

WHAT YOU SHOULD KNOW ABOUT YOUR CHAPTER 13

This booklet was prepared to help you understand how your Chapter 13 case works and answer most questions that arise during your Chapter 13 case.

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THE CHAPTER 13 TRUSTEE MAY NOT GIVE LEGAL ADVICE TO DEBTORS OR CREDITORS.

Although sincerely interested in the success of your case, the Chapter 13 Trustee may not give you legal advice.

ABOUT CHAPTER 13. Chapter 13 is one method under the Bankruptcy Code to obtain relief from your creditors while, at the same time, providing a fair means to repay as much as you can. It allows you to keep some or all of your property during the time you are repaying your creditors and it permits you to modify some contract payments and interest rates. Your Chapter 13 plan may limit some interest, late charges, and penalties on some debts, as well as allow you to extend payments on those debts. The U.S. Bankruptcy Court must approve your plan before it becomes effective; the Order approving a plan is called a Confirmation Order. Chapter 13 is an attractive alternative to "straight" (Chapter 7) bankruptcy, and has gained widespread acceptance across the country.

WHO CAN FILE CHAPTER 13. Chapter 13 is for individuals with regular income who have voluntarily come under the protection of the court with debts below a certain dollar amount. A Chapter 13 petitioner must be able to remit a monthly payment to the Trustee and still cover ongoing living expenses.

CREDIT COUNSELING. Within the 180 days BEFORE filing your bankruptcy case, you must complete an approved credit counseling program and be able to provide certification that the program was successfully completed. This certificate must be filed with the court. If you HAVE

NOT completed such a program, discuss this with your attorney at once.

PERSONAL FINANCIAL MANAGEMENT COURSE REQUIREMENT. You are required to attend a financial management course before you will be entitled to receive a discharge of your debts. Please speak with your attorney to learn where and how you may obtain this education. The financial management course is different from and is in addition to the credit counseling that you received before you filed your bankruptcy case.

TAX RETURNS. If you are required to file tax returns, you must have filed all returns for the last four (4) years with the appropriate taxing authority. In addition, you are required to provide the Chapter 13 Trustee with a copy of your most recently filed return no later than at your Meeting of Creditors. You may be required to submit your tax returns on an annual basis to your trustee and/or creditors.

YOUR CASE NUMBER. When your Chapter 13 petition was filed, the Bankruptcy Court Clerk assigned your case a number. This number is very important. **WRITE YOUR CASE NUMBER ON ANYTHING YOU SEND** to the Trustee's Office, the Clerk of the Bankruptcy Court, or any other party, including any payment you make to the Trustee. **PLEASE WRITE YOUR CASE NUMBER IN THE SPACE PROVIDED ON THE OUTSIDE OF THIS BOOKLET.**

CHAPTER 13 COSTS. Each Chapter 13 case has three costs:

1. Court Costs: The filing fee must be paid to the Bankruptcy Court to begin the case.
2. Chapter 13 Trustee's Fees: By law, the Chapter 13 Trustee is required to charge a fee as a percentage of disbursements. This fee will vary during your case.
3. Your Attorney's Fees: Your attorney's fees should be set forth in your Chapter 13 plan, schedules and in your attorney fee agreement.

PRO SE DEBTORS. You have the right to represent yourself and handle your own Chapter 13 case. However, if you are *pro se* (without a lawyer) and do not know how to proceed, the Chapter 13 Trustee strongly recommends that you hire an attorney. The Chapter 13 Trustee is not your attorney and cannot give you legal advice. Neither is the Judge and the Judge cannot give you legal advice.

YOUR ATTORNEY. When your attorney agreed to represent you and signed your petition with you, your attorney became obligated to appear and represent you throughout your Chapter 13 case. Your attorney must continue to appear on your behalf as long as your case is active. Of course, you have the right to change attorneys. In addition, your attorney may withdraw from your case, with Bankruptcy Court approval, under certain circumstances. If you ever have any questions concerning your case, your creditors, your rights under the Bankruptcy Code, or your options under Chapter 13, ask your attorney first.

Your attorney should have explained to you how much the legal fees will be and how those fees will be paid. In most cases, your attorney will be paid through your Chapter 13 plan. Be sure that you have specifically discussed whether additional legal services during your plan will cost you more money or whether the initial fee will cover all legal services. All fees charged by your attorney must be reviewed and approved by a Bankruptcy Court Judge, even if you have agreed to pay those fees.

When you need advice or assistance, you should be able to get help from your attorney. Although the Trustee's Office is able to answer many questions, the law prohibits the Trustee, the Trustee's staff, the Bankruptcy Court clerk's office, and the Judge from giving you any legal advice. If you have a problem, a question, or need advice, please call your attorney.

YOUR ADDRESS. The Chapter 13 Trustee and the Bankruptcy Court must have your exact mailing address as long as you are in your case. All notices or papers filed in your case will be sent to you at the address listed in your bankruptcy petition. If you move or change your mailing address, you must inform your attorney, the Trustee, and the Bankruptcy Court, in writing, of your new address. You will be bound by notice of any papers or notices sent to the address on file if you have not given written notice of your new address to both the Trustee and the Bankruptcy Court Clerk's Office.

CALLS TO THE TRUSTEE'S OFFICE. Your Chapter 13 Trustee's name, address, and phone number are on the

front of this booklet. The Trustee's office hours are 8:00 a.m. to 4:30 p.m., except Saturdays, Sundays, and holidays (including all Federal holidays).

If you have a question that your attorney cannot answer, you may ask the Trustee by writing a letter with your case number and your question. Please remember that the Chapter 13 Trustee does not represent you or your legal interests, and is prohibited from giving you any legal advice.

It may be necessary for the Trustee to refer you back to your attorney if your question involves legal advice. The Trustee's staff is familiar with the policies and guidelines under Chapter 13 and may be able to discuss with you many problems or questions that may arise during your case.

However, the Trustee and the Trustee's staff cannot give any legal advice. Please direct all legal questions to your attorney. Remember that the Trustee is not your attorney.

PAYMENTS AND EMPLOYER DEDUCTION ORDERS. Generally, a Court Order sent to your employer requires Chapter 13 payments to be made through deduction from your paycheck and sent directly to the Chapter 13 Trustee. If you change jobs at any time during your case, please notify your attorney immediately so that a new Employer Deduction Order can be presented to your new employer.

It is important that both you and your employer understand that an Employer Deduction Order is not a garnishment.

The Bankruptcy Code permits a Bankruptcy Court to issue an Employer Deduction Order as an aid in the efficient administration of Chapter 13 cases. When you voluntarily filed your Chapter 13 case, all of your future income became subject to the Court's exclusive jurisdiction as long as you are in a Chapter 13 case. We find that most employers understand that you are making a serious effort to repay your debts. If your employer has any questions, he or she may call the Chapter 13 Trustee's Office for an explanation.

Only in special cases will the Court allow plan payments to be made by you directly to the Trustee instead of by Employer Deduction Order. A Debtor may be permitted to make direct payments from self-employment, Social Security, Worker's Compensation, Disability, or Retirement Income. If you make a plan payment personally, do so by money order, personal check, or cashier's check. Be sure to include your name, address and your Chapter 13 case number on the check. **DO NOT SEND CASH.** The Chapter 13 Trustee's Office will accept your personal check as long as one has not previously been returned by your bank.

OBLIGATION TO PAY. Even though the Bankruptcy Court will usually order your employer to deduct plan payments from your paycheck and send them to the Trustee, you have the obligation to ensure that all payments are made. If your employer ever fails to make a plan payment deduction, you must tell your attorney that the deduction was not made and **YOU** must send the plan payment due to the Trustee by money order, personal check, or cashier's check. You should keep your pay stubs

to show that your employer is deducting the payments. If a payment is not received by the Trustee, as required by your Chapter 13 plan, any creditor in your case may ask the Court to dismiss your case. The Trustee will ask the Court to dismiss your case if you fail to make the required payments.

DO NOT ATTEMPT TO PRE-PAY YOUR CHAPTER 13 CASE OR MAKE ANY LUMP SUM PAYMENTS INTO YOUR PLAN. SEE YOUR ATTORNEY FOR LEGAL ADVICE ABOUT THIS MATTER.

DOMESTIC SUPPORT OBLIGATIONS (CHILD SUPPORT AND/OR ALIMONY). In order for your plan to be confirmed, your plan must propose to pay all domestic support obligations (due at the time of filing and during the life of the plan). Your domestic support obligations must be paid on time and kept current and you must certify that fact at the conclusion of your case in order to receive a discharge of your debts. Any questions you have concerning your domestic support obligations should be addressed to your attorney.

PROBLEMS MAKING YOUR PLAN PAYMENTS. If you are not able to make your regular plan payments because of illness, loss of job, family emergency, or other serious problem, you should inform your attorney immediately. Under some circumstances, you may be able to stop payments for a short time with permission from the Trustee or the Court or amend your plan to provide for a modification of its terms.

MORTGAGE PAYMENTS. Payments to real estate mortgage creditors that come due after your case is filed must be made directly to those creditors, unless your Chapter 13 plan provides otherwise. Please make certain you keep written copies as proof of these payments. If a serious problem prevents you from making such a payment, you should ask your attorney to contact the creditor to attempt to work out some other method to bring the missed payment current.

REQUEST FOR DISMISSAL BY THE TRUSTEE OR A CREDITOR. If you fail to make the plan payments to the Trustee, and you have not been excused, the Trustee will ask the Court to dismiss your case. Any creditor may ask the Court to dismiss your case if you do not make your plan payments to the Trustee or your direct monthly payments on your house or other real estate.

Creditors or the Trustee may request dismissal of your Chapter 13 case if they believe your plan will not work (is not "feasible"), if you fail to attend the Meeting of Creditors, or fail to comply with other requirements of the Bankruptcy Code.

REQUEST FOR DISMISSAL BY YOU. You have the right to dismiss your case, unless you have already converted your case from another Chapter of the Bankruptcy Code or the Court orders otherwise. The Bankruptcy Code provides that if you voluntarily dismiss your case after a Motion for Relief from the Automatic Stay has been filed, you will be ineligible to file another bankruptcy case for 180 days after entry of the Order of Dismissal.

Always contact your attorney for advice before voluntarily dismissing your Chapter 13 case. No one can force you to remain in a Chapter 13 case. If you desire to stop your case, contact your attorney.

A request for dismissal of your case must be in writing and filed with the Bankruptcy Court, with a copy sent to the Chapter 13 Trustee.

AUTOMATIC STAY. Upon the filing of your Chapter 13 case, all creditors listed in your plan and schedules may be subject to an automatic stay, which prohibits them from contacting you regarding your debts. While the automatic stay is in effect, you are under no obligation to discuss your debt or your case with a creditor.

However, please be aware that, if you have had one or more bankruptcy case(s) pending within the last year, the automatic stay may expire or may not even exist. Your attorney can advise you on the appropriate course of action if this situation applies to your case.

The dismissal of your case will also end the protection of the automatic stay. Creditors will once again have the right to collect their debts, including but not limited to, charging interest as well as imposing finance charges and late fees, repossessing a car, foreclosing on a house or garnishing your wages.

If you fail to make payments, your creditor(s) may file a Motion seeking relief from the automatic stay. You will receive notice of a hearing at which you may appear and

respond to the creditor's Motion. If you do not respond or appear, the Court will likely grant the Motion.

DEALING WITH CREDITORS. You cannot pick and choose a particular creditor and pay that creditor "on the side" or "outside of the plan" or "outside of the Court", because ALL of your debts must be dealt with through the Bankruptcy Court. If you want to pay creditors, you must do so according to your Chapter 13 Plan.

INSURANCE. Secured property that is collateral for a loan (such as a car or house) must be insured. In order for you to keep your secured property while your creditors are being paid through your Chapter 13 plan, you must make certain that the insurance premiums are paid on time. The secured creditor must be listed as lien holder and loss payee on all insurance policies and binders.

The Bankruptcy Court has a separate rule requiring you to keep vehicles insured at all times. If you let insurance lapse on any vehicle (car, truck, van, or motorcycle, etc.), the secured creditor may request, and the Court may enter an Order, allowing repossession, without notice or a hearing. Keep your insurance policies handy should any creditor ever request proof of insurance or allege that your insurance has lapsed.

WHAT YOU OWE CREDITORS. The Trustee's Office will mail you a status report once a year. It is very important for you to review this report with your attorney so that your attorney can promptly file objections to any incorrect claims and/or modify your Chapter 13 plan, if necessary.

At any other time you wish, the Trustee's Office will send you a statement listing all of the creditors who have filed Proofs of Claim in your case, and the balances due each of those creditors at the time of your request. Always include a self-addressed, stamped envelope with your request.

CLAIMS OF CREDITORS. Each creditor you list in your plan and schedules may file a claim for payment, but they must do so within 90 days of the date of the Meeting of Creditors. Claims filed by governmental units must be filed within 180 days after you filed your Chapter 13 petition. However, taxing authorities may have additional time to file Proofs of Claim for taxes. In addition, a creditor may obtain an Order from the Bankruptcy Court allowing the filing of a claim beyond the 90 or 180-day period in certain circumstances.

Again, when you receive a status report from your Trustee, you should read and examine this report very carefully with your attorney. If a creditor's name is listed incorrectly or any amount claimed appears to be incorrect, or if you dispute the claim for any other reason, your attorney will be able to advise you as to whether it may be appropriate to file an Objection to Proof of Claim or a modification of your Chapter 13 plan. The Trustee will not fund any claims not provided for in your plan.

CREDITORS NOT LISTED. You must list **ALL YOUR CREDITORS** on the creditor mailing list and in your schedules of assets and liabilities. You may not receive a discharge of the claim of any creditor not listed. Therefore, carefully review your schedules and the creditor mailing

list filed by your attorney to make certain that all of your creditors are listed, the addresses shown are accurate, and all debts are listed. If you become aware of an unlisted creditor (one you owe but forgot to list), you should let your attorney know the details immediately. Time is very important; do not delay in notifying your attorney so that your schedules and/or plan may be amended.

HOW CREDITORS ARE PAID. The money that you pay to the Trustee is used to pay expenses of administration, (including Court costs, Trustee fees, and payments to your attorney) and the claims of your creditors. The Trustee pays all claims according to your Chapter 13 plan.

DISCHARGE OF DEBTS. When you have successfully completed your plan payments, you will receive notice from the Bankruptcy Court about your discharge. In order to receive a discharge at the end of your case, all domestic support obligations must be paid and/or current. You must provide the Court with a certificate verifying that all such payments have been made. In addition, you must have completed a personal instructional financial education course and provide verification of the successful completion of such course. This course requirement is not the same as the credit-counseling course you received prior to the filing of your case. If you have any questions regarding these requirements, please contact your attorney.

You may not be eligible to receive a discharge in your current Chapter 13 case if you have received a discharge in a previous bankruptcy case. Please discuss your eligibility for a discharge with your attorney.

THE END OF YOUR PLAN/DEBTOR EDUCATION.

After you have successfully completed your plan (when the Trustee has received enough money from you to pay your creditors pursuant to your confirmed plan, you have completed an instructional course concerning personal financial management, and certified that you have timely made all Domestic Support Obligation payments as they have come due (if applicable), you will then receive an Order of Discharge. You should discuss with your attorney the effect of the discharge. After you receive your Order of Discharge, you will generally not owe any debts, other than long-term debts not paid in your plan, (such as mortgage payments) and certain non-dischargeable debts (such as child support, alimony, or student loans). If you are not sure which of your debts will be discharged, you should discuss that with your attorney.

After you have received your discharge, you may receive a small refund check from the Trustee. This refund is paid to you if you have paid more to the Trustee than is required to pay your debts pursuant to your confirmed Chapter 13 plan.

HARDSHIP DISCHARGE. Under unusual and exceptional circumstances, a hardship discharge may be available. Please consult with your attorney about this type of discharge.

CO-SIGNERS, CO-MAKERS, AND GUARANTORS.

The co-debtor stay protects a co-signer, co-maker, or guarantor (co-debtor) from creditor contact on your consumer debts. This protection may apply automatically

upon the filing of your case. If your co-debtor has pledged collateral as security for a loan, the creditor must request a hearing before a Bankruptcy Court Judge in order to collect the debt or foreclose against the property. The automatic stay will protect co-debtors only up to the amount of the debt your plan proposes to pay. If your plan will pay such debt in full, the co-debtor is protected during your plan. If the debt is not paid in full, the creditor may obtain permission from the Court to collect the unpaid portion from your co-debtor.

POST-PETITION DEBTS (POST-FILING DEBTS).

Creditors with claims arising after you filed your Chapter 13 case are called “post-petition creditors.” Post-petition creditors are rare because you are not permitted to borrow money or use credit cards while in Chapter 13. You may not borrow from a finance company, bank, or credit union, or receive an advance of your salary. You cannot buy anything over time, like a car or an appliance. You cannot sign, co-sign, or guarantee an installment note or use credit cards.

If you need to borrow money for any reason during your Chapter 13 case, you must first obtain written approval from the Chapter 13 Trustee or the Court. Your request may be approved if you are paying regularly into your Chapter 13 plan, if there is a good reason to incur the debt, and if your ability to pay your plan payments will not be threatened. You may also consult with your attorney regarding filing a Motion to Incur Debt.

OBTAINING CREDIT WITHOUT PERMISSION.

Any credit purchase you make without approval is improper and the Bankruptcy Court may require you to return the purchased goods, may dismiss your case, or both. You will place your plan in serious jeopardy if you obtain credit without prior approval.

SELLING PROPERTY. You may not sell any of your property, including land, without prior Court approval. If you sell your property without permission, the sale may be set aside. If you want to sell any of your property, trade in a car, or sell your home, be sure to discuss it with your attorney in order to obtain prior Court approval.

CLAIMS FOR MONEY DAMAGES OR LAWSUITS.

If you have any type of claim for money damages, personal injury, employment discrimination, workers' compensation, social security benefits, or any other type of lawsuit, either before or after the filing of your case, you cannot receive money before obtaining the approval of the Bankruptcy Court. Thoroughly discuss any legal matter with your bankruptcy attorney and make sure your non-bankruptcy attorney knows about your Chapter 13 case. Your non-bankruptcy attorney cannot receive any fees for representing you unless approved by the Bankruptcy Court.

CONTACT BY CREDITORS AFTER COMPLETION OF CASE.

Usually, after your creditors' claims are paid under your plan, creditors may send "paid in full" papers to you. Even if they do not, the official records of the Court will show that you received a discharge. If you receive any request for more payments by creditors whose claims were

paid under your plan, do not pay without first talking with your attorney.

DO YOU STILL HAVE QUESTIONS? If any of your questions or concerns have not been answered by this booklet, please contact your attorney. This booklet is intended to be an overview of the Chapter 13 program in the Northern District of Georgia, and does not deal with all issues that could arise. If you still have questions, you may write the Chapter 13 Trustee's Office, after you have contacted your attorney.

ONE FINAL WORD. Complying with a Chapter 13 plan is not easy. You may have to make a real sacrifice to meet the obligations that you have specified in your plan and still live within your Chapter 13 budget. Thousands of families have successfully completed Chapter 13 plans in the Northern District of Georgia. They have resolved their debt problems without filing “straight” bankruptcy and have paid most, if not all, of their obligations to their creditors. Chapter 13 will work for you only if you work very hard at meeting your obligations under your plan.

IMPORTANT REMINDERS:

Put your name and case number on anything you send to the Trustee's Office.

You cannot sell any real or personal property without permission of the Court. The process takes a minimum of 30-45 days so contact your attorney immediately about any desired sale of property.

You are not allowed to incur any debt, use credit cards, or finance/re-finance any purchases without permission of the Court or the Trustee. Always discuss these matters with your attorney before taking any action.

Do not make any lump sum payments into your plan before discussing the matter with your attorney.

If you have any lawsuits or claims for money against anyone (either before you file your case or after filing) see your attorney immediately. You are not allowed to settle any claim without authority from the Court and the Court must approve any attorney representing you in order for that attorney to be paid the agreed fee.

Always remember to contact your attorney, not the Trustee, for legal advice and assistance about your Chapter 13 case.

GOOD LUCK WITH YOUR CASE!