful record of what is said, who said it, what is done, who did it (with specific attention to detail) and the date and time involved in order that an appropriate action may be commenced before the Bankruptcy Judge to protect your rights.

### **MAY I KEEP MY BANK ACCOUNT IN MY PRESENT BANK AFTER I COMPLETE MY CHAPTER 13**

The Bankruptcy Code does not provide for anti-discrimination provisions or procedures to redress grievances in the event your bank would unilaterally choose that you could not transact business with them. Practically speaking, a bank or commercial institution or private enterprise concern has the right to select who they are going to do business with, which is the essence of free enterprise.

A bank can "offset", which is a legal term meaning "take from your account", the moneys owed by you prior to bankruptcy and they may very well decide that you are not a desirable customer and close your account. There is virtually no way to prevent this from occurring.

My recommendation to you is that, if your banking relationship with the bank is long and well-established and does not involve a bank which lost money to the discharge of an unsecured debt, you should be able to carry on your banking relationship as if nothing happened. If, however, a bank is an entity that has lost funds because of debts that you have not been able to pay it is very reasonable to anticipate that such a bank may not be interested in your business in the future. If this be your situation, I recommend, in order to avoid sudden closure of your account or other embarrassment, I recommend that you consider closing your bank account and opening new accounts at "neutral" banks contemporaneously with the filing of your bankruptcy.

### **IN WHAT ORDER DOES THE TRUSTEE PAY MY DEBTS?**

The Chapter 13 plan that you filed determines how your obligations will be paid. In most instances, the trustee disburses funds first to secured and priority creditors. Some plans call for simultaneous installments to be made toward your attorney's fees, mortgage delinquencies and any priority claims (usually taxes) until all have been retired.

Unsecured debts such as credit card charges are always paid last, if at all.

### **WHAT HAPPENS TO MY UNSECURED CREDITORS?**

Congress expected that some families could never fully pay all of their debts within the 3-5 year period allowed for Chapter 13 plans. Since we pay priority and secured creditors first unsecured creditors are paid last or not at all. In order to confirm a plan your case must meet two basic tests these are the liquidation test also called the best interest test and means test described above.

The liquidation test requires you to pay your unsecured creditors at least what they would have received in a Chapter 7. If all of your assets are exempt you need not pay your unsecured creditors anything, if however you have non-exempt assets your unsecured creditors must over time receive at least that value. So for example if you have a non-exempt boat with a value of \$6,000.00, your Chapter 13 plan if a sixty month plan must include \$100.00 per month for your unsecured creditors so they receive \$100.00 for 60 months or \$6,000.00. Typically the liquidation test is not a problem for a non-business Chapter 13 filing. Non-exempt assets, if any, in consumer cases are typically not a problem. Business cases typically always have non-exempt assets which directly effect the calculated plan payment.

The second test called the means test requires that you pay your net disposable income to the Chapter 13 Trustee for at least 36 months or for up to sixty months if your income is above the "median level". This test is typically not a problem for poor or middle class wage earners and it typically a problem for high wage or business earners in Chapter 13. The test requires that the plan payment be calculated based on a formula beginning with current monthly income or CMI. From CMI we subtract Monthly Expenses per the Bankruptcy Code and these expenses are limited by IRS national standards for allowable living expenses, allowable living expenses for transportation and IRS local standards for housing and utilities and these currently total \$3,588.00 monthly for a family of four at median state income with two cars but differ by family size, income and number of cars and may be supplemented or adjusted due to payments on secured debts like a house or car. So the actual numbers in your case may be more or less depending on these secured payments so by way of example if your house payment is greater than the allowed housing allowance you may use your actual house payment and are not limited to the IRS housing allowance and your number would be higher. Again exact numbers for allowable expenses are available at our web site under the Links section. What is left after these expenses are deducted from CMI is your Chapter 13 plan payment.

Problems with the disposable income test typically fall into two areas:

First living expenses **not** considered reasonable and customary and hence disallowed by the Chapter 13 Trustee. These can (but not always) include luxury automobiles, private school and college tuition, excessive food and clothing allowances. The following are **usually allowed but may be limited by the IRS local standards** house payments (never limited), actual utilities (never limited), car payments and upkeep for your home, reasonable food, reasonable clothing, tithing up to 15% (never limited), non-luxury car payments, insurance, taxes, reasonable recreation and children's activities. The following are allowable on a case by case basis; college tuition and supports for dependants not at home such as elderly parents.

The second problem is retirement plan deductions. While the issues are complex here are some general guidelines. First mandatory retirement is always allowed. Second you may make a voluntary contribution to a retirement plan (typically a 401k) of 4% (an argument can be made for a greater contribution if you are approaching retirement age). Retirement loans can be repaid but if you are paying retirement loans you cannot make a voluntary retirement deduction until after your loan has been paid. So in effect the Trustee will review your retirement contributions in order to determine if they are reasonable and customary.

In summary if you are making a real effort to pay your creditors as much as possible during the Chapter 13 you will not face any difficulty in your Chapter 13.

Most judges like to see creditors paid as much as possible. The judge often seeks advice from the Trustee to determine if your income and expenses reasonably permit the filing of a plan.

### **WILL I HAVE TO TESTIFY IN COURT?**

Every Chapter 13 debtor must attend and testify at a 341 meeting of creditors. It is normally scheduled about six weeks after the case filing. The meeting is held at the Federal Courthouse at 515 Rusk Avenue, Houston, Texas 77002 or the Federal Courthouse located in the Post Office on 25<sup>th</sup> Street in Galveston, Texas.

### **THE 341 MEETING OF CREDITORS**

Creditors in your case receive notice of the hearing and may attend it if they desire. In most instances, creditors have already received a summary of your Chapter 13 plan and know in what order debts will be paid. Most do not come to the 341 meeting. The purpose of the meeting is to discover and learn the location and condition of the property listed in your bankruptcy schedules.

The 341 meeting is presided over by a Chapter 13 Trustee. There is no judge at the meeting. You will be asked general questions by the Trustee. The testimony is recorded on tape. You may be asked if you have other assets not listed on your bankruptcy schedules or about other matters relating to your Chapter 13 plan. Sometimes the Trustee gives you instructions concerning the plan.

Any creditors attending the meeting are given an opportunity to ask questions. Usually they ask about collateral that you pledged in order to obtain a loan. For example, if your car is collateral for a bank loan, the creditor may want to know if you have insurance on your vehicle. You might be requested to turn over a copy of the insurance policy as proof.

### **CONFIRMATION HEARING**

As a Chapter 13 debtor, you may also be required to attend the hearing on confirmation of your plan. This hearing is held before the bankruptcy judge. Any objections to your plan may be heard at this time. The Trustee is usually asked to give an opinion of whether confirmation of the Chapter 13 plan is the best solution for both you and the creditors. A debtor is not normally expected to testify at the hearing although the possibility exists if specific answers are needed. Our office can advise you about any possible questions.

### **WHO ELSE ATTENDS THE 341 MEETING OF CREDITORS OR CONFIRMATION HEARING IN MY CASE?**

You may see a great many people in the courtroom at the time scheduled for the 341 meeting in your case. Besides the lawyers, most other spectators are debtors just like you.

It is common practice to set 341 meetings in a number of cases for the same time and date. Because the meetings are short in length, it is most efficient to conduct several of them on the same day.

You should not be nervous just because the courtroom is full. Other debtors are thinking about their own individual cases and are not concerned about those of anyone else.

The confirmation hearing is usually attended by only the judge and his clerks and by attorneys present for hearings on their cases scheduled at the same time. Unless there is a specific reason, creditors do not normally attend.

### **WHAT ARE MY SPECIFIC DUTIES AS A CHAPTER 13 DEBTOR?**

Bankruptcy law requires that you make your first Chapter 13 plan payment within 30 days of the filing of the plan. If the payment is made before the confirmation hearing, the trustee holds the funds until a confirmation order is signed by the judge and placed on the court records. The trustee then begins distributing the money to your lawyer and to creditors.

From the date your case is filed, your main responsibility is to make each and every Chapter 13 plan payment on time.

1. Keep the trustee informed at all times of your current address and telephone number. In the event questions arise or paperwork is sent by the trustee it is important to reach you. Some trustees also wish to have the name, address and number of a nearest relative if you cannot be contacted.
2. Always notify the trustee if you change jobs. If a wage withhold order has been signed by the Judge a copy must be sent to your new employer. Remember that you are responsible for all plan payments whether or not your new boss has received the withhold order. So the sooner the trustee learns of a different job, the better.
3. If you make the plan payments directly to the trustee, print your case number and social security number on your checks. This allows the trustee to make sure you are given proper credit for the payments.
4. The Trustee cannot approve any change to your Chapter 13 plan without court approval and should not be asked to do so. If you encounter problems making plan payments, your bankruptcy attorney must file papers with the court asking that a change be authorized. The bankruptcy law requires seeking approval if you need to obtain new credit for significant purchases. You must also ask court permission to sell "non-exempt" property during the lift of the Chapter 13 plan.
5. Although the trustee can answer many of your questions, please do not ask for legal advice. You will be referred to our office on these matters.

#### **WHAT WILL YOU AS THE ATTORNEY DO AND WHAT WILL BE EXPECTED OF ME?**

Although we have touched on this previously, it is my job as your attorney to provide (1) knowledge and (2) procedure. On the other hand, you must provide the facts in written format to me. I will rely totally on written lists and facts you give me; thus, you should exercise the highest degree of care to make sure the facts are accurate. I will assume the total accuracy of all information you give me unless you advise me to the contrary.

I must continually reiterate that unpleasant surprises can only develop in a bankruptcy proceeding because of inadequate information. You must make sure that I have all relevant facts.

#### **HOW LONG WILL IT TAKE TO COMPLETE MY CHAPTER 13?**

The entire Chapter 13 process usually takes from 36 or 60 months; however, the time should not be of concern to you, in that your fresh financial start begins the day after your Chapter 13 is filed.

#### **I HAVE FILED BANKRUPTCY AND HAVE RECEIVED MY DISCHARGE BUT MY CREDIT RECORD AT THE CREDIT BUREAU REFLECTS THAT I OWE A NUMBER OF DEBTS THAT HAVE BEEN DISCHARGED. WHAT CAN I DO ABOUT IT? SHOULD I EMPLOY ONE OF THE MANY SERVICES WHO OFFER TO STRAIGHTEN UP MY CREDIT?**

Credit reports in a Credit Bureau are primarily made up of two elements: a listing of debts that have been paid and past paying procedure. Thus, if you have been chronically late, there is a notation as to paying procedure. If you have not paid, resulting in foreclosure, that is a procedural notation. Bankruptcy will allow you to rid yourself of debts which cannot be paid and which negatively impact your credit record. This cleanup is accomplished through the discharge in bankruptcy, in that you no longer owe your previous debts.

Most of the individuals and companies who promise to clean up credit do so by writing letters on your behalf to the credit agencies and providing them with information that the debts have been discharged. Other than a periodic phone call, this is basically all such firms or agencies actually do. You can accomplish the same thing, and probably even better, by taking about half a day after you have received your order of discharge and going to the credit agencies, showing the negative information and requesting that they clean up your credit.

It is a violation of the Fair Credit Reporting Act for an agency to maintain on your credit record information that represents debts that are not owed. Debts that have been discharged in bankruptcy are not owed, therefore, would not be listed.

### **WHAT HAPPENS IF I LOSE A JOB OR HAVE MORE FINANCIAL PROBLEMS DURING THE CHAPTER 13?**

#### **1. Modifying the Chapter 13 Plan**

In cases of severe financial distress, a Chapter 13 plan may be modified to decrease the amount of your plan payments. It may even be necessary to turn your full payout plan into a composition plan. You will need to discuss the problem with your lawyer. If together you can find no other solution, it may be advisable to file a motion asking the Court to allow the plan to be modified.

Such a request to decrease your Chapter 13 plan payments is heard by the Judge only after creditors are notified of the changes you want made. They have an opportunity to object to the modification. When this occurs, the Judge makes a decision based on your present financial circumstances and your ability to pay.

#### **2. Conversion to Chapter 7 Case**

In very extreme cases, your attorney may advise you to convert your Chapter 13 case to a case number under Chapter 7 of the Bankruptcy Code. Chapter 7 is a liquidation bankruptcy case. In a Chapter 7 bankruptcy, unsecured debt is discharged and does not have to be paid by the debtor.

### **WHAT ARE MY RIGHTS IF SOMEONE HARASSES ME AFTER I FILE BANKRUPTCY ABOUT A DEBT THAT I OWED?**

While we have discussed this issue before, I think it is important to state the information again. Once the automatic stay has been imposed (effective automatically with the filing of the bankruptcy petition), the creditor is enjoined and restrained from contacting you or making any efforts to collect the indebtedness.

Let's assume that you are dealing with an overzealous creditor and have been contacted after bankruptcy was filed. My recommendation is that, in very clear, slow terms, regardless of what the party on the other end of the line may be saying, the statement be made three times that you are in bankruptcy. Then the case number should be stated, as well as the date of filing. After this is stated, the question can be asked as to whether any of this need be repeated. Assuming repetition is not necessary, the conversation should terminate at that time.

If you are, however, dealing with a secured debt, such as the amount owed to XYZ department store on the new refrigerator, when the question is asked as to what your intentions are, assuming those intentions are clear, my recommendation is to state, "I am returning the refrigerator," or "I am keeping the refrigerator," or "I will pay for the refrigerator in my Chapter 13 plan."

I would strongly recommend that no clarification be given subsequent to that and that the caller be referred to me for further questions. Simply give them my name and phone number and decline further comment.  
by the Bankruptcy Court.

In the very unlikely event that a creditor seeks to harass you because you have filed bankruptcy by either making derogatory statements or saying things that are offensive to you, my recommendation is that you terminate the conversation as quickly as possible. Then, immediately make a note as to what was said, precise quotes if remembered, the date the conversation occurred, the time of day and any identification given to you by the person making the statements. Only with that type of information can be hope to be able to consider same kind of sanction by the Bankruptcy Court.

The sanctions that I have spoken of are basically penalties in the form of a fine or civil penalties handed out for violation of the Bankruptcy Law. In addition, a creditor who intentionally violates the law can be punished through contempt of Court, which also could involve imprisonment

### **CONCLUSION**

Again I am honored that you have selected my office for representation in your Chapter 13 bankruptcy. I encourage you to call either me or my legal assistant at 281/332-4800 should you have any questions. For your information our regular office hours are 8:30 a.m. to 5:30 p.m. Monday through Thursday and 8:30 a.m. to 4:00 p.m. Friday.

### **CONTACT INFORMATION**

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