

# WHAT YOU SHOULD KNOW ABOUT YOUR CHAPTER 13 CASE

## PLEASE READ AND REIVEW PRIOR TO YOUR SECTION 341 MEETING OF CREDITORS-THANK YOU

This pamphlet answers a number of questions that may come up during your Chapter 13 plan. Read this information completely to help you understand your rights and obligations and refer to it later when you have questions.

Please put your case number on all payments and letters sent to the Trustee.

Case: # \_\_\_\_\_

### The Trustee's address is:

<u>PAYMENTS ONLY</u>	<u>LETTERS &amp; INQUIRIES</u>
<p>Dianne Crandell Kerns, Trustee P.O. Box 366 Memphis, TN 38101-0366</p> <p>(Please do not include correspondence or other information with your plan payment)</p>	<p>Dianne Crandell Kerns Office of the Chapter 13 Trustee PMB 413 7320 N. La Cholla Blvd. #154 Tucson, AZ 85741</p>

Your Attorney is:

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**KEEP THIS FOR FUTURE REFERENCE!**

## **\*\* REMEMBER THIS \*\***

### ***Start Making Plan Payments Immediately!***

Payments should commence with the first income you receive after filing your plan, but not later than 30 days after your plan is filed.

### ***Send NO Money to the Trustee's Office!***

We do not accept payments in the Trustee's Office. Do not bring or mail payments to our office. All payments must be in the form of cashier's checks or money order mailed to our bank lockbox at: DIANNE C. KERNS, CHAPTER 13 TRUSTEE, P.O. BOX 366, MEMPHIS, TN 38101-0366.

If you do not have mailing or case number labels from our office, be sure to write your case number on your cashier's check or money order, as well as your name, before mailing any payment to the bank lockbox.

### ***DO NOT Send Correspondence or Tax Returns to the Lockbox!***

The lockbox is intended for plan payments only. Correspondence items will be rejected by the bank. ALL correspondence must be mailed to address listed in the Debtor Handbook which may be found online at [www.dcktrustee.com](http://www.dcktrustee.com).

### ***Keep in Touch with Your Attorney!***

The Trustee's Office **is precluded from dispensing legal advice**. You must call your attorney if you feel any changes are needed to your plan. This and other types of legal advice can only be provided by your attorney.

### ***Keep your Personal Information Up To Date!***

The Trustee must have your current name, mailing address and employer for as long as you are in Chapter 13. All notices, letters, checks, etc. will be mailed to the last known address reflected on the Court's records. If you have changes to your name, address or employer, notify your attorney.

### ***Review your own Case Online!***

Your case information is available on the Internet. This FREE service is available to debtors to help you clearly monitor the progress you are making toward your financial recovery.

Make sure the debts listed are your bills! If there is anything that you do not understand contact your attorney immediately and make sure the issue is resolved.

Log on to [www.dcktrustee.com](http://www.dcktrustee.com). Under the Forms section locate "How to access your case information on the internet-National Data Center" or go to [www.ndc.org](http://www.ndc.org).

# OFFICE OF THE CHAPTER 13 TRUSTEE

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DIANNE CRANDELL KERNS, TRUSTEE

Dear Debtor(s),

You have taken a brave step in filing Chapter 13. It will require a great deal of hard work and discipline on your part in order to complete your plan successfully. I recommend that you read the Debtor Handbook carefully prior to your Section 341 Meeting of Creditors. Acquainting yourself with your rights and obligations will help you in understanding Chapter 13 and will increase your chances of success going through the Chapter 13 process. This handbook does not cover everything that may come up during your case and ***is not intended*** to provide legal advice in conducting your case.

The bankruptcy laws give you a chance to gain control of your finances. Please stay involved in the Chapter 13 process. Remember to work with your attorney and keep him/her posted of events in your life.

You may download the entire Debtor Handbook, "What You Should Know About Your Chapter 13 Case" from our website [www.dcktrustee.com](http://www.dcktrustee.com). Please take the time to review our website as well as valuable links and resources.

*Dianne Crandell Kerns*

Best Regards,  
Dianne Crandell Kerns  
Chapter 13 Standing Trustee

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# IMPORTANT INFORMATION ABOUT YOUR CHAPTER 13 CASE

## SECTION ONE: General Information About Your Bankruptcy Case

### **INTRODUCTION:**

Chapter 13 is one method under the Bankruptcy Code to get protection from your creditors, providing that you pay them back as much as you can. It allows you to keep most or all of your property during the time you are paying creditors back. It also lets you modify some contractual payments, interest rates and lengths of obligation. Creditors can take action against you only after you have had a hearing and the judge has allowed it. Chapter 13 has gained widespread acceptance across the country as an attractive alternative to a “straight bankruptcy” (under Chapter 7 of the Bankruptcy Code).

### **YOUR CASE NUMBER:**

When your Chapter 13 petition was filed, the Bankruptcy Court gave the case a number. *This number is very important.*

You will need your case number, your current address AND the last four digits of your social security number whenever you call the Trustee’s Office. If you write a letter to the Trustee’s Office, it is important to write your case number on your letter. Also, whenever you make a **payment** to the Trustee put your name and case number on your cashier’s check or money order. Labels are provided for your convenience and have been included in this packet.

### **YOUR ATTORNEY:**

Under the rules of the Bankruptcy Court, your attorney must continue to represent you for as long as your case is active, or until the Judge permits your attorney to withdraw from your case. If you ever have a legal question (concerning your case, a creditor, your rights or your options) **ask your attorney first**. You should reach a clear agreement with your attorney about his pay. In many cases, your attorney will be paid some or all of his or her legal fee through your Chapter 13 plan.

Be sure that you and your attorney have fully discussed whether additional legal services during your Chapter 13 plan will cost you more money or, whether the initial fee will cover all legal services.

Remember that all legal fees must be reviewed and approved by the Bankruptcy Judge. You may change attorneys during the life of your plan, but you are required to let the Trustee and the Court know the name and address of your new attorney.

***IF YOU DO NOT HAVE AN ATTORNEY:***

Under the law, you are held to the same standards as an attorney in conducting your case. Our experience shows that it is very difficult to succeed in a Chapter 13 case without an attorney. Very few cases filed without an attorney make it through to a confirmed plan. The Trustee's Office cannot give you legal advice. Court personnel cannot provide you legal advice. Only an attorney can provide you legal advice. We recommend that people obtain the services of an attorney to increase the chances of success in this process. Many attorneys will accept payment of some or all of their fees through your plan payments, which may allow you to pay your fees over the course of your case.

***YOUR NAME, ADDRESS & EMPLOYER:***

The Trustee must have your current name, mailing address and employer for as long as you are in Chapter 13. All notices, letters, checks, etc. will be mailed to the last known address reflected on the Court's records. If you have changes to your name, address or employer, notify your attorney as your attorney must submit the information to the Court so your records can be changed to reflect the correct information. Forms available at [www.dcktrustee.com](http://www.dcktrustee.com).

***PLEASE NOTE: The Trustee cannot change your information until it is updated on the Court's records first.***

***CALLS TO THE TRUSTEE'S OFFICE:***

The Chapter 13 Trustee's phone number is: (520) 544-9094

We will only discuss your case with parties associated with your case. We will not provide information to any friends, relative or any creditors that are not listed on your case.

The Trustee's Office is open Monday through Friday from 9:00 a.m. to 4:30 p.m. and is closed all Federal holiday's. If you have a question which your attorney cannot answer, you may call the Trustee's Office during those hours. You will not need to talk to the Trustee personally. The staff understands the policies and guidelines in Chapter 13 and is well qualified to discuss any problems or question that may arise. The Fax number is (520) 989-6269.

***The Trustee and the Trustee's staff are precluded from giving legal advice.***

You should direct all legal questions to your attorney. If you are having trouble reaching your attorney, please contact us by phone, email ([mail@dcktrustee.com](mailto:mail@dcktrustee.com)), fax or letter and we will try to help you make contact with your attorney.

***ANNUAL REPORT OF PLAN ACTIVITY:***

Once a year you will receive an Annual Report of receipts and disbursements from the Trustee. This report includes the financial activity on your case. It will itemize payments

that you have made to the Trustee and it will itemize all the payments which the Trustee has made to creditors on your behalf. The information that appears on this report has not been audited by the Trustee's staff. If you have any questions regarding the information on the report, please contact your attorney.

***CHAPTER 13 PLAN LENGTH:***

It is important to remember that the plan length is only a close approximation at the time your plan is proposed. The plan length is dependent on many factors, which may change during the course of your plan. It is not unusual for a plan to run longer than originally proposed. There may be several reasons for this. Interest, which may or may not be paid to your creditors depending on your particular plan, may add to the plan length and the amount of funding to complete your plan. Interest rates may change. It often happens that a creditor files for a larger amount than you thought you owed. You may have forgotten a creditor which must be added to your plan. Also, if unsecured creditors are being paid back less than 100% of their debt, and the liquidation analysis contains a dollar amount which has not been met, the percent paid to unsecured creditors will be increased.

No plan is allowed to exceed 60 months in length. This is the time limit for completion allowed by the Court. If your plan should exceed 60 months in length, your attorney can help you in resolving this problem.

***BUSINESS CHAPTER 13:***

Debtors who file as small businesses are subject to the same requirements, restraints, and jurisdiction as debtors filing as individuals. Since self-employed debtors have no employer, it is necessary for them to make payments directly to the Trustee's Office in the form of a cashier's check or money order.

Small business debtors are required to file monthly reports and summaries of their business operations with the Trustee and the Court. A copy of the monthly report can be located at [www.dcktrustee.com](http://www.dcktrustee.com).

You should contact your attorney if you have any legal questions.



## **SECTION TWO: PAYMENT INFORMATION**

### ***PAYMENTS:***

Your first payment is due within 30 days after your case is filed, or within 30 days after your Chapter 13 plan is filed, whichever comes first. You need to write your name and case number on all documents and payments to the Trustee. **You are responsible for making all payments under your plan. If your payments are deducted from your paycheck, you are still responsible for making payments before your employer starts deducting for your plan payments from your paycheck.**

Please make all money orders or cashier's checks payable to Dianne Crandell Kerns, Chapter 13 Trustee.

Forward all payments to:

Dianne Crandell Kerns  
Chapter 13 Trustee  
P.O. Box 366  
Memphis, TN 38101-0366

Money orders and cashier's checks must include:

- 1) your **NAME**
- 2) your **ADDRESS**
- 3) your Chapter 13 **CASE NUMBER**

Make sure you include your return address on the outside of your envelope. This will help us track your payment if you forget to write your case number or write a wrong case number on your payment.

**Do not mail cash or bring payments  
directly to the Trustee's Office or Court Hearing**

Alternatively, you may choose to make your plan payments online. You may log on to [www.dcktrustee.com](http://www.dcktrustee.com) and select the *ePay* tab. To register, please refer to the Debtor Quick Reference Guide. You may only use a Checking or Savings account and you will be charged a processing fee for use. Please be aware, if you make a payment when there are not sufficient funds to cover the payment plus processing fee, the Trustee will manually lock the account and you must make all further

payments using Cashier's Checks or Money Orders only. There are no second chances once a non-sufficient funds or stop-pay payment has been submitted and declined.

Please discuss your payment options with your Attorney.

## **THE TRUSTEE DOES NOT ACCEPT PERSONAL CHECKS OR ONLINE BILL PAYMENTS FROM YOUR BANK**

### ***PAYROLL DEDUCTION ORDERS:***

At the time you filed your Chapter 13 petition, your attorney may have submitted a payroll deduction order to be served on your employer. This order tells your employer to deduct your plan payment from your paycheck and send it to the Chapter 13 Trustee. This order prohibits your employer from honoring any garnishments while you are under Chapter 13, including back taxes.

The only exceptions to garnishments stopping are ongoing child support and other limited, special circumstances provided for in the order. *It is important that both you and your employer understand that a payroll deduction order is NOT a garnishment.* A garnishment or attachment can only come from someone to whom you owe money. You do not owe the Court or the Trustee any money. You voluntarily filed and gave the Court exclusive jurisdiction over your future pay while you are under Chapter 13. The Trustee is just carrying out his duty to administer the plan by receiving voluntary payments and disbursing those payments according to your Chapter 13 plan.

It may be helpful if you speak to someone in your payroll department to make sure they understand that:

- this Court order stops garnishments
- this deduction should not be listed as a garnishment or Friend of the Court payment

Most employers understand that you are making a serious effort to repay your debts, and think more highly of an employee who seeks to repay his/her debts than of one who avoids repaying his/her debts.

**If your employer does not honor a wage attachment, tell your attorney so that appropriate action can be taken.** If your employer has any questions, he or she should call your attorney for an explanation.

**Note:** It may take several weeks for your payroll deduction to become effective. In the meantime, be sure to make your regular payments directly to the Trustee. The Judge's willingness to approve your plan will depend on the good faith effort you demonstrate by your payment record prior to confirmation.

If your employer fails to make a payroll 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 or cashier's check.

**If your employer is deducting the payments, but is not sending them to the Trustee's Office, contact your payroll department and your attorney immediately.**

***OBLIGATION TO PAY:***

Even if you have a wage deduction order through the Court, you must remember that you have the obligation to make sure payments are made. The law requires that your payments start no later than 30 days after your plan is filed. The sooner you start making payments, the greater chance you have of successfully completing your plan. The Trustee does not have the capability to use payment coupon books or to send monthly statements. **Therefore, you must keep your own record of payments.**

**You need to keep your receipts for cashier's checks and/or money orders that you send to the Trustee. This way, if there is ever any discrepancy in your payment history, you will have complete records showing the payments that were made. For many people, it is helpful to have a large envelope or file folder to contain a copy of your plan, the schedules and statements that were filed with the Court and the order confirming your plan (confirmation orders are entered several months after your plan is filed and is the document that lets you know how much you have to pay into your plan and over what period of time). Every time that you send a plan payment, you should put the payment receipt in your plan envelope or folder. It may be helpful to have the payment receipts in a regular size envelope that you keep inside the larger envelope or folder, with each payment being put at the back of the envelope. Then your payments would be in the order they were made and it will assist you in comparing your payments to the records of the Trustee, in the event a dispute arises. Bring all pay stubs (if plan payments are deducted from your paychecks) and copies of cancelled cashier's checks or money order receipts to Court hearings if there is a dispute over your plan payments. Having all of the information in one place makes it easier for you to keep track of your case, you have ready access to your case number when you are sending a plan payment off (all payments must have your name and case number on them).**

It is your responsibility to pay the plan payments, even when you are not working. If you become unemployed, you may be able to amend your plan, seek a moratorium on payments or take other necessary action. **Talk to your attorney about your options.**

**TAX RETURN AND TAX REFUND REQUIREMENTS:**

You or your attorney are required to provide copies of federal and state income tax returns for each year for the duration of the Plan to the Trustee. Tax returns must be forwarded **within 30 days after the returns have been filed**. All Personally Identifiable Information must be redacted prior to submission. Tax returns may be submitted to [mail@dcktrustee.com](mailto:mail@dcktrustee.com). This requirement is to be included in the Stipulated Order Confirming the plan. Failure to submit tax returns may result in the dismissal of the Chapter 13 case.

If you receive a tax refund larger than \$1,000 for the tax period preceding the filing of this case, the continuation of such deduction would constitute a diversion of income that would otherwise be available to creditors. Accordingly the Trustee requires that (i) you adjust your payroll tax deductions to prevent over withholding, (ii) amend Schedule I to reflect the reduced withholding; (ii) submit to the Trustee two consecutive paystubs to verify said reduction; and (iv) increase the plan payments in the Stipulated Order Confirming.

**Discuss this issue with your attorney and make sure you follow the guidelines in your Chapter 13 plan.** If the IRS keeps your refund to apply to other taxes you owe, or another creditor (for example, Friend of the Court), you may still be responsible for paying the refund amount to the Trustee – contact your attorney!

If your Chapter 13 plan requires you to submit all or a portion of your tax refund each year, you are responsible for making the refund payment to the Trustee yourself. Failure to do so could result in the Trustee filing a motion to dismiss your case with the Court. Send the amount you are obligated to pay into your Chapter 13 plan in a cashier's check or money order to the payment address for the Trustee. Please include your name and case number and clearly mark the tax year the amount covers ("20\_\_" income tax refund).

**SECTION 341(a) FIRST MEETING OF CREDITORS:**

The Bankruptcy Code requires all debtors to appear at a meeting of creditors (aka 341(a) Meeting, and be examined under penalty of perjury regarding your financial affairs. The Bankruptcy Court will send you a notice of the date and time. It is important that you allow plenty of time to get to your meeting on time.

**You must bring with you 1) a government issued photo identification and 2) proof of your social security number.** Acceptable proof of SSN includes your Social Security Card, Military ID, your W-2, or a letter from the Department of Economic Security or Social Security Administration. Having your SSN on your driver's license or tax return is not acceptable.

If you do not appear at your meeting of creditors, your case may be dismissed. If you fail to bring both forms of identification, your hearing will be rescheduled and you will have to come back a second time. **Do not forget your identification.**

**Please note that you must begin making your plan payments BEFORE your meeting of creditors.** Do not bring your payment to this meeting. Do not wait for this meeting to begin making your plan payments.

### **341(a) Meeting Locations:**

<u>Tucson:</u>	<u>Casa Grande:</u>
38 South Scott Avenue Suite 140 Tucson, Arizona 85701-1704	Pinal County Superior Court 971 Jason Lopez Circle, Bldg. A, 3 <sup>rd</sup> Floor Florence, Arizona 85132

\*Please refer to [www.dcktrustee.com](http://www.dcktrustee.com) and select the *341Hearings* tab for further instruction and details regarding your Section 341(a) hearing.

#### ***ADJUSTMENT OF PAYMENTS:***

It is extremely important for you to let your attorney know if something interrupts your pay and makes it impossible for you to make payments to the Trustee. In some cases, adjustments may be made on payments to prevent undue hardship. Whether or not you will be able to adjust your plan payments will depend on how long your plan has been running and on the kinds of creditors you have.

If you require a permanent payment adjustment, please contact your attorney to review and revise your plan.

#### ***FAILURE TO PAY:***

If the Trustee's Office fails to receive payments on your Chapter 13 plan, either the Trustee or a creditor will seek to have your case dismissed. If something happens to your job, you become disabled, you are laid off, terminated or you are otherwise made incapable of continuing your current payments, consult your attorney at once. Your attorney should be able to counsel you on the best way to protect yourself during such time.

Your plan requires you to send your Chapter 13 payments to the Trustee no matter what happens to your job, unless the Judge allows you to stop or reduce payments.

If you are temporarily without work, be sure that as soon as you return to work the payroll deduction starts again, if you pay the Trustee through a wage deduction. The Trustee's role as administrator of Chapter 13 cases requires her to protect the interests of both debtors and creditors alike.

Whenever you are two (2) or more months behind in payments under the plan, the Trustee will review the case for dismissal.

When the Trustee seeks to have your case dismissed, you will be notified in writing. You should then contact your attorney immediately to discuss your options.

***DISMISSAL:***

If your case is dismissed you might not be eligible to re-file a Chapter 13 petition for six months, if you can re-file you may lose the benefit of the automatic stay or if you can re-file you may not be able to obtain a discharge of your debts. Discuss this with your attorney.

The Trustee's Office has no authority to allow you to miss a payment or pay less than the amount stated in your Chapter 13 plan.

Only the Bankruptcy Judge can change the terms of a plan. If you feel you cannot meet the obligations of your Chapter 13 plan contact your attorney to review your options that may include modifying your Chapter 13 plan with Court approval.

***PAYING MORE THAN REQUIRED:***

**If your plan requires you to repay creditors 100%**, paying the Trustee more than what your plan requires you to pay may decrease the amount of time it will take your plan to complete. Paying a little extra may reduce administrative expenses for the Trustee and cause the payroll deduction to stop a little sooner. There are several ways to pay more than is required into your plan.

If you ever wish to increase your plan payments, contact your attorney. If you wish to make a single extra payment, you may do so by sending a money order or cashier's check to the payment address. If you wish to complete your plan payments before the confirmed length of your plan has run, you must contact your attorney.

**REMEMBER: You have access to your case information online!**

You may go to [www.dcktrustee.com](http://www.dcktrustee.com) in order to link to [www.ndc.org](http://www.ndc.org) This site will provide you with the latest information as you carry out your Chapter 13 plan. This is especially important in order to help you audit your case and monitor the progress you are making toward your financial recovery.

## **SECTION THREE: CREDITORS**

### ***CONTACT BY CREDITORS:***

The creditors that you listed on your Chapter 13 petition are subject to an automatic Restraining Order, also called the “automatic stay.” The automatic stay prohibits your creditors from contacting you or your employer in any way.

### ***HOWEVER IF YOU ARE NOT REPRESENTED BY AN ATTORNEY:***

You should not be contacted by creditors. However, you may have some creditors that you need to be in contact with to resolve how their claims are being treated in your case. These most typically will be the IRS, the Arizona Department of Revenue, your mortgage company or the company refinancing your automobile. The Trustee’s Office is not able to give legal advice about these matters. The Court is not able to give legal advice about these matters. It is recommended that you obtain the services of an attorney to assist you in your case, as very few cases succeed without the assistance of an attorney.

**If you get notices in the mail from your creditors, send them to your attorney.**

Late notices from creditors need not cause you any great concern. If you receive a more personal, direct contact from a creditor, however, (such as a telephone call, a personal letter, a summons or a visit in person) you should immediately tell them that you filed Chapter 13 and give them your case number. Then, give them the addresses and names of both the Trustee and your attorney.

You should not discuss any debts with creditors in any manner. Be sure to tell your attorney the name of the person who contacted you, so that he or she can follow up on the contact.

By the same token, *you should not contact your creditors.*

### ***BILLS YOU STILL PAY (UTILITIES, PHONE) & BOUNCED CHECKS:***

You are still responsible for paying your regular monthly household bills such as insurance, utilities, groceries, etc. (see Schedule J in your Chapter 13 paperwork) while you are in Chapter 13.) It is important that you are very careful and only write checks your bank can honor. Although you are in a Chapter 13 plan, writing a bad check is still a criminal offense and a creditor that holds a bounced check after you file is not stopped from seeking a criminal prosecution.

The automatic stay (restraining order) in your Chapter 13 case does not stop criminal prosecution.

If the creditor does decide to prosecute, the debt would become a fine and you would handle the fine directly, outside of Chapter 13. Please contact your attorney for further assistance if you find yourself in this situation.

***BALANCE DUE CREDITORS:***

You may not deal with a creditor, just as a creditor may not deal with you. You cannot pick and choose particular creditors and pay them “on the side”. All of your creditors must be paid per the Chapter 13 plan as confirmed by the Court. If you have an immediate reason to know how much money you still owe to one creditor or to all creditors at any time during your plan, you can review your case information online. You may request in writing from the Trustee’s Office a copy of the accounting of your case. Please keep in mind, the Trustee automatically mails you and your attorney a copy of your annual report once a year. However, neither the accounting nor the annual report should be used to determine the “payoff” of your case. A formal payoff statement can be provided.

If you are considering paying off your case, you should contact your attorney immediately because legal issues are involved.

***CLAIMS OF CREDITORS:***

The creditors which you list on your Chapter 13 petition are given an opportunity to file a claim for payment. They are allowed 90 days from the Meeting of Creditors to file their claim.

If a creditor does not file a claim within the time allowed, but you want that creditor paid in your Chapter 13 case, please have your attorney file a claim for that creditor.

After your Chapter 13 plan has been confirmed, the Trustee’s Office will notice a complete list of every creditor who has filed a claim in your case and the amount of money they claim to be owed. This list is called a Report of Allowed Claims. **You should read and examine this list very carefully.**

If a creditor is listed incorrectly or any amount claimed seems incorrect, you should contact your attorney at once. Unless your attorney objects to a claim, **we will pay the amount the creditor requests rather than the amount listed on your petition.**

***MORTGAGE PAYMENT OR ESCROW CHANGES:***

Should your mortgage payment or escrow change, your Chapter 13 plan will have to be adjusted. Any material increase monthly could interfere with your ability to complete your Chapter 13 plan as proposed. This could cause dismissal of your case or cause your mortgage company to file a legal action against you. **You need to contact your attorney immediately should you receive a Notice of Increase from either your mortgage lender or the Chapter 13 Trustee.**



**LATE CLAIMS:**

As noted above, most creditors generally have 90 days to file a claim (180 days for governmental units). Creditors might not be entitled to payment if they file their claim after that date. **Tax claims are an exception to this rule.** If you do not want to pay a late claim, contact your attorney who must object to its payment. If a late claim is not objected to, it will be paid.

Unless you object to paying a late-filed claim, the Trustee may pay the claim, even though it was filed late.

Any claim which is not allowed by the Court will not be paid. If you complete your plan, most claims (except some taxes) that are not allowed or not filed will be discharged upon the completion of your plan. However, speak with your attorney if you have questions regarding certain unfiled or unpaid claims.

Student Loans and Domestic Support Obligations (child support or alimony) may not be discharged upon completion of your Chapter 13 plan. If you have these issues, make sure you discuss these issues thoroughly with your attorney.

**CREDITORS NOT LISTED:**

Not listing all creditors you owe when you file for Chapter 13 can, and usually will, cause problems.

There are two kinds of creditors who are absent from the original list:

- 1) Those creditors whom you owed money before filing but forgot to list in your petition (unlisted creditors), and
- 2) Those creditors who lent you money after you filed (post-petition creditors) your Chapter 13 plan.

IF you discover an unlisted creditor after filing, you must let your attorney know the details of the debt immediately.

Your attorney can include this *unlisted creditor* in your plan to protect you from collection procedures. Time is very important in terms of protecting you, so **do not delay** if you discover one.

*Post-petition creditors* are rare because you are not allowed to accumulate a debt while under Chapter 13, unless you have received Court permission to do so. (Contact your attorney if you have a need to borrow money -- see provisions below.) Occasionally, however, unusual or emergency situations may arise.

Post-petition debts should be brought to the attention of your attorney so that a review of your plan can be made.

If extra debts are added to your original plan, the Trustee may request that your plan payments be adjusted to handle the addition.

***CREDIT CARDS AND POST-PETITION DEBTS:***

Once your plan has been filed, the Judge will prohibit you from acquiring any debt for as long as you are under Chapter 13 unless you receive Court permission to do so.

This applies to any member of the family that is supported by the debtor under Chapter 13, whether or not they themselves are under the jurisdiction of the Court. This is because the person under Chapter 13 may be responsible for any debts the dependent acquires. The only exception to this rule is for medical or other emergencies. The Court will usually permit you to incur a bill to a doctor or a pharmacist during your plan.

If you ever feel that it is important for you to buy something on installment payments, you must obtain the Judge's permission to do so. The Judge will generally grant you permission if: you are paying regularly into your plan, there is a good reason to incur the debt and your ability to make plan payments is not threatened by the additional debt. **Remember: you must first contact your attorney, if you need to incur additional debts.**

***OBTAINING CREDIT WITHOUT PERMISSION:***

Obtaining creditor without permission of the Court is a violation of the Court's rules and is, therefore, subject to reversal by the Court. Any credit purchase you make without the approval of the Court might be illegal. The goods may have to be returned to the original owner and you probably would lose any payment you made on the purchase. You would also place your plan in serious jeopardy if you obtained credit without approval and it may even be dismissed.

***HOW CREDITORS ARE PAID:***

The Trustee pays your creditors as directed by Court orders entered by the Court. The money which you pay to the Trustee is used to pay all the expenses of administering your case, including any attorney fees to be paid through the plan, and the debts to all your creditors. After you have filed a Chapter 13, you cannot choose some particular creditor and pay him/her "on the side" because all of your debts must be dealt with through the Court.

Any payment you make independently to a creditor may be illegal. By law, ALL creditors must be paid under the authority of the Court.

Payments from the Trustee are disbursed to creditors once each month.

There are four basic types of claims: 1) administrative, 2) secured, 3) priority and, 4) general unsecured.

Generally, The Trustee will pay administrative costs first: the Trustee's fee and any attorney fees to be paid through the plan. Next, the Trustee will pay all creditors with liens on your property (secured claims). Next, any taxes that you owe will be paid (priority claims). Lastly, all remaining creditors (unsecured claims) will receive payments under the plan.

Confirmed plans often require that the Trustee begin paying priority and unsecured creditors only after administrative and secured claims are paid. For this reason, it could be several months before the first payment is made on priority and unsecured claims. You may decide, however, that you want priority and/or unsecured creditors to also receive payments simultaneously with secured creditors. If you choose this option, please discuss it with your attorney.

**Remember:** secured claims may accumulate interest under Chapter 13, but unsecured creditors are not allowed interest after the date when you filed your petition (except for unusual circumstances). Thus, it may be more advantageous for you to pay off the debts accruing interest first, rather than trying to pay all your creditors at once.

## **SECTION FOUR: MISCELLANEOUS**

### ***COSIGNERS AND CO-MAKER:***

A cosigner, co-maker or guarantor on any of your consumer debts is generally protected from contact by the creditor as long as you remain under Chapter 13. This automatic protection applies only in Chapter 13 cases. If the cosigner, co-maker, or guarantor has given collateral for the loan, the creditor must request a hearing before the Judge in order to reclaim the property. However, this co-debtor protection will only protect cosigners, co-makers, and guarantors for the amount of debt which your plan proposes to pay.

If your plan is not scheduled to pay the creditor in full, the creditor may obtain permission to collect the percentage of the debt that your plan is not going to pay from the co-debtor.

### ***SELLING PROPERTY:***

You cannot dispose of any of your property, including land, without Court approval while you are under Chapter 13. If the Court allows you to sell any of your property for a profit, the Court will decide where the profit will go. Some or all of it may have to be applied to your Chapter 13 debts.

If you sell your property without permission from the Judge, the transaction may be revoked and your case could be dismissed. This includes re-financing your home or other property. **See your attorney for exact details.**

### ***CREDIT RATING:***

Your credit rating during and after completion of Chapter 13 will be, as it always has been, the personal opinion of any credit grantor who looks at your record. A credit rating is not a rank or a number; it is a record of all your past credit performances. This record is made available to credit grantors who make up their own minds, using their own standards, as to whether or not they will grant credit to you. Lawsuits, collections, attachments or garnishments, straight bankruptcies (Chapter 7) and Chapter 13 bankruptcies are all indications of credit problems. However, after a number of years of operation and a number of successfully paid-in-full Chapter 13 cases, we find that many credit grantors look with respect upon those who have paid their debts in full under the Chapter 13 plan. Of course, any credit record that has been blemished by a problem must be gradually rebuilt. The Trustee does not provide any information to the credit reporting agencies before or after your Chapter 13.

***FREE ANNUAL CREDIT REPORT:***

Free annual credit reports are now available upon request pursuant to the Fair and Accurate Credit Transaction Act of 2003. Reviewing your credit for accurate information will help to reduce incidents of identity theft.

You can order your free annual credit report online at [www.annualcreditreport.com](http://www.annualcreditreport.com), by calling 1-877-322-8228, or by completing the Annual Credit Report Request Form and mailing it to: Annual Credit Report Request Service, P.O. Box 105281, Atlanta, GA 30348-5281.

SOURCE: "Your Rights: Credit Reporting" link at <http://www.ftc.gov.credit>

***INCOME TAX INFORMATION:***

The Trustee's Office is not in a position to advise you on how to file your income tax return, or the amount of interest paid to creditors. We will, upon written request, provide you with a copy of a report which will include the names of creditors that received money. The Trustee's Office cannot provide legal advice, including tax advice.

***INTEREST INCOME RECEIVED:***

Should your case be dismissed or converted prior to confirmation, the Trustee is required to return any pre-confirmation interest earned from plan payment made. The I.R.S. requires the Trustee to issue 1099-INT forms for any unconfirmed case interest earned over \$15.00.

Unfortunately, the expenses of your Chapter 13 plan are not deductible for Federal Income Tax purposes.

***INCOME TAX RETURNS AND REFUNDS:***

A different office of the Internal Revenue Service, called Special Procedures Section, processes federal tax returns filed by Chapter 13 debtors. The IRS does this to help them avoid accidentally issuing notices in violation of the automatic stay (restraining order). However, it often results in tax refunds being delayed.

To be certain that you receive any refund in a timely manner, you should file your tax returns each year as early as you possibly can. If you owe any taxes for prior years, the refund may be kept by the IRS. If this happens, discuss it with your attorney immediately.

***ANNUAL REPORT:***

Every year you will receive from the Trustee Office an Annual Report of receipts and disbursements. This report includes all of the financial activity on your case during the previous 12 months. This report will itemize all payments the Trustee has received from you, and summarize all payments the Trustee has made to creditors on your behalf. If you have any questions regarding this report, please contact your attorney.

## **SECTION FIVE: ENDING YOUR CHAPTER 13 CASE**

### ***STOPPING PAYROLL DEDUCTIONS:***

If you make plan payments through a wage deduction, it is **your** obligation to notify your employer to cease payroll deductions as quickly as possible when a plan is completed or dismissed. In most instances, your attorney will be required to file a Motion to Quash Wage Order and will receive an order instructing your employer to stop your payroll deduction.

It often takes some time for employers to process these instructions, so your employer may make one or two extra payments. These funds will be returned to you in full, without deduction of the normal Trustee's fee. It generally takes six to eight weeks from initial review to completion of closing out cases. Any funds on hand after the case is closed will be returned to the Debtor once the process is finished.

### ***DISCHARGE:***

The Trustee compiles a monthly list of cases that appear ready for discharge (i.e., all plan terms have been successfully completed). A review of the Court's records is performed to ensure that the Trustee has paid all claims filed by creditors. Occasionally, the Court may have received a claim which the Trustee did not. Consequently, the Trustee did not pay that creditor. If this happens, these claims will be scheduled for payment according to the terms of the Order Confirming Plan.

You will also be required to do several things if your case was filed after October 17, 2005 in order to obtain your discharge:

- 1) Domestic Support Obligations: Certify that child support or alimony has been paid and is up-to-date.
- 2) Instructional Course in Financial Management: You will be required to take an instructional course concerning personal financial management approved by the United States Trustee. Please contact your attorney's office for information on how to enroll for this course.

When it appears that your case is completed, the Trustee's Office will send a "Notice of Completed Plan and Request for Discharge" to you, your attorney and the Court. The Court will then send you a certification document that you will be required to fill out and file with the Court before you can receive a discharge. The entire process usually takes about eight weeks. **The Court, not the Trustee's Office**, will issue a Discharge Order approximately 30 days after receiving the Trustee's notice, if you have filed the certification document (and are eligible for discharge). The discharge also acts as an injunction against your creditors, prohibiting them from taking unauthorized action

against you after your case is ended (cannot attempt to collect discharged debts). Your Discharge Order will be noticed by the Court to all of the creditors on your Master Mailing List.

The entire closing process (cases completed – paid in full) usually takes about ten to sixteen weeks but could take longer if checks to your creditors are not negotiated in a timely manner.

***DEBTOR REFUNDS:***

In the event you paid over your plan base (more than required under your Chapter 13 plan) or your wage order was not stopped; such over payment of funds will be returned to you in full, without deduction of the normal Trustee’s fee. However, if your address is not current with the Court and our office, a reserve will be placed on your refund and it will not be mailed to you until your attorney has filed an address correction with the Court. Should you fail to update your address with the Court within 60 days, your refund will be routinely turned over to the Court. In the event funds are turned over to the Court, it will be the responsibility of you and your attorney to seek recovery from the Court. Any amount over paid by you via ePay (online payment) will be held for a period of 90 days to ensure funds have cleared your bank.

***REQUEST FOR DISMISSAL BY YOU:***

Federal Bankruptcy law allows you to request that your Chapter 13 case be dismissed at any time.

If you desire to dismiss your case, contact your attorney. Understand, however, that a dismissal will reactivate all unpaid or disputed debts, interest, finance charges, late-filed charges which the Court did not recognize and debts to creditors who did not file their claims.

If your case is dismissed, you no longer have Court protection and you will be forced to deal with these creditors on their own terms, not yours or the Court’s. The request for dismissal of your plan must be in writing. We urge you to give careful consideration to such a decision, and discuss it with your attorney. The Trustee’s Office cannot give legal advice about the voluntary dismissal of your case.

***CONTACT BY CREDITOR AFTER COMPLETION OF A CHAPTER 13:***

When a secured creditor has had its claim paid in full by your Chapter 13 plan, it should send the paid-in-full papers to you. If the creditor fails to do this, it is not necessarily a problem; the official Court records show that your plan is completely paid and would overrule most claims the creditor might make for additional money. If you receive any request for additional money after your plan is completed, contact your attorney!



## ***ONE FINAL WORD:***

Complying with a Chapter 13 plan is not easy. You may have to make a substantial sacrifice to meet the obligations of your plan and to live within your Chapter 13 budget. Many families have already successfully completed their Chapter 13 plans. They have the satisfaction of knowing that they have resolved their debt problems without filing straight bankruptcy and that they have paid most, if not all, of their obligations to their creditors.

Good luck!