

**GENERAL INFORMATION ABOUT THE BANKRUPTCY SYSTEM INCLUDING THE RIGHTS AND DUTIES OF
CHAPTER 13 DEBTORS**

(and other information necessary to assist a debtor in completion of the chapter 13 plan)

WHAT IS BANKRUPTCY?

Bankruptcy is a process under federal law that allows individuals, families, fishing families, family farmers, small businesses and corporations to receive protection from creditors and discharge or release from most debts. The law allows many debts to be discharged, or canceled, if a bankruptcy case is filed and all procedures and rules are followed. It is important to provide past tax returns and current pay stubs to verify the information. An education element must be completed prior to filing. After filing, a debtor must complete a financial management course, such as this one, before discharge. This handout includes bankruptcy information in general and in particular the basics of the Chapter 13 process.

FEDERAL COURT SYSTEM

The federal law which provides this protection from creditors is found in the United States Bankruptcy Code which sets out the relationships between debtors and their creditors, the trustee and the court. The bankruptcy court is a part of the federal district court.

TYPES OF BANKRUPTCY

There are several types of bankruptcies that are named by the chapter in which each type appears in the Bankruptcy Code.

Chapter 7 is often called regular or straight bankruptcy. In Chapter 7, all nonexempt property with value over valid, perfected security interests is sold by a Chapter 7 Trustee and the proceeds are used to pay the creditors.

Chapter 11 is sometimes called business reorganization. Chapter 11 is generally used by businesses to reorganize their debts, assets, and operations in order to remain in business and pay creditors out of future profits.

Chapter 12 is a reorganization for family farmers and fishing families, which is similar to Chapter 13.

Chapter 13 is for any individual with a regular income. In Chapter 13, a plan is filed with the court which outlines how debts to creditors will be repaid from money a debtor receives in the next three to five years.

The information in this handout will focus on Chapter 13; however, the financial information provided is applicable to any Chapter.

THE PEOPLE INVOLVED IN A BANKRUPTCY

Debtor

Each individual who files a bankruptcy case is referred to as a “debtor.” As part of the process, the debtor must file with the court accurate schedules listing all assets, all debts, all income and all expenses.

Attorney for the Debtor

The attorney advises the debtor on all matters concerning the bankruptcy, files paperwork, appears at hearings, and negotiates on behalf of the debtor with creditors and the trustee.

It is difficult to prepare a Chapter 13 plan and almost impossible to complete the case without the help of a skilled consumer bankruptcy attorney. People who file their cases *pro se* are acting as their own attorney. Debtors who are concerned about attorney fees should contact their local bar association. Many attorneys ask for only a small portion of their fee to be paid prior to filing and agree to be paid the balance of their fees through the plan.

IF A DEBTOR PAYS ANYONE OTHER THAN AN ATTORNEY TO HELP FILE A BANKRUPTCY CASE, IT SHOULD BE REPORTED TO THE TRUSTEE.

Creditors are the people or companies owed a debt. There are three types or classifications of creditors:

Secured -A creditor is secured if property has been pledged as collateral, such as a house or car, and the creditor has perfected a lien against the property. A creditor may also be a secured creditor by operation of law, such as a real estate tax creditor.

Unsecured Priority -An unsecured priority creditor does not have a lien against property but must be paid in full. Examples of this type of creditor are certain income tax debts, a debtor’s attorney’s fee, and alimony and child support.

General Unsecured -Unsecured creditors do not have a lien against property and may not be required to be paid in full in a bankruptcy case. Examples include signature loans, medical expenses and most credit card debt.

The Chapter 13 Trustee and the staff of the trustee’s office review all paperwork filed in each case to make sure it meets the requirements of the law. The trustee or a representative of the trustee conducts the § 341 meeting of creditors, and makes a recommendation to the court whether or not the plan should be confirmed (approved by the bankruptcy court). The trustee receives payments from the debtor or the debtor’s employer and pays creditors according to the

plan. The trustee can request that a case be dismissed if payments are not made on time. Neither the trustee nor any of the trustee's staff may give a debtor legal advice.

The **Court (Bankruptcy Judge)** makes the final decision regarding any dispute between debtors, creditors and the trustee. In a Chapter 13 case, the judge has the authority to confirm or approve each plan if it meets the requirements of the Bankruptcy Code. The judge grants all discharges and can dismiss or convert a case to another chapter of bankruptcy.

The **U.S. Trustee or the Bankruptcy Administrator** represents the government and monitors the Chapter 13 Trustee in the performance of the trustee's duties. Whether it is a U.S. Trustee or Bankruptcy Administrator depends on the judicial district.

Here is a look at how Chapter 13 works:

Filing the bankruptcy **Petition** begins the bankruptcy case. It must contain certain basic information about the debtor:

- all names used within the last eight years including business names,
- current physical and mailing addresses,
- the name and address of the attorney filing the case, and
- a statement of whether or not the debtor has filed previous bankruptcies.

A Mailing List. A debtor must file a mailing list of all creditors which is used for sending out the Notice of Chapter 13 Bankruptcy Case to parties in interest.

Schedules must be filed disclosing additional information about the debtor's assets, liabilities, income, and expenses:

Schedule A/B—list of all real estate and personal property owned by a debtor, including cash, claims and causes of action.

Schedule C—list of property a debtor claims as “exempt” (protected) under either federal or state law.

Schedule D—list of all Secured creditors.

Schedule E/F—list of all Unsecured creditors.

Schedule G—list of Executory Contracts and Leases.

Schedule H—list of Co-Signed debts.

Schedule I—list of all Income.

Schedule J—list of all Expenses.

A **Statement of Financial Affairs** must be filed containing information about a debtor's past earnings, recent transfers of property, lawsuits, foreclosures, repossessions, and recent payments to creditors, attorneys and credit counseling agencies.

The Chapter 13 **Plan** sets out the payments the debtor or debtor's employer will make to the trustee and outlines how the creditors will be paid. A plan cannot last for longer than 60 months.

Form 122C-1&2 is mandatory in all bankruptcy filings. On this form, debtors disclose the average income they received during the six months prior to filing the bankruptcy petition. This form is used to help determine the minimum monies due to unsecured creditors and the minimum length of time a debtor is required to remain in the plan.

The debtor signs the Petition, Schedules, Statement of Financial Affairs, and Form 122C-1&2 under oath that the information disclosed is true and accurate. It is a federal crime to provide fraudulent information on these documents.

In a Chapter 13 case, the schedules, statement of financial affairs, Form 122C-1&2 and Chapter 13 plan must be filed with the petition or within 14 days of the filing of the bankruptcy petition, or the case is subject to dismissal.

All of the assets owned at the time of filing are part of the **bankruptcy estate** and are under the jurisdiction of the court. This includes all of a debtor's projected disposable income.

The **automatic stay** prevents creditors from taking any action to collect a debt without permission from the judge. The first time a Chapter 13 petition is filed, all creditors, with a few exceptions, are stayed (or stopped) from taking further action to collect the debts a debtor owes. All creditors listed are sent notice of the bankruptcy case filing and of the automatic stay. This means foreclosures, repossessions and all creditor contact by phone or mail must stop. The extent of the stay protection changes if a debtor has filed multiple bankruptcies in a twelve-month period.

A **co-signer, co-maker or guarantor (co-debtor)** on any of a debtor's personal debts is protected by a **Co-debtor Stay** under most but not all circumstances. When it applies, it is as powerful as the stay protections enjoyed by the debtor. If that person has given collateral for the loan, the creditor must request relief from the co-debtor stay in order to proceed against the property. The co-debtor stay will only provide protection for the amount of the debt the plan proposes to re-pay. If the plan does not propose to pay the co-signed debt in full, a creditor may obtain permission to collect the unpaid portion of the debt from a co-signer, co-maker or guarantor. The discharge of a debt is personal to the debtor and does not affect a co-signer's obligations after the bankruptcy case is over.

Any questions about a co-signer's protections under the terms of a plan should be discussed with an attorney.

A creditor may ask the court for permission to lift or modify the automatic stay or co-debtor stay to give the creditor a right to proceed against property or a co-debtor. This is done by a filing a motion with the court and sending copies of the motion to the debtor, the debtor's attorney and the trustee. If a debtor receives a motion for relief from stay, he or she should contact an attorney immediately to discuss what action is appropriate. If a debtor does not have an attorney, then he or she must timely file a response to the motion, or risk a default order lifting the stay.

There are several reasons a creditor might file a motion to modify or lift a stay. These include: the creditor believes the collateral is not insured, or the creditor has not received payments according to the plan.

The **Section 341 Meeting of Creditors** is a very important event. Each debtor must attend a meeting, unless the court or United States Trustee approves a waiver. Answers must be under oath. The debtor's attorney should appear with the debtor. The trustee or trustee's representative conducts the meeting and may ask questions regarding the information contained in the petition, schedules and statement of financial affairs. The trustee will verify that the information is accurate and that the payment plan proposed meets the requirements of the law. Creditors may appear and ask questions. The judge is not allowed to attend this meeting. Debtors must show a government issued photo ID, such as a driver's license or passport, and proof of their social security number. They may also be required to furnish copies of documents including pay stubs, tax returns, and profit and loss statements for any business operated by the debtor.

Each creditor that receives notice in a bankruptcy case has the opportunity to file a **proof of claim**. The creditor uses the proof of claim form to tell the court the amount owed to them. The deadline for filing a proof of claim is called the **Claims Bar Date**. For nongovernmental creditors that date is set forth in the notice sent by the clerk. Governmental units such as the IRS have 180 days from the date the petition is filed to file a proof of claim.

The bankruptcy judge must **Confirm** (approve) the chapter 13 plan if the plan meets the following seven requirements:

- The plan complies with the law;
- Court costs have been paid;
- The petition and the plan have been proposed in good faith;
- The plan is in the best interest of creditors, meaning that unsecured creditors will receive at least what they would have received had a Chapter 7 liquidation case been filed;
- The plan provides for secured creditors to be paid according to the terms of the law, or for the collateral to be surrendered to the creditor. The purchase date of the collateral determines whether or not creditors will be paid the full amount of the claim, or only the value of the collateral. The claim will include interest at the market

rate;

- The plan is feasible, i.e., the debtor will be financially able to make the payments called for by the plan; and
- The plan either proposes to pay 100% of all allowed general unsecured claims, or to pay all of the debtor's projected disposable income to the trustee for the applicable commitment period of 36 or 60 months.

Plan Payments

The first plan payment is due within 30 days from the filing date of the petition and every 30 days thereafter unless that date is changed. This is the **DUE date**. Unless withheld from wages

by debtor's employer or drafted from debtor's bank account by the trustee, a debtor needs to mail their payments five or six days in advance of the due. Debtor's name and case number must be included on every payment. Some trustees allow electronic payments by debtors.

Depending on the jurisdiction, the payment may be made through payroll deduction. A payroll deduction order will be issued to a debtor's employer. The employer will then deduct the total monthly payment from the debtor's paycheck and send that money to the trustee. (This money will be deducted in equal installments determined by the frequency of the debtor's pay, not in one lump sum.)

Even if the payment is to be made directly, it is essential for the debtor to do so on time and in full until the plan payment is deducted from the pay check or bank account. Fixed and timely Chapter 13 plan payments are a requirement of the court and it is a debtor's responsibility to maintain those payments. Failure to make plan payments could result in the dismissal of the case. The automatic stay goes away if the case is dismissed, and debts will not be discharged.

Once the plan is confirmed, the trustee's office disburses payments as spelled out in the confirmed plan. The debtor should review the plan carefully with their attorney to know what payments the trustee will be making to the creditors.

If a debtor's income changes, they should contact their attorney immediately. The plan may be modified to prevent the case being considered delinquent. The trustee's office has no authority to let a debtor miss a payment or to allow a debtor to pay less than the required amount. Only the court can do so. If the attorney files such a motion, a debtor should not change or stop payments until there is a signed order from the court. This could take up to 30 days.

When a Chapter 13 plan is successfully completed, if the debtor is eligible for a discharge, debts listed in the plan are discharged, or legally forgiven, except long term debts and certain non-dischargeable debts. Collection activity is prohibited on discharged debts. Legal collection activity can resume on long term and non-dischargeable debts after completion of the plan. A debtor should discuss dischargeability of debts with his or her attorney.

If unsecured creditors do not receive the full amount originally owed to them, all remaining balances of most debts will be “discharged” or legally forgiven upon the completion of the plan. Creditors cannot resume collection activity on discharged debts.

Examples of debts which cannot be discharged include trust fund taxes, private or government funded student loans, some debts arising from divorce, child support obligations, fines and damages for injury caused by a debtor while under the influence of drugs or alcohol. A debtor will be responsible for any balances due on debts of these types after the completion of the plan, including any interest and penalties.

Should a debtor receive collection demands after completion of the plan and receipt of the discharge, the debtor should discuss such communications with an attorney.

A case may be dismissed either voluntarily, or involuntarily, if the court finds cause to do so, such as a debtor’s failure to maintain timely payments or a failure to comply with bankruptcy rules or the court’s orders. A debtor has the right to a voluntary dismissal at any time. Debtors should consult with their attorney to discuss the procedure, the consequences, and the alternatives before voluntarily dismissing their case.

The case will be automatically dismissed if a debtor fails to file certain paperwork with the court within the first 45 days after the date the petition was filed, on motion of the trustee or a creditor served on the debtor and debtor’s attorney.

In the event of a dismissal, either voluntary or involuntary, all creditor stays will be lifted and creditors can resume collection procedures on accounts and **may add any interest and penalties that were stayed by the filing of the Chapter 13 case.**

IT IS IMPORTANT FOR EACH DEBTOR TO IMMEDIATELY OPEN ANY MAIL RECEIVED FROM THEIR ATTORNEY, THE COURT, OR THE TRUSTEE’S OFFICE. THEY SHOULD CALL THEIR ATTORNEY IF THEY DO NOT UNDERSTAND SOMETHING.

DEBTORS SHOULD ALWAYS NOTIFY THEIR ATTORNEY AND THE TRUSTEE IF THEY MOVE, TO INSURE THAT THEY CONTINUE TO RECEIVE IMPORTANT MAIL DURING THE CASE

Debtors must be current on any **domestic support obligations** (alimony or child support), in order to receive a discharge. This includes payments that come due after the bankruptcy petition is filed.

The **sale** or transfer of non-exempt property while in a Chapter 13 must be approved by the court. A debtor should contact their attorney before they sell or transfer property while in a Chapter 13 case.

While under a Chapter 13 plan, a debtor’s **use of credit** is generally prohibited without court or

trustee permission. A debtor should contact his or her attorney to discuss how to request approval to obtain credit while under a Chapter 13 plan. This includes purchasing a car on credit or refinancing a house.

With a few exceptions, every debtor must complete a credit **counseling** session during the 180 day period prior to the date the bankruptcy case is filed. This counseling may be done in person, by telephone or over the internet but must be taken from a government approved nonprofit budget and credit counseling agency.

With a few exceptions, every debtor must complete a **personal financial management course** after the bankruptcy case is filed. This course must be taken from a government approved provider and must be completed before the last plan payment is made. The trustee's office may provide this course at no extra cost to the debtor. Completion of this online course will fulfill this requirement.

A debtor will receive periodic reports from the trustee. It is very important that a debtor read the reports carefully and contact their attorney and the trustee immediately if there are any errors or have questions concerning the reports. The reports may include the following:

- 1) A list of all creditors covered by the case, whether or not a proof of claim has been filed. A debtor should carefully check the list for accuracy. If there is a creditor whom a debtor wants to be paid through the plan who has not filed a proof of claim, the debtor should contact their attorney promptly about filing a proof of claim for the creditor. This would include relatives and friends to whom a debtor owes money.
- 2) A statement sent to the debtor at least once a year by the trustee's office accounting for the money paid into the plan and how creditors have been paid. It shows the balance of all accounts being paid through the plan. The debtor's attorney also receives a copy of the report. If a debtor has any questions concerning the report, they should contact their attorney.
- 3) A Trustee's Final Report showing all monies received by the trustee and paid by the trustee through the plan. This document must be filed by the trustee with the court before the case can be closed. A notice of filing of the trustee's final report is sent to all creditors as well as the debtor.

The debtor will also receive an Order of Discharge from the Bankruptcy Clerk. Creditors will receive notice of the discharge. After a debtor receives a discharge, the debtor should get credit reports and ensure discharged debts are shown as such.

IT IS IMPERATIVE FOR DEBTORS TO KEEP ALL DOCUMENTS RECEIVED DURING THE TERM OF THE PLAN IN A SAFE PLACE. DEBTORS MAY NEED TO REFER TO THEM FOR AT LEAST TEN YEARS AFTER THE COMPLETION OF THE PLAN.

Trustee Website:

Many trustees allow debtors access to a website. Information contained on the website is very important and will help a debtor in the overseeing of their case. Most trustees provide case data to the National Data Center, which can be accessed by debtors free of charge at www.ndc.org.