

Chapter 13 Handbook

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DISCLAIMER

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It is the purpose of this handbook to provide practical information regarding Chapter 13 bankruptcy proceedings, but it is not intended to be an all-inclusive treatment of Chapter 13 proceedings. Its purpose is to summarize and supplement other texts, including the Bankruptcy Code (Title 11, U.S.C.).

The publication of this handbook is not intended to constitute legal advice or the performance of legal services, and is made available by the Trustee upon a condition that it not be treated as such by any reader. The Trustee recommends that anyone in need of advice in the field of bankruptcy law, and specifically as it relates to Chapter 13 matters, obtain the services of qualified legal counsel with expertise in bankruptcy and proceedings as practiced in the San Francisco Court.

The Trustee shall not be liable or responsible for any of the statements of information contained herein. All persons acting in reliance upon any statement contained in this brochure shall do so at his/her own risk.

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INTRODUCTION

This booklet is designed to help you understand what happens when you are in a Chapter 13 bankruptcy. The information provided answers some common questions or concerns that arise from being in Chapter 13 bankruptcy. Please keep this booklet as a guide while in Chapter 13 and refer to it as often as needed.

Chapter 13 bankruptcy is a federal law that allows individuals with regular income or a small, sole-proprietary business to obtain relief from creditors while paying them back as much as possible. In order to qualify, you must have money left over after reasonable expenses have been paid.

Bankruptcy is confusing and complicated. You should obtain legal counsel to protect your rights. The Trustee and his staff are prohibited from giving legal advice. Your attorney is the best source for legal advice. Our goal is for you to complete your Chapter 13 Plan and I hope the information in this booklet will help you achieve that goal.

David Burchard
Chapter 13 Trustee

CHAPTER 13 TIMETABLE

Each Chapter 13 case differs slightly. However, a general timetable of events is shown below:

Case Opened

Your case is filed with the U.S. Bankruptcy Court Clerk and the Automatic Stay goes into effect suspending all contact between you and your creditors.

First Month

You and your creditors receive notice of your filing Chapter 13, your 341 Meeting of Creditors, the Automatic Stay and claim forms. Creditors begin filing claims and you start payments into the Plan.

Second Month

Generally, the 341 Meeting of Creditors is held. You, your spouse (if both of you filed) and your attorney are required to attend. Your creditors may also be present. This also is your opportunity to attend the Trustee's free Debtor Education class that is required to complete your case.

Third Month

Assuming a successful 341 Meeting of Creditors has been concluded, and any objections to your Plan are resolved, the Bankruptcy Judge will sign an Order Confirming your Plan.

Sixth Month

The time period for creditors to file claims expires.

Final Payment

You will receive notice from the Trustee when all your payments have been paid to the Trustee.

Completion

After careful review and analysis of your case, the Trustee prepares the Final Report and Account, a copy of which will be sent to you and your attorney.

Debts Discharged

Once all requirements for the debt to be discharged are completed, the Bankruptcy Judge signs the Order Discharging Debtor After Completion of Chapter 13 Plan.

REPORTS AND DUTIES OF THE TRUSTEE

A. Responsibilities of the Trustee

The Trustee has the responsibility to review your Plan to ensure that it is both feasible and realistic for debtors, fair to your creditors, and properly meets all the Bankruptcy Code requirements. The Trustee is not allowed to give legal advice and questions of a legal nature should be addressed to your attorney. Although the Trustee's main duty is to administer your Plan by receiving and disbursing your payments, he is also responsible for producing numerous reports and other periodic statements.

B. Status Reports

If you need to review how much you have paid into the Plan, or how much money remains due to a creditor or all creditors, the Trustee's office can prepare a Status Report or you can go to our website: www.burchardtrustee.com. You should carefully review these records to make sure all payments by you have been credited to your case. The records display the unaudited balance due to each creditor's claim and your entire case. It will not, however, include unmatured interest that may be payable in the future to any creditor who is entitled to interest under the Plan terms.

C. Final Report and Accounting

When your case is closed the Trustee's office prepares the Final Report and Accounting, which summarizes all transactions in your case including total payments received into the Plan, disbursements to creditors' claims and administrative costs.

PAYMENTS INTO YOUR PLAN

A. How to Make Plan Payments

Payments into your Chapter 13 Plan must be Cashier's Checks, Money Orders, or Wage Garnishments. Print your Bankruptcy case number and name clearly on each payment, and retain the receipts for your personal records. Payments must be made payable to:

David Burchard, Trustee
P.O. Box 8059
Foster City, CA 94404

B. Voluntary Requests for Payroll Deduction of Payments

You may voluntarily request the Trustee's office to direct your employer to deduct the Plan payments from your paychecks, thus eliminating the costs of purchasing money orders and cashier checks.

C. When Do Plan Payments Begin?

The first payment is due 30 days after filing your Chapter 13 Petition. Your case may be dismissed if all the payments are not made timely. All confirmed case payments are due to the Trustee, on the 20th of the first month, following the month the last pre-confirmation payment was paid.

D. Improper Creditor Deductions

After your case is filed, a creditor cannot take money from your paycheck or checking/bank account in payment of a debt.

E. Verification of Payments prior to the 341 Meeting of Creditors

At the 341 Meeting of Creditors, bring copies of your payment receipts as it may be necessary to verify that your Plan payments are current since filing your Chapter 13 case.

F. Late Payments

Once your Plan has been confirmed, only the Court has the authority change your Plan. Proper budgeting and communication by you are the key ingredients in taking your Plan to a successful conclusion.

PAYMENTS INTO YOUR PLAN

G. Enforcing the Payment Requirements of the Plan

If you fail to make the Plan payments, the Trustee will take action to dismiss your case. In administering your Plan, the Trustee is ensuring that not only the creditors are restrained from taking action against you and your assets, but that you are also complying with the terms of your Plan.

H. Annual Report

You will receive an annual report from the Trustee that shows all payments credited to your Plan. You must review this report and immediately notify the Trustee's office and your attorney of any discrepancies.

TAX RETURNS

Your Plan requires you to provide the Trustee with your federal income tax return on an annual basis by May 15th of the year following Confirmation of your Plan. Failure to provide the Trustee with your return, by that date, may result in the Trustee filing a Motion to Dismiss of your case for Failure to Comply with this provision of your Plan.

341 MEETING OF CREDITORS

Usually within 30 days after your case is filed, all parties of interest to your case will receive notice of your having filed Chapter 13, the Automatic Stay, claim forms, and the date, time and location of your Meeting of Creditors as required by Section 341 of the Bankruptcy Code. This may be the first time your creditors are aware of your filing Chapter 13 and that you are now under the protection it provides.

The 341 Meeting is conducted by the Trustee or a member of his staff, and your attendance is mandatory. Your attorney will be at the meeting, and if you and your spouse filed together, both of you must appear. If an emergency occurs, contact your attorney as soon as possible. The 341 Meeting will begin on time, and because this is a formal proceeding, please try to make arrangements for small children. Also arrive early so that you may speak with your attorney and handle any questions that you may have about your case.

When the Trustee calls your case, he may ask about your income and budget to determine if the Plan is fair and equitable to you, as well as your creditors. The Trustee wants your Schedules and Statements to reflect the true and complete circumstances of your financial status, so that he may determine that your Plan meets all the necessary requirements for confirmation.

Finally the Trustee will ask if there are any creditors present who wish to be heard. If there are creditors who feel it necessary to ask additional questions of you, the scope of their questions will be limited and they will not be allowed to badger or harass you. The creditors will have approximately five minutes for their questions.

If the Trustee and creditors are satisfied with your schedules, your answers, your compliance to the Bankruptcy Code and your Plan, the 341 Meeting can be concluded, and your Plan will be recommended for confirmation by the Court.

COSTS TO FILE A CHAPTER 13

1. Filing Fees

A filing fee must be paid to the Bankruptcy Court Clerk upon the initial filing of your Chapter 13 case. This fee is paid directly to the Clerk, and is not administered by the Trustee, nor retained by your attorney.

2. Trustee's Fees

The Trustee's office is not federally funded and the Trustee and his staff are not federal employees. Congress, in designing the Bankruptcy Code, has provided for the Trustee's participation in Chapter 13 cases. The Trustee is allowed to be paid up to 10% of the total funds administered. This fee is not a monthly, quarterly or an annual charge, but is based solely upon the amount of money that is actually paid through the Chapter 13 Trustee's office, and is included as part of your Plan payments.

3. Attorney's Fees

Generally, the attorney's fees are reviewed and controlled by the Bankruptcy Court. The Court approves the fee your attorney may charge you for services involved in a Chapter 13 case. Your attorney will also represent you and your Plan including their participation at the 341 Meeting of Creditors. If you are delinquent or deficient in the performance of your Plan so as to cause additional legal services, or should you require legal assistance after your Plan has been confirmed, your attorney may request additional fees. Your attorney may agree to receive all or a part of his/her fee through your Plan as an Administrative Creditor.

4. Motion Fees

If there are unusual circumstances or events in your case that cause you to take action by filing a Motion with the Court, you may be required to pay a fee to the Bankruptcy Court Clerk for filing the motion.

COST BENEFITS IN CHAPTER 13

Listed below are descriptions of how a Debtor's costs are decreased in Chapter 13.

1. Creditor's Charges

Upon filing for relief under Chapter 13, your creditors are prohibited from adding any late charges, service charges or collection costs. Additionally, all fines, fees and penalties normally charged by a creditor must cease.

2. Interest

One of the major savings provided as a result of your filing for relief under Chapter 13, is in the amount of interest you are no longer obligated to pay.

(a) Partially Secured

The court-approved interest rate is only allowed on the secured portion of the creditor's claim, or the balance of the debt, whichever is less.

NOTE: If Priority Creditors have filed a lien against an asset, they shall be treated as a secured creditor up to the amount of your equity. The amount owed in excess of the lien, your equity or the whole claim if no lien or security is claimed, shall be paid as an unsecured priority creditor.

(b) Unsecured

Unless the Court orders otherwise, all interest charges normally assessed by the creditor and paid by you to your unsecured creditors cease as of the date your Chapter 13 case is filed.

DISMISSAL/CONVERSION OF YOUR CHAPTER 13 CASE

A. Effects of Dismissal

If your case is dismissed you are no longer protected from your creditors and your debts will not be discharged. Your creditors may resume their collection efforts for the entire amount due, less any disbursements made by the Trustee's office. Creditors who did not file their claims can also collect from you. In addition, any objections to claims granted by the Court will cease to be binding against the creditor. Co-signers are also no longer automatically protected by your Chapter 13 case. Interest unpaid by the Trustee, may be retroactively calculated at the full contract rate, and added to the amount owed.

NOTE: If you voluntarily dismiss your case, you may be ineligible to file for additional Bankruptcy relief. Contact your attorney for further information.

B. Voluntary Dismissal/Conversion

You have the right at any time to dismiss your Chapter 13 case. You also may have the right to convert your existing Chapter 13 case to a case under other Chapters.

C. Involuntary Dismissal

Immediately upon filing your Chapter 13 case, it is your responsibility to comply with the terms of your Plan. Should you be unable to meet the conditions of your Plan and you do not take proper steps to modify your Plan, your Chapter 13 case may be dismissed. It is very important to contact your attorney should you be unable to comply with your Plan's requirements.

C-1 Involuntary Dismissal by the Trustee

If the Trustee finds that you are not in compliance to your Plan, he has both the responsibility and authority to take steps towards the dismissal of your case. If you disagree with the Trustee's course of action and/or are unable to meet the terms of your Plan, contact your attorney.

C-2 Involuntary Dismissal by Others

Creditors and other parties of interest may also request dismissal if your Plan does not comply with all the necessary provisions of the Bankruptcy Code, or if you are not in compliance with your confirmed Plan. If a creditor has filed for the dismissal of your case, consult with your attorney immediately.

GLOSSARY

341 MEETING OF CREDITORS gives the Trustee and the creditors the opportunity to examine the debtor.

ADMINISTRATIVE CREDITORS are creditors who services were necessary to properly administer a case and are therefore entitled to receive payment.

ASSETS are anything of value in the debtor's estate, whether or not the debtor has possession of the assets , or if money is owed on those assets.

AUTOMATIC STAY is in effect immediately upon filing a Chapter 13 case suspending or limiting all contact regarding the collection of a debt, and prohibits creditors from adding various charges or penalties normally assessed.

BANKRUPTCY CODE is Title 11 of the United States Codes as signed into law in 1979, and any amendments thereto.

BANKRUPTCY COURT CLERK is the administrative arm of each Bankruptcy Court, performing Court clerical duties. All Bankruptcy case documents are filed with the Court.

BANKRUPTCY JUDGE is a public official, appointed by the Federal Government, and empowered to adjudicate issues as they may relate to a Bankruptcy Case.

CASE is a file reflecting the Bankruptcy docket number that consists of all documents related to the debtor's estate, including the Petition, Schedules, Statements, Plan, Claims, Motion, etc.

CHAPTER 7 is the seventh chapter of the Bankruptcy Code under Title 11 in the United States Codes that relates to regular liquidation Bankruptcy cases.

CHAPTER 13 is the thirteenth chapter of the Bankruptcy Code under Title 11 in the United States Codes that adjusts the debts of an individual, or small proprietary businesses, and proposes a plan of reorganization to handle their financial affairs.

CLAIM(S) is a specific form where a creditor sets forth the amount of money owed by the debtor and is usually accompanied by substantiating documents.

CONFIRMATION is the approval of a Chapter 13 Plan by the Bankruptcy Judge.

GLOSSARY

CONVERSION is when a debtor changes from one chapter of the Bankruptcy Code to another, for example, changing from Chapter 7 to Chapter 13.

COURT HEARING is when an issue is brought before the Bankruptcy Judge for review, determination, and adjudication.

CREDITOR is an entity that has a claim against a debtor.

DEBTOR is a person or entity that owes a debt.

DEBTS are monies or obligations owed to an entity.

DISBURSEMENTS are the distribution of funds to creditors' claims, by the Trustee.

DISCHARGE is to be released, by a Bankruptcy Judge, from debt obligations.

DISMISS is when a Bankruptcy Judge removes, terminates or cancels a Bankruptcy Case.

ENCUMBRANCE is an amount owed, usually a debt that is legally secured by an asset.

EQUITY is the value of an asset in excess of the claims and or debts against it.

EXEMPTIONS is a list of limited and specified assets or equities that a debtor may retain or protect from seizure by a creditor.

FILING is the official recordation of the Chapter 13 Petition or other documents with the Bankruptcy Court Clerk.

LIABILITY is an obligation and/or debt owed.

LIEN is a claim against property giving the creditor a secured interest in the debtor's asset.

MOTION is an application to the court requesting an Order in favor of the applicant.

MOTIONS FOR RELIEF is an application to the Court to allow the creditor to proceed with their normal collection practices despite the Bankruptcy.

GLOSSARY

NOTICING is to follow the rules of the Court that requires the directing of information to the parties involved or others who may be of interest to a certain action.

ORDER is direction of the Bankruptcy Judge on a matter as it specifically relates to the case.

PETITION is a specific formal document that when filed with the Bankruptcy Clerk, constitutes the initiation of a Chapter 13 case.

PLAN is the formal document that sets forth the method by which the debtor is proposing to deal with the creditors and reorganize their financial affairs.

POST-PETITION refers to events after filing Chapter 13.

PRE-PETITION refers to events before filing Chapter 13.

PRIORITY refers to a specific creditor that is treated in a preferred manner as defined in the Bankruptcy Code.

PRO RATA is an equal share of funds available for distribution to be paid proportionately, to the total debts owed.

SCHEDULE OF DEBTS is a form listing all creditor names, address, account numbers, the amount owed and other specific information.

SCHEDULES refer to certain statements that must be filed with the Bankruptcy Clerk to properly execute the Bankruptcy Case.

SECURED refers to a creditor who legally holds title to, or has a lien against an asset.

STATEMENTS are part of specific form required for a complete Bankruptcy case.

TRANSFER is to legally change ownership or rights to something of value.

TRUSTEE is an individual appointed through the Department of Justice, to act as an administrator of a Bankruptcy Case.

UNSECURED refers to creditors who do not have legal title to an asset.

NOTES
