

WHAT YOU SHOULD KNOW

ABOUT YOUR CHAPTER 13

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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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Put your complete case number on anything you send to the Trustee .

TABLE OF CONTENTS

About Chapter 13
Your Case Number
Chapter 13 Costs
Pro Se Debtors
Your Attorney
Your Address
Calls To The Trustee's Office
Payments and Payroll Deduction Orders
Obligation To Pay
Problems Making Your Plan Payments
Request for Dismissal by Trustee or Creditor
Request for Dismissal by You
Contacts By Creditors

TABLE OF CONTENTS...continued

- Dealing With Creditors
- Insurance
- What You Owe Creditors
- Disposable Income Requirement/Base Plan
- Claims Of Creditors
- Creditors Not Listed
- Post-Petition Debts
- How Creditors Are Paid
- The Dividend To Unsecured Creditors
- Discharge of Debts
- Hardship Discharge
- Co-signers, Co-Makers and Guarantors
- Credit Card And Post Petition Debt
- Obtaining Credit Without Permission
- Selling Property
- Claims for Money Damages or Lawsuits
- The End of Your Plan
- Credit Rating
- Contact By Creditor After Completion of Case
- Tax Returns
- Do You Still Have Questions?
- One Final Word

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 them as much as you can. It allows you to keep some or all of your property during the time you are repaying creditors and it permits you to modify some contract payments and interest rates. Your plan can limit some interest, late charges and penalties on some debts, and allow you to extend payments on some of your debts. The Bankruptcy Court must approve a 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.

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 Court, or any other party, including any payment you make to the Trustee. **YOUR CASE NUMBER IS ON THE OUTSIDE OF THIS BOOKLET UNDER YOUR NAME.**

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. The fee may vary somewhat during your case.
3. Your Attorney's Fees: Your attorney's fee should be set forth in your Chapter 13 Plan.

PRO SE DEBTORS. You are entitled to handle your own Chapter 13 case. If you are *pro se* (have no attorney) and do not know how to proceed, the Chapter 13 Trustee strongly recommends that you get an attorney. The Chapter 13 Trustee is not your attorney.

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 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 fee will be and how it will be paid. In most cases, your attorney will be paid the allowed fee through the 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 the Bankruptcy Judge, even if you agree to pay more.

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, Trustee's staff, Bankruptcy Clerk's office and the Court from giving you any legal advice. If you have a problem, a question, or need advice, please call your attorney first.

YOUR ADDRESS. The Chapter 13 Trustee and the Bankruptcy Court must have your exact mailing address for as long as you are in a Chapter 13. 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 your address in the 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 and phone number are located on page [i]. The Trustee's office hours are 8:00 am to 4:30 pm, except Saturdays, Sundays and holidays (including Federal Holidays).

If you have a question which 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 any problems or questions that may arise during your case that do not involve legal advice.

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

PAYMENTS AND PAYROLL DEDUCTION ORDERS. Generally, a Court Order sent to your employer requires Chapter 13 payments to be made through deduction from your paycheck and sent to the Chapter 13 Trustee. Only in special cases will the Court allow plan payments to be made by you directly to the Trustee instead of by payroll deduction order. If you change jobs at any time during your case, please notify your attorney so that a new employer deduction order can be presented to your new employer. 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 if one has not already been returned by your bank.**

It is important that both you and your employer understand that a payroll deduction order is not a garnishment. The Bankruptcy Code permits a Bankruptcy Court to issue a 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 pay 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.

OBLIGATION TO PAY. Even though the Court will usually order your employer to deduct plan payments and send them to the Trustee, **you have the obligation to make sure 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 needed plan payment 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 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.

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 amend your plan to provide for a modification of the terms of your plan.

The Trustee has limited discretion to permit you to postpone a plan payment. A request to the Chapter 13 Trustee for additional time within which to make a plan payment must be made in writing and must explain in detail the reason for the request. An agreement by the Trustee not to seek dismissal of your case because of a missed payment does **NOT** prevent one or more of your creditors from moving to dismiss your case.

Payments to real estate mortgage creditors, that come due after your case starts, must be made directly to those creditors. 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. Otherwise, a missed payment may result in a motion by the creditor for relief from the automatic stay to conduct a foreclosure; then, 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 motion will probably be granted by the Court.

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") or if you fail to attend the meeting of creditors or fail to comply with other requirements of the Bankruptcy Code. Also, if you fail to appear at hearings, fail to file a plan or schedules, cause delays in your case, fail to file or conduct your case in good faith, file Chapter 13 cases often, or otherwise show an intention not to complete your plan, the Court will dismiss your case and you may be ineligible to be a debtor in any bankruptcy case for 180 days from the date of the dismissal order.

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 dismissal order.**

Always contact your attorney for advice before voluntarily dismissing your Chapter 13 case. No one can force you to remain under a Chapter 13 plan if you do not wish to remain. If you desire to stop your case, contact your attorney.

A dismissal will end the protection of the automatic stay. Creditors will once again have the right to attempt to collect their debts, including interest, finance charges, and late fees. 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.

CONTACTS BY CREDITORS. Upon the filing of your Chapter 13 case, all the creditors listed on your petition are subject to an automatic stay which prohibits them from bothering you concerning your debts. Routine delinquency notices need not cause any concern, but if you get a more personal, direct contact from a creditor, such

as a telephone call, a personal letter, a summons, or a visit in person, you should inform the creditor that you have filed a Chapter 13 case and give your case number and your attorney's name and address. You are under no obligation to discuss the debt or your case with the creditor. Be sure that you get the name of the creditor and the person who contacted you and give this information to your attorney. (*See Page 11, "Creditors Not Listed".*)

DEALING WITH CREDITORS. You cannot pick and choose some 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 Court. If you want to pay creditors, you must do so through your Chapter 13 plan.

INSURANCE. Secured property which 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 as **loss payee** on 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 hearing*. Keep your insurance policies handy should any creditor ever state that your insurance has lapsed.

WHAT YOU OWE CREDITORS. The Trustee's office will mail you a status report twice a year. It is very important for you to review this report with your attorney so that your attorney can promptly file objections to incorrect claims. The Trustee's office will pay all claims as filed, unless and until an objection is filed.

At any other time you wish, the Trustee's office will send you a statement listing all of your creditors who have filed proofs of claims 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.** The status report will show the claims filed in your case and the balance to which they have been paid through the date of the report.

Remember that regardless of the balance due indicated on the "status report", you are required to make at least thirty-six (36) months of plan payments into your Chapter 13 plan, unless your plan pays a 100% dividend to all creditors in less than thirty-six (36) months.

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.

DISPOSABLE INCOME REQUIREMENT (MINIMUM 36 MONTHS) AND BASE PLANS. If you are unable to repay all of your debts **in full**, you must pay all of your estimated disposable income to the Trustee during the first 36-months of your plan. Disposable income is the difference between gross income and normal expenses. The total of disposable income over the minimum 36-month plan period is known as the "base".

Your plan cannot be completed until you pay an amount equal to your disposable income for 36 months or the minimum amount of payments that you agree to make in the plan, whichever is greater. You will not have to pay more than is necessary to pay all of your debts in full. If changes are made to your plan after your plan has been confirmed and your plan has a "base" amount, be sure to ask your attorney how the change in your plan affects the minimum thirty-six (36) month plan period. It may not be in your best interests to pre-pay your Chapter 13 case. Before you make any payment to the Trustee, other than your regular plan payments, talk to your attorney first! **Only after advice from your attorney should you make any lump sum payments to your plan.**

CLAIMS OF CREDITORS. Every creditor that you list in the schedules to your Chapter 13 petition 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. A creditor may obtain an order from the Court allowing the filing of the claim beyond the 90-day period in certain circumstances.

When you receive a status report from the Trustee, you should read and examine this report very carefully. If a creditor's name is listed inaccurately or any amount claimed appears to be incorrect, or if you dispute the claim for any other reason, contact your attorney at once. If you and your attorney cannot resolve the problem with the creditor, your attorney should promptly object to the claim. If the creditor disagrees with you, the correct amount of the claim will be determined by the Court at a hearing. **Unless you object to an incorrect claim, however, the Trustee is required to make payments to the creditor based upon the amount of the proof of claim, not the amount you listed in your schedules.**

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, review your schedules and the creditor mailing matrix 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 may be amended.

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 run up a bill while under Chapter 13, except under very unusual circumstances. (*See Page 13, "Credit Card and Post-Petition Debt".*)

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 then the claims of your creditors. The three basic types of creditor claims are: priority, secured and unsecured.

The Trustee pays administrative expenses first, then creditors holding priority claims (taxes, alimony and child support), and creditors with claims on your property (secured claims) are paid next, generally on a pro rata basis. Then your unsecured claims are paid. Unsecured creditors are not paid until the priority and secured claims are paid in full.

THE DIVIDEND TO UNSECURED CREDITORS. When your plan was proposed, you and your attorney calculated what minimum payment would be paid to your unsecured creditors. Because your plan may also include a "base" amount, your actual payment could be more than the 36 month minimum in your plan. (*See page 9, "Disposable Income Requirement"*)

DISCHARGE OF DEBTS. If your Chapter 13 Plan does not pay at least a seventy percent (70%) dividend, you will not be eligible to obtain a discharge under Chapter 7 ("straight" bankruptcy) for six years from the date of filing of your Chapter 13 case. This is important: giving up the right to full bankruptcy relief is significant and could work to your disadvantage if, in the future, you are faced with a financial catastrophe.

Most people would like to pay all their debts. Paying all debts in full may help you reestablish your credit after your Chapter 13 is finished.

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

CO-SIGNERS, CO-MAKERS OR GUARANTORS. The co-debtor stay protects a co-signer, co-maker or guarantor (co-debtor) from creditor contact on your consumer debts. This protection applies automatically upon the filing of your case. If your co-debtor has pledged collateral as security for the loan, the creditor must request a hearing before the bankruptcy judge in order to collect the debt or foreclose against the property. The 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.

CREDIT CARD AND POST PETITION DEBT.

The order confirming your plan prohibits you from incurring post-petition debt without permission. This means 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 a credit card. If you need to incur new debt, you must first obtain written approval from the Chapter 13 Trustee. 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.

OBTAINING CREDIT WITHOUT PERMISSION. Obtaining credit without permission of the Court is not only a violation of the Court's order, it may be reversed by the Court. Any credit purchase you make without approval of the Court would be improper and the 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 approval.

SELLING PROPERTY. You may not dispose of any of your property, including land, without 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 and obtain Court approval.

CLAIMS FOR MONEY DAMAGES OR LAWSUITS.

If you have any type of claim for money damages or a lawsuit, either before or after the filing of your case, you cannot recover money before obtaining the approval of the U.S. 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 U.S. Bankruptcy Court.

THE END OF YOUR PLAN. 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 will receive an Order of Discharge from the Clerk of Court. You should discuss with your attorney the effect of the discharge. After you receive the discharge, you will generally not owe any debts, other than long-term debt not paid in your plan, (such as mortgage payments) and certain non-dischargeable debts not paid in your plan (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 when you meet with him or her.

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

CREDIT RATING. Your credit rating during and after completion of Chapter 13 will be, as it is now and was in the past, the personal opinion of any lender who looks at your credit record. A credit rating is not graded as A, B, or C, or 1, 2, or 3. It is a record of all your past credit performances. Your credit record is compiled by a private agency and is made available to creditors who, by their own standards, decide whether or not to grant credit to you. Suits, collections, attachments, Chapter 7 cases and Chapter 13 cases are indications of credit problems. After many years and thousands of paid in full Chapter 13 cases, we find a good many knowledgeable creditors looking with respect upon those who have paid debts in full under a Chapter 13 plan. Any credit record that has been blemished by a payment problem must be gradually rebuilt. Remember, though, that Chapter 13 is a good place to start.

CONTACT BY CREDITOR AFTER COMPLETION OF CASE. Usually, after your creditors' claims are paid under the 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 to your attorney.

TAX RETURNS. The Internal Revenue Service must hand process all returns filed by a debtor in a Chapter 13 case in order to avoid accidentally issuing notices in violation of the automatic stay. To be certain that you receive any refund due you in a timely manner, you should file your tax return as early as possible. If your tax refund has been dedicated to your Chapter 13 plan, you must endorse the refund check and send it to the Trustee's office.

DO YOU STILL HAVE QUESTIONS? If any of your questions or concerns have not been answered in this pamphlet, please contact your attorney. This pamphlet is intended to be an overview of the Chapter 13 program in the Northern District of Georgia, and does not deal with all issues which could arise. If you still have questions, after contacting your attorney, you may write the Chapter 13 Trustee's office and you will receive a prompt response.

ONE FINAL WORD. Complying with a Chapter 13 plan is not easy. You may have to make a real sacrifice to meet the obligations which you have specified in your plan and still live within your Chapter 13 budget. Thousands of families have successfully completed their 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 of 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 any attorney representing you must be approved by the Court in order to be paid an agreed fee.**
- **Always remember to contact your attorney, not the Trustee, for legal advice and assistance about you Chapter 13 case.**

GOOD LUCK WITH YOUR CASE!