

## **FREQUENTLY ASKED QUESTIONS**

### **1. *What are my options?***

In general terms, most people either file a Chapter 7 or a Chapter 13. A Chapter 7 is a straight bankruptcy where you wipe out your bills and a Chapter 13 is a debt repayment plan.

### **2. *My house is going to be foreclosed upon tomorrow. Can you stop it?***

The answer is yes. You can stop the foreclosure either by filing a Chapter 7 or a Chapter 13 before the foreclosure sale takes place. If you file a Chapter 7 more than likely the house will eventually be foreclosed upon but not for another 3 or 4 months. If you file a Chapter 13 and can successfully complete it then you can keep your house. The key to saving a house is to get the bankruptcy filed prior to the sale date. Therefore I need as much warning as possible in order to prepare all of the paperwork. Not long ago I had a man call at about 10:30 in the morning to tell me his house was going to be sold at a foreclosure sale at 2:00 that afternoon. Could I stop it? His wife had filed a Chapter 13 with me many years before and I told them that if they could get their information together I could stop the foreclosure but they had to get here no later than noon. Well they made it with enough information to file the Chapter 13 and we did stop the foreclosure. Now obviously they were lucky. They were lucky because I was available and could get it done. If they called on a day when I was in court or perhaps simply not in the office, then they might have lost their house.

3. ***What if my house has already been foreclosed upon?***

Generally speaking once the foreclosure sale takes place there is little we can do through bankruptcy. If there is any outstanding debt due following foreclosure, a bankruptcy can take care of that. About the only way to undo a foreclosure would be if there was some defect in the foreclosure preceding itself and that is not a strictly bankruptcy issue.

4. ***My car just got picked up. Can I get it back?***

If your car has been repossessed but not sold, you can usually get the vehicle back through the filing of a Chapter 13. This would not be true for a Chapter 7. However the bankruptcy must be filed and the creditor must be notified of that filing prior to the sale of the vehicle. Once the vehicle is sold; that is once the title has passed to another party, the vehicle is gone and a bankruptcy cannot get it back. Much like the foreclosure upon house, if your car has been repossessed it is essential that you get up to my office as soon as you can. It's also essential that you have full coverage insurance on your vehicle when you come into my office.

Under Tennessee law a creditor must wait ten days before selling a repossessed vehicle.

5. ***How do I stop the phone calls from my creditors?***

It normally takes about ten or twelve days for your creditors to get the notice of the bankruptcy once the bankruptcy has been filed. Once they get the notice they will stop calling. However, once you've retained me to file bankruptcy for you, you may feel free to pick up the phone and tell your creditors that you have filed bankruptcy and to give them my name and number. Please do not do this until you have actually retained me because until that time I would not have you in my computer system.

**6. *What are your qualifications as a Bankruptcy Lawyer?***

If you thumb through the Yellow Pages and look on the internet, you'll see many lawyers advertising that they do bankruptcy. Now many of these lawyers are quite competent, but some only do bankruptcy as a very small part of their practice. I am a bankruptcy Specialist. I filed my first bankruptcy in 1982. I'm a former Chapter 7 Trustee. I've been Board Certified by the State of Tennessee and the American Board of Certification as a specialist in consumer bankruptcy since 1994 and I'm a former President of the Middle Tennessee Association of Consumer Lawyers. I'm also a member of numerous other organizations for bankruptcy professionals. Of course I want your business and I won't tell you to go anywhere else but, especially if you live in another state or another district where I cannot help you, I would encourage you to go to the American Board of Certification's website and look for a certified bankruptcy Specialist. This is probably the best way to find an attorney that you know is competent in bankruptcy. Bankruptcy is after all a very specialized area of the law and I've had many clients over the years who have hired me to repair cases that were not adequately prepared by other attorneys who may have been otherwise competent in other areas of the law.

**7. *What are these credit counseling courses that I keep hearing about?***

There are two credit counseling courses. The first one is relatively short and we usually do it in my office while you are here. If things run smoothly it takes about twenty minutes or so. It is done online.

The second credit counseling course is a little more involved. If you're in a Chapter 13 you must attend this course in person at the Chapter 13 Trustee's office. I encourage everyone to take this course as early as possible to get it behind them. If you're in a Chapter 7 you may do this on

the internet or on the phone through any one of the approved credit counseling agencies. I will give you information concerning that second credit counseling course when you attend your Chapter 7 Meeting of Creditors.

**8. *Can I lose my job by filing bankruptcy?***

NO. There is a specific provision in the bankruptcy law that prohibits employers from discriminating against employees for filing bankruptcy.

**9. *Will bankruptcy hurt my credit?***

Probably. A Chapter 7 is on a credit record for 10 years from the date of filing and a Chapter 13 remains on your credit for 7 years from the date of filing. During that time creditors may make whatever judgment they want to make about the fact that you filed bankruptcy. Much of your ability to borrow money in the future depends in part on the overall availability of credit at the time at which you attempt to borrow. In other words, if credit is tight all around, it will be harder on you to borrow after bankruptcy. If credit is loose then it will be easier.

**10. *What are the differences between Chapter 7 and Chapter 13?***

There are a lot of differences between the two. A Chapter 7 is a straight bankruptcy where you wipe out your debt and a Chapter 13 is a debt repayment plan.

In Chapter 7 you simply file your papers with a court and you wipe out your debts. That is the advantage of the Chapter 7. You emerge debt free. However there are certain disadvantages. Notably they are as follow:

- 1) There is a risk of losing property
- 2) There are some debts, even if though they are listed on your bankruptcy, which you still have to pay.
- 3) It is on your credit record for ten years.

Chapter 13 is a debt repayment plan. The advantages of Chapter 13 over Chapter 7:

- 1) There is little to no risk of losing property.
- 2) You can discharge more types of debts.
- 3) It is on your credit for 7 years instead of 10 years.
- 4) The Chapter 13 protects co-signers, whereas a Chapter 7 the creditors are free to pursue them.

### ***11.How do I lose property in a Chapter 7?***

Property is usually lost in one of two ways in a Chapter 7. The first is if you have property as collateral for debt, such as a car with a lien on the title or a house with a mortgage on the deed. If you have property with a lien and you desire to keep the property, you must keep the debt. You should keep in mind that your creditors have the same option. In other words they can refuse to let you keep the property but in doing so they will also lose the ability to collect the debt from you. Generally speaking, creditors do not do this if you are current in your payments to them. It is therefore important if you file a Chapter 7 and you wish to keep collateral, that you are current on your payments to the creditor that has a lien on that collateral.

The other way that you can lose property in a Chapter 7 is if the property is worth a lot of money. Property that has a significant amount of equity, which is almost always a house, can be sold by the court where proceeds of that sell will be taken by the Chapter 7 Trustee and distributed to your creditors.

Realistically this does not happen very often. Most people simply don't have that kind of equity in property and if they do there are a set of laws called statutory exemptions that allow you to protect various types of property.

**12. *What kind of debts cannot be included in Chapter 7?***

All of your debts are included in the sense that they must all be listed on your bankruptcy petition. However, generally speaking taxes, student loans, child support and alimony and anything criminal in nature are debts that are called "non-dischargeable". That means that they are not covered by the Chapter 7 discharge and must be paid bankruptcy or no bankruptcy. This is not written in stone and you should be sure and discuss these type of debts with me when you come in to see me.

Also if you lose your house in a Chapter 7 and there is a Home Owner's Association, you must continue to pay the Home Owner's Association whether or not you are living in the house, until such time as the house is foreclosed upon.

**13. *Can my Chapter 7 be denied?***

Creditors do have their rights, and they can object to your discharge. Generally, objections to discharge occur in two (2) fashions. One is an objection to a discharge of a particular debt. This usually involves a creditor filing objection to your bankruptcy alleging that you somehow defrauded that particular creditor. This is a major undertaking by the creditor as he has to file an actual lawsuit against you in bankruptcy court. So while I would not call these objections rare, they are certainly not common.

The other objection a creditor could file would be an objection to the entire bankruptcy. This is very rare and this is always based on some sort of fraud upon the bankruptcy system as a whole. Typical of this would be trying to

hide assets. If the whole discharge is disallowed, then, of course, you owe all of your creditors. So creditors very seldom bring this type of objection. Sometimes the trustee or United States trustee's office will.

14. ***Do I have to list everything?***

YES. You have to list all of your debts and you have to list all of your property. This means you cannot leave a favorite doctor off of your petition if you owe him money. It also means that you must list relatives and friends to whom you may owe money. This is not to say that once the bankruptcy is over you cannot go ahead and repay them. You can, but you must list them as creditors. Whatever you do, do not try to pay them before the bankruptcy. That is always a mistake.

Also you must list all of your property. Frequently my clients will tell me that they don't have any property. They are of course referring to real estate. The property in a bankruptcy context refers to all of your assets or potential assets, so you must list all vehicles, money in the bank, stocks, bonds, IRAs, 401ks and potential law suits. For instance even if you may have not sued someone; if you've been in a car wreck you must list this lawsuit or potential lawsuit as an asset.

15. ***What's a reaffirmation?***

A reaffirmation occurs when you decide you want to keep property and keep paying for it. Keep in mind that once you file the bankruptcy, the debt you owe on secured property, such as a note on a car, will be discharged along with your other debts. For instance you may owe money to Ford Motor Credit on a car, and following the bankruptcy you get behind on your car payment, Ford's only recourse is to repossess the car. However, if you sign a reaffirmation agreement, you become personally liable on the vehicle once again. Thus, if your bankruptcy is concluded with a signed

reaffirmation agreement and a year after the bankruptcy is concluded you get behind on your car payment, Ford can pick up the vehicle, and sell it, and then sue you for the deficiency. In other words, it is just like you never filed bankruptcy on that particular debt. Furthermore, all creditors, except mortgage creditors, have the right to demand a reaffirmation agreement from you. Thus, if you do not sign one, they can repossess their property.

**16. *What is a Chapter 13?***

A Chapter 13 is a type of bankruptcy where you pay back your creditors through an intermediary called the Chapter 13 Trustee. You file a Chapter 13 Petition with the court which includes a plan and this plan proposes a specific monthly payment. The court issues an order to employer and payments are deducted from your paycheck every payday and go into the trustee's office. The trustee then once a month distributes those funds to your creditors.

**17. *Why would I file a Chapter 13 and pay people back when I can file a Chapter 7 and wipe the debts out?***

Most people who file a Chapter 13 do so because they would lose property in a Chapter 7. They would lose property either because they are behind in their payments or there is enough equity to justify a sale in Chapter 7. Some people simply want to pay all their debts back and this is a good way to do it since it freezes interest on all unsecured debts, such as credit cards, and lowers the interest rate on secured debts such as automobile loans. Other people file Chapter 13 because they do not otherwise qualify for Chapter 7, either because they have filed a Chapter 7 within the past 8 years or because their income is too high.

**18. *Does the Chapter 13 have to be deducted from my paycheck?***

Yes, it does. While the law does not specifically require this, our judges are very strict. If you do not wish to have the deduction come out of your paycheck, then they will throw your Chapter 13 out. Now the exception to this is if you are self-employed or have a social security check. Social Security will not make this deduction so you must make the payment. So you must make the payments yourself.

**19. *So if I am self-employed I can still file a Chapter 13?***

Yes, you can. Although realistically Chapter 13 is very difficult for people who are self-employed. The nature of being self-employed is that your income is not steady and, of course, because there is no payroll deduction, you see the money before the trustee does and there is always that temptation to do something else with it.

**20. *Can I file just on my business and not on my personal debts?***

In theory it is possible to file on a business if the business is incorporated or an LLC. If you are a sole proprietor then there's no difference between your business and your personal debts. This is because you are the business and the business is you. However, realistically most people who have small businesses that are incorporated wind up filing personal bankruptcy. Sometimes it is not even necessary to file on the business. The reason is this. Creditors always get individuals who own small companies to guarantee the debts of that company, or simply to sign in their names personally and not even in the company name. Therefore, if you are ready to shut the business down, you simply just need to close it and file a personal bankruptcy. There is probably no need to file a separate bankruptcy on the business. Now sometimes it is necessary to file two bankruptcies, one personal and one business. That is fairly unusual.

## **FREQUENTLY ASKED QUESTIONS FOR PEOPLE ALREADY IN BANKRUPTCY**

### **FAQ for People Already in Chapter 13**

#### **1. *Once my case is filed, do I have to go to court?***

Yes, you do. Your court hearing is normally called a meeting of creditors, although some people prefer to it as a “341 meeting” and it occurs approximately 45 days after your case has been filed.

#### **2. *What happens in court?***

At court you will meet the trustee. It is the trustee’s job to take in the money that you or your employer sends in and distribute towards your creditors. Also at your meeting of creditors, your plan will be confirmed. That is that it will be approved by the court. Occasionally, there is some objection which will cause your case to be set for a confirmation hearing. This is not unusual and happens to about 25% to 30% of the cases. These objections are usually worked out, although sometimes they can require a hearing in front of a judge.

#### **3. *How do I find out what my court date is?***

You should receive a letter in the mail directly from the court telling you what the court date is. You should receive that letter about 10 days after your case is filed. You will receive a follow-up letter from me about 3 to 5 days before your hearing as a reminder.

**4. *What if I leave something off my petition?***

This is a very good question. In Chapter 13 this can be critical. Unlike Chapter 7 a debt not listed on the petition is not discharged. Consequently if you leave anything off, you should notify this office immediately. We would need the name, complete address, account number, and balance owed.

Also please keep in mind that you must list not only all of your debts but all of your assets. This is as true in Chapter 13 as it is in Chapter 7.

**5. *How many of my creditors actually appear at a meeting of creditors?***

That really depends on what type of creditors you have. Certain creditors you can usually count on appearing. Those are the ones that hold collateral such as mortgage companies and car creditors. Also the IRS usually appears.

**6. *What should I bring to my Meeting of Creditors?***

You should bring with you to your Meeting of Creditors: Full coverage insurance on any vehicle in which you are paying through the plan, a photo I.D. such as your driver's license, and something official with your social security number on it. Because of recent changes in the law, your social security number is almost never on your paycheck stub anymore. Neither is it on your voter registration cards. Nor is it on driver's license. Therefore about the only official verification of your social security number is going to be the social security card itself or a W-2 form or a 1099 form provided by your employer. You should also, and this is very important, bring evidence that you have made your payments into your plan.

**7. *What constitutes evidence that I have made payments into the plan?***

That can be one of two things. It can either be a copy of your paycheck stub showing that your employer has deducted the money or it can be a copy of a money order receipt if you have sent the money in yourself.

Personal checks are not an acceptable form of payment to the Trustee.

**8. *What if my employer has not sent the money in and I have not made the payment myself?***

Well this can be a big problem. While payroll deduction order is issued to employer, it is your obligation to begin your Chapter 13 payments with the next pay period after you file your plan. You make your payments by getting a cashier's check or money order and mailing it to the Chapter 13 Trustee at P.O. Box 190664 Nashville, TN 37219-0664.

Always put your case number or social security number on your cashier's check or money order.

If you have not yet made a payment by the Meeting of Creditors you could be in a lot of trouble. The only thing you can do at that point is to bring a cashier's check or money order for all of the back payments to the Meeting of Creditors with you. Make sure that your case number is written on your cashier's check or money order.

**9. *So I didn't make the payment into my plan. How do I figure out exactly how much I should bring to court with me?***

Basically you should bring about a month's worth of payments. Your Chapter 13 Meeting of Creditors is generally held about 45 days after you file your paperwork and most people pay it every two weeks. Consequently

if you bring two payments you're probably ok. If you get paid monthly, then only one full payment is due or if you get paid weekly then four weekly payments would be due.

**10. *When do I get discharged in Chapter 13?***

You receive your discharge whenever your plan is over. Your plan is usually over 3-5 years after you file. Prior to discharge you must file a document indicating that you either owe no child support or that support is current.

As soon as the Trustee stops your payroll deduction, call my office so we can send you this form.

**11. *What is discharged?***

All of your debts are discharged except for student loans and child support. Long term debts such as child support and mortgages are not discharged.

**12. *What happens to my mortgage after I finish my 13?***

Your mortgage should be current and there should be a court order indicating that your mortgage is current. You simply contact the mortgage company and find out when your next payment is due and start sending the payments yourself. This also applies to a child support payment if you've been paying child support through Chapter 13.

**13. *If I haven't made a payment before the Meeting of Creditors, can I get my case postponed in order to get the money together?***

Basically the answer to this is no. A continuance is a possibility however the Trustee will file a motion to dismiss your case. By the time the hearing comes up on the motion to dismiss you must be current in your payments.

**14. *What if I can't afford my car insurance?***

If at any time during the life of your Chapter 13 you fail to keep full coverage insurance on a vehicle that is being financed, the company financing the vehicle (such as GMAC or Ford), can repossess the car. It does not matter if your plan payments are up to date and the creditors are being paid. Failure to keep insurance means potential loss on the vehicle. Insurance on the car itself is available through a company called Priority Insurance and is payable through your Chapter 13 plan. This is insurance on the car only and not liability. Priority Insurance can be reached at 1-866-829-4323.

**15. *Will I lose my tax refund in Chapter 13?***

Sometimes. Generally speaking the Chapter 13 Trustee will issue an intercept for your tax refunds if your plan is not paying what he considers a significant dividend to your unsecured creditors (such as charge cards and doctor bills). Usually you must propose to pay at least .20 cents on the dollar in order to keep your tax refund. You may also lose your tax refund if any time during the Chapter 13 plan you fall behind on your payments. As a condition allowing your case to continue, the Chapter 13 Trustee will issue an intercept to the IRS.

**16. *I notice on my confirmation order that I have a "base", what is this?***

Your base is simply all of your Chapter 13 payments added together over the life of your plan. Your plan provides that you must pay a minimum

dividend, such as 20%, or your base whichever is greater before your case can be discharged. Consequently in many cases creditors wind up being paid an amount above and beyond the minimum dividend. If you set a minimum of 20% in your plan, and then say two or three very large creditors don't file claims, then the money that would've gone to those creditors who failed to file claims will go to the creditors who did file claims and their dividend will be increased.

## **FREQUENTLY ASKED QUESTIONS FOR PEOPLE ALREADY IN BANKRUPTCY**

### **FAQ for People Already in Chapter 7**

**1. *Once my case is filed, do I have to go to court?***

Yes, you do. Your court hearing is normally called a meeting of creditors although some people refer to it as a 341 meeting.

**2. *What happens in court?***

At court you will meet your trustee. The trustee is chosen from a panel of about 10 people and could be anybody. It is primarily the trustee's job to determine whether or not you have any assets that you can use to sell to pay your debts. Most people do not. And 99.9% of the Chapter 7 cases are "no asset" cases.

**3. *How do I find out what my court date is?***

You will receive a letter in the mail directly from the court to you about seven to ten days after you file giving you a court date. The actual meeting of credit will take 30-45 days after you file. My office will know your court date immediately upon filing and if you are especially anxious, you can feel free to call my office to find out the exact date once we have filed your case.

**4. *How long will my creditors keep contacting me after I file Bankruptcy?***

In theory, they should stop contacting you immediately but, of course, this is impossible. It is not unusual for you to continue to receive bills for one

more billing cycle. This means for about a month. As for phone calls, it takes most creditors about ten days to receive notice of your bankruptcy and to put that notice into the computer system. Once they have done that, the phone calls will stop. In between time, you may feel free to tell everyone that you have filed bankruptcy and give them your case number.

5. ***What if I have left something off my bankruptcy petition?***

That is a very good question. We will send you a copy of your bankruptcy papers in the mail a day or two after your case is filed. You should read these papers over thoroughly and if there is anything left out or if there is anything wrong, you should call my office immediately. It is very important that your bankruptcy papers be accurate. Any inaccuracies can be corrected through an amendment but it is much easier to correct them either before or at your meeting of creditors rather than afterwards. Please keep in mind that the law does require that you list all of your debts and all of your assets on your bankruptcy petition. If you have any doubts about whether something should be listed, the safest thing to do is to go ahead and list it.

6. ***You keep referring to my meeting of creditors, how many creditors will be there?***

Usually, none. Unsecured creditors such as doctors, charge cards and so forth never show up. Secured creditors may show up to find out exactly what you want to do with the collateral and perhaps whether or not their collateral was insured.

7. ***What should I bring to my meeting of creditors?***

If you have a car and you want to keep it, you should bring your car insurance. You should also bring an official government photo I.D. such as a driver's license or passport. Finally, you must bring something official

with your social security number on it. This can be a social security card. This is almost always a social security card because nothing else has a complete social security number on it anymore. However, a W-2 that you have received from your employer will have your social security number and that will also suffice.

**8. *What happens after the meeting of creditors?***

This is almost a dead period – nothing really goes on. Your discharge cannot be entered for 60 days from the meeting of creditors. During the 60-day period between the meeting of creditors and your discharge date, in most cases, nothing really happens. In some cases, the trustee might start administering assets, if he has found an asset. Or there may be on-going negotiations with the creditors about reaffirmation agreements.

**9. *Do I get my discharge exactly 60 days after the bankruptcy after the Meeting of creditors?***

Usually not. The court automatically processes your discharge and it takes the court a few weeks, perhaps as much as a month, to get the discharge issued.

**10. *Is there anything that can delay my discharge?***

Yes. The most common cause of delay of discharge will be failure to take your second credit counseling course. You remember you took the first credit counseling course to begin your bankruptcy, probably in my office. There is a second credit counseling course that you must take to get out of bankruptcy. If you have not yet taken that, make sure and ask me at your meeting of creditors and we will discuss it. This is required and must be taken.

The other thing that may delay your discharge is if a creditor or trustee wants to investigate the potential of fraud in your case and files a request with the court to delay the discharge. This is fairly rare, but will happen from time to time.

11. ***If I get my discharge but I have left a creditor off, do I have to pay that creditor?***

No. Even though if a creditor is left off purely by accident, then that debt is discharged along with your other debts you left it off. However, if the debt was actually incurred *after* you filed your bankruptcy, then the debt is not covered by the bankruptcy. So if you file bankruptcy on the first of the month and on the second of the month you go to the emergency room, that emergency room bill would not be covered by the Chapter 7. But on the other hand, if you go to the emergency room on the 31st of the month and then file bankruptcy on the first of the next month, then that emergency room bill is covered by the bankruptcy you may not have received the bill by the time you file the bankruptcy.