Consumer Bankruptcy

An Instruction Booklet for Clients

Part 2

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Chapter 13
Typical Post Filing Issues

1.0 In General

There are a number of issues that typically arise after the filing of Bankruptcy. A number of these are discussed in the material below.

2.0 The Taking of Property

2.1 In General

The Automatic Stay of 11 U.S.C. § 362 provides that once a bankruptcy has been filed, creditors are no longer allowed to pursue their claims against you (subject to the exceptions discussed in Part 1). Nevertheless, some creditors will not learn about your bankruptcy filing until after they have already started the process of taking some of your property.

If you have provided your attorney with copies of all legal papers that were served upon you prior to the filing of bankruptcy, he will have sent a notice to those creditors and to the court which should minimize these types of actions. That is because the notice your attorney sends to the creditor will arrive before the notice from the Bankruptcy Court. However, if you find yourself in the position after filing where you may have forgotten to provide your attorney with the appropriate information, or a creditor has acted without knowledge of your bankruptcy, you will need to know what to do. The instructions below should help.

2.2 Garnishments

If your wages are garnished post-petition, you should immediately obtain a copy of the Writ of Garnishment from your employer. That document along with the name of a responsible person in your employer's payroll department and their fax number should be immediately given to the attorney. The attorney will then fax notice to your payroll department that the garnishments is not to be honored. The attorney will also send a notice to the court that issued the Writ of Garnishment indicating that a bankruptcy has been filed and that no further Writ's should be issued. Finally, the attorney will send a letter to the creditor's attorney requesting a refund of any amounts attributable to post-petition earnings. You should understand, that it may take several weeks for you to receive money that had been garnished improperly.

If the creditor refuses to turn over money that it should not have taken, it may be necessary for an attorney to file an order to show cause proceeding in the

Bankruptcy Court requesting return of the funds. You should be aware that this an additional legal process that is not included in the normal services provided to bankruptcy clients.

2.3 Foreclosures

A notice of sale on real property, is handled much like a garnishment. You must immediately provide the attorney a copy of the notice of sale and any other documents you may have received. This allows the attorney to call the foreclosing agent and inform them of the bankruptcy filing. He will also send a follow up letter to the agent and/or attorney involved. You may also call the foreclosing agent yourself and give them your case number and the date of filing.

2.4 Writs of Execution

Occasionally a Sheriff will appear at your door with a Writ of Execution. This is a document that normally allows a creditor to seize your non-exempt personal property to help satisfy the creditor's claim against you. You should be polite to the individual who is attempting to serve those documents upon you. They are simply doing their job. However, you should give them your case number, the date of your bankruptcy filing, the name of your attorney, his address, and phone number. You can even show them the notice you received from the court listing the date of your hearing. That will allow the Sheriff or Constable to verify the information that you have provided to him. They will appreciate your assistant in being able to quickly resolve the matter.

Sometimes a creditor will serve a Writ of Execution against your bank account post-petition. While you are suppose to receive a copy of the Writ, you will often not know of its existence until the bank informs you that your accounts are frozen. Once you become aware of a Writ of Execution on a bank account, you should immediately obtain a copy of the Writ and provide it to your attorney. You may also provide your financial institution with your case number and the date of filing, as well as your attorney's name and phone number. You should write down the name of the individual you talked to at the bank. Next you will need to go to the Court that issued the Writ of Execution. You should request from the clerk the packet containing documents allowing you to object to the Writ of Execution. You should complete those documents indicating that the Writ of Execution was not appropriate because you had filed bankruptcy. There is a specific place on the forms for noting a bankruptcy filing. The clerk will then schedule a hearing before the judge on the matter. You must attend that hearing and provide to the judge proof that you filed bankruptcy prior to the date the Writ of Execution was served upon your bank. If you come to the office, we will provide you the legal documents which the court will accept as proof. The court should then order a

release of the Writ or a return of the money taken by the creditor. Unfortunately, this entire process can take up to two (2) months or more. If you wish the attorney to appear with you at the hearing (which is not necessary) there will be an additional charge for doing so. If you wish the attorney to appear with you, you must speak to him personally to make the appropriate arrangements.

2.5 Writs of Replevin

It is extremely rare to be served a Writ of Replevin in Utah. This is a legal document that allows an individual to repossess secured property. Most creditors will attempt voluntary repossession, which you are not required to comply with. If you are served a Writ of Replevin after the filing of a bankruptcy, you have two options. The first is to simply provide the Agent with proof of your bankruptcy filing. If however, the creditor has obtained "Relief from the Automatic Stay" as well as a "Writ of Replevin" you must immediately surrender the collateral.

If the item is something that you intended to surrender as part of the bankruptcy, you should immediately surrender the property even though the Writ may be technically invalid. Remember, that in order to retain property after the filing of Bankruptcy you must be current on your payments. If you are not current, you should surrender the property.

2.6 Surrender

Shortly after your bankruptcy is filed, the attorney will send a notice to each secured creditor indicating your intent with regard to their collateral. If you wish to surrender the property, that information is provided to the creditor. The creditor will usually contact your attorney requesting permission to contact you to arrange taking possession of the property. The attorney normally grants such permission since it is more efficient for you to arrange a time that is convenient to you to have the creditor come out and pick up the property. If you have indicated an intent to surrender property on your bankruptcy pleadings, you are required to complete the surrender within 30 days of your first meeting of creditors.

Some client's wish to retain the collateral for as long as possible before surrendering it. However, the creditor is entitled to possession of the property as soon as possible since you are not paying for the use of that property. You must keep the collateral insured up until the time the creditor takes possession of it. As long as the property is in your possession you are responsible for any damage that may occur to it. Therefore, it may be wise for you to actually deliver the property to the creditor so that you can cancel your insurance coverage.

If the property is a motor vehicle, it can be delivered to the bank that did the financing or to the lot were you purchased it. Other property may be simply dropped off at the creditors place of business. It is wise to take an unrelated third party with you as a witness that you actually dropped off the property. If it is a motor vehicle, you should enter the place of business and give the keys to someone in authority. You may simply indicate that your attorney instructed you to drop off the collateral. If the collateral is a motor vehicle that is no longer operating, that information as well as the location of the vehicle should be provided to the creditor as soon as possible. Once the creditor has been informed, it was their responsibility under the old law to take possession of the collateral. The new law seems to indicate that you may have a responsibility to return the collateral.[1] If you are not capable of returning something you should inform the creditor of that fact and keep the property insured for a reasonable amount of time after you have asked them to pick it up.

If the property you wish to surrender is a home, you should provide the mortgage company or their agent with the key and notice of the date upon which you are abandoning the property. When you leave the property, you should secure it and turn off all of the utilities. If it is winter time you should attempt to secure the property by shutting off any exterior utilities and draining the water lines so that they do not freeze. Alternately, you should leave the utilities on for at least two weeks after you have abandoned the property before shutting them off. Remember, that you will be responsible for any utility bills incurred after the date of bankruptcy filing.

If the property is a cell phone, you must not use the phone after the date of filing. In addition, unless you fully paid[2] for the phones you should return them to the place were you purchased them. In addition, you should call and notify the company were you obtained service that you have filed bankruptcy giving them your case number, attorney information, and date of filing.

3.0 Legal Pleadings

3.1 In General

Do not ignore any legal papers that you may receive after the filing of your Bankruptcy. If you receive a document that you do not understand, immediately

[1] 11 USC 521(a)(2)(B)

[2] If you only paid part of the price of the phone under an agreement to continue service for a specified time and you cancel the contract prior to the expiration of that period, you must return the phone.

contact the attorney so that you can receive instructions on what you may need to do. Often the attorney will need to see the document, so it is usually a good procedure to either fax or drop off the document to the attorney before you call him. Some common documents that you may receive will be described below.

3.2 Motion for Relief from the Automatic Stay

The Bankruptcy Code provides that if a creditor is not "adequately protected", the debtor has no equity in the property, the property is not necessary to the debtor, or the debtor has indicated an intent to surrender the property; the creditor may move the court to lift the automatic stay.[3] In layman's terms this means that a creditor is seeking the permission of the Bankruptcy Court to pursue its rights against their collateral. For example, the creditor may wish to take possession of a home or motor vehicle that you are delinquent on.

If you have indicated an intent to surrender the property or you are behind in your payments, or you are in a chapter 7; the court will automatically grant the creditors request to lift the automatic stay. As a result, you should not ask your attorney to object to the lifting of the automatic stay under those circumstances.

If, however, you are current on your payments and have indicated in your bankruptcy papers an intent to retain the collateral, you should immediately make an appointment with the attorney and bring him proof that you have made your payments. This proof must be in the form of canceled checks or verification of payments actually received by the creditor. The attorney will then file an objection to the motion. Please be aware that you may be required to attend the hearing and present evidence to the judge regarding the fact that you are current. You should also be aware that if the attorney must respond to motion or appear at a hearing there will be an additional charge. Any response must be filed with the Court within 10 days of the filing of the Creditor's Motion. If you do not provide information to the attorney quickly enough he will not be able to help you. Please understand that in a chapter 7 the court will probably grant the creditor's motion anyway. However, by sending an objection to the bank's attorney there is a good chance that someone may actually look at the account and correct any error that may have been made.

In chapter 13 motions for relief from stay are most often filed for failing to remain current on post petition filings. If you can prove that you are current the court will generally deny the creditors motion.

[3] 11 USC 362(d)

3.3 Motion to Accept or Reject Executory Contract

If you have a leased car or leased business equipment, the creditor can request that you either accept or reject the contract with them. Under the code, you have sixty days after the filing of a bankruptcy to accept an executory contract. If you are not current on such a contract, the creditor can ask for earlier cancellation. You should also be aware that the creditor is entitled to the fair rental value of the property for the length of time you keep it post filing if the contract is rejected. As a result, if it is your intent to cancel an executory contract you should immediately return the property to the creditor. If fact, this is a type of property that you should actually return to the creditor before you file.

Once your case is filed the attorney will send a notice to each creditor with an executory contract indicating whether you wish to accept or reject their contract. If you wish to accept the contract you should continue to keep your payments current.

If you receive a request to accept or reject an executory contract, and it is your intent to surrender the property back to the creditor, you need to do nothing except deliver the property to the creditor. If you are not capable of returning the property you should immediately provide the creditor with the location of the equipment and a list of convenient times to pick it up. If, however, you are current on your payments and you wish to retain the item, you should immediately contact the attorney and provide him documentation within 10 days of the creditors motion proving that you are current on your contractual obligations. This could include maintaining insurance on the property. The attorney will then file an objection and you may be required to appear in court with the attorney to answer any questions to which the court may have. Please be aware that this is an additional service beyond those typically rendered in a Chapter 7 and there will be an additional charge for the attorney's time and effort. Also be aware that under the new law, the creditor may have the right to cancel the contract even if you are current.[4]

3.4 Adversary Proceedings

Occasionally you will receive a Summons issued by the Bankruptcy Court and an accompanying Complaint prepared by one of your creditors. This is called an adversary proceeding. It is a separate legal action filed in the Bankruptcy Court which is handled just like regular litigation in the state district court.

[4] 11 USC 365(p)(2)

The broad jurisdictional powers granted to the U.S. Bankruptcy Court, allows debtors and creditors one place to iron out virtually all non criminal problems in one court. The creditor can litigate his claims against the debtor and his related claims against non-debtors at the same time.

The most common adversary proceedings in chapter 7's are those filed to determine the dischargeability of a particular debt. Adversary actions filed under 523 deal with the dischargeability of: fraudulently occurred debts, recent consumer purchases or advances over $500, or other priority obligations. A complaint filed under 727 asks the court to deny the debtor a discharge because of some fraudulent action toward the court by the debtor, such as failing to list assets or answering untruthfully the questions on the statements and schedules. The most common 727 actions are those filed by Trustees asking that a debtors discharge be revoked for failure to turn over property.

If you receive an adversary proceeding, it is important that you not ignore these documents. The creditor can obtain a judgment against you that will survive bankruptcy or you may lose your discharge if they are successful. You should immediately make an appointment to speak to the attorney so he can advise you of your legal rights. You should understand that our office does not handle adversary proceedings. As a result, if you intent to fight the complaint, you will need to hire another attorney to represent you in that legal action. A list of attorney's who handle adversary proceedings (at least as of the date of the preparation of this booklet) are found below.

Anna Drake
215 S. State St. #900
Salt Lake City, UT 84111
(801) 328-9792

Daniel Boone
10 W. 300 S. #707
Salt Lake City, UT 84101
(801) 355-5225

R. Mont McDowell
50 W. Broadway #1200
Salt Lake City, UT 84101
(801) 359-3500

Jeffrey W. Shields
170 S. Main Sr. #1500
Salt Lake City, UT 84101
(801) 521-3200

Jory Trease
#9 Exchange Place #200
Salt Lake City, UT 84111
(801) 596-9400

Jory also handles violations of the Automatic Stay and Student Loan Litigation

3.5 A Regular Summons and Complaint

Occasionally you will be served a summons and complaint from the state court after the filing of a bankruptcy. You should immediately provide a copy of these documents to the attorney. He will then prepare a notice of bankruptcy filing to send to the court as well as the attorney for the creditor. This should normally take care of the matter. If it is a matter not stayed by a bankruptcy, such as a divorce, you will need to obtain the assistance of an attorney to help you. If you receive any further documents in a case stayed by the bankruptcy please contact the attorney immediately.

3.6 A Motion and Order in Supplemental Proceedings

Occasionally clients will receive a Motion and Order in Supplemental Proceedings. This can only occur in a case were a judgment has been entered against you. If you have provided the attorney a copy of any legal pleadings served against you prior to filing of your bankruptcy, this is not likely to occur since he will have already of sent a notice to the court and to the attorney. However, if you receive a Motion and Order in Supplemental Proceedings after the filing of a Bankruptcy, you should immediately provide copies of those documents to your attorney. He will then provide notice to the court and the attorney for your creditor that you have filed bankruptcy. This should prevent any further proceedings in the case and you generally do not need to appear.

However, if you have the time it is advisable that you or your spouse attend the hearing anyway with proof of your bankruptcy filing. Sometimes the court will miss filed documents. In addition, opposing counsel may occasionally misrepresent to the court the status of your case. As a result, it may be wise for someone to appear to ensure that the court dismisses the case rather than issuing a bench warrant for your arrest.

3.7 An Order to Show Cause or Supplemental Proceeding

Occasionally a court will schedule an Order to Show Cause or a Supplemental Proceeding of some sort to verify the filing of your bankruptcy filing. You should appear at any such hearing and provide the court with proof of your bankruptcy filing. That proof can be shown by giving the court a copy of the initial notice of your first meeting of creditors or by coming in to the office and obtaining a photocopy of the petition page from your bankruptcy filing.

3.8 Criminal Actions

The bankruptcy filing does not stay a criminal action or the exercise of police powers such as a local ordinance requiring you to maintain your real or personal property in a safe condition. If you receive legal documents in such an action you should immediately obtain the services of an attorney to assist you.

4.0 Creditor Contact

4.1 Phone Calls

If a creditor contacts you after the filing of a bankruptcy, you should politely indicate to them that you have filed bankruptcy, that you are represented by an attorney, and that they should not call you in the future. Please feel free to give them your bankruptcy case number, the date of filing, your attorney's name and his phone number. If the creditor is rude, insistent, or continues to call; be sure to ask for their name, their phone number, and if possible the name of their supervisor. That information should then be given to your attorney as soon as possible.

4.2 Billing Statements

If you receive a bill from a creditor that you believe was listed on your Bankruptcy, you should first carefully review your copy of the Bankruptcy schedules and statements. If they are already listed on your Bankruptcy, it will not be necessary to prepare an amendment. If it is a new collection agency collecting for a creditor who is already on your Bankruptcy, it may be wise to prepare an amendment adding them on. If the bill is from a creditor that is listed, and it is received more than thirty days after you have received your Notice of the Meeting of Creditors, you should bring the bill in to the attorney, so he can send a follow-up letter to the creditor. Otherwise, you can ignore the bill. If in doubt, contact the paralegal who handles Chapter 7 matters. She should be able to assist you.

In some cases you will continue to receive statements even though you have filed bankruptcy. For example, if you are surrendering a home on which property taxes are still due you will continue to receive billing statements until the property is actually sold and the taxes paid. If you have surrendered a car, you may receive statements until the vehicle is actually sold and perhaps even a deficiency letter thereafter. You can ignore these statements. The only exception is a bill for post filing association fees if you are still in possession of the property.[5]

[5] 11 USC 523(a)(16)

5.0 Safeguarding Property or Services

5.1 Utilities

If you are not current on payments to a utility company and you have listed that company on your bankruptcy statements and schedules, you should immediately call the utility company to give them your case number, date of filing, and to ask them if a deposit will be required to continue service. By law, they can require you to post a new deposit to continue service.[6] Each company has their own particular policy, but most deposits are equivalent to two months regular service. You have 20 days from the date of the filing of your bankruptcy to pay this deposit or your service could be disconnected. Remember, that this deposit is in addition to any deposit already paid to the utility company. Previous deposits will be applied to any bills owing as of the date of filing. Be sure to write down the date and time you call as well as to the name of the person to whom you spoke. In addition to the required deposit, you must make payments for any utilities used after the date of filing. Most utility company's will send you a new bill with services beginning on the date of filing. If you do not make payments on these services post petition even though you have posted a new deposit, your services will be disconnected or terminated. If your service is disconnected you will have to pay a reconnect fee in addition to a further deposit.

5.2 Insurance

It is a legal requirement that you keep your motor vehicle insured. If you owe money on the motor vehicle, insurance coverage will be a condition of that contract. You will not be able to reaffirm on the motor vehicle unless you have current insurance. In addition, it is a violation of Utah law to drive a motor vehicle that does not have insurance. If your motor vehicle is not insured the creditor can use that as grounds for filing a Motion to Lift the Automatic Stay. In a chapter 13 you are now required to provide secured creditors with proof of insurance on their collateral within 60 days of filing and copies of any renewals thereafter.[7]

[6] 11 USC 366

[7] 11 USC 1326(a)(4)

5.3 Post Petition Bills

5.31 Chapter 7

There are a number of payments that you should continue to make after the filing of bankruptcy. First, you should continue to pay your regular living expenses. These include your utilities, food, clothing, shelter, insurance, etc. If you have any executory contracts that you wish to accept you should continue to make the payments on those obligations as well. These include things such as your rent, cell phones, gym memberships, and leased motor vehicles. In addition, if you have secured debt that you wish to retain such as a home, motor vehicle, or recreational property you must continue to make the regular payments.[8] If you fail to make the payments, the creditor will not reaffirm with you and will ask the court for permission to take back the collateral. Finally, you may continue to pay any obligations that you wish to repay even though they have been discharged in your bankruptcy. For example the obligation to your doctor or pediatrician.

5.32 Chapter 13

The debts you may continue to pay in a chapter 13 are more limited. You should continue to pay for ongoing living expenses such as food, clothing, and housing. You will also continue to pay 401k loan payments and any ongoing lease payments that you have accepted in your plan. Payments outside the plan are not allowed on pre-petition debt. If you have questions on how this might apply in your case, please ask the attorney.

5.4 Reaffirmation

In a chapter 7 most creditors (other than Mortgage Companies) will send a reaffirmation agreement to your attorney. He will then forward that agreement on to you. If you wish to reaffirm you should complete any requested information on the form, sign it, and return the document a soon as possible to the attorney. He must then countersign the document and file it with the court before the discharge date in your case. You can determine the discharge date by looking at your Notice of First Meeting of Creditors that was provided to you by the court. If you look down at the middle of the document you will see a heading called "Deadlines" under deadlines is a date for the last day to file complaints objecting to discharge. That is your discharge date.

[8] If it is your intent to surrender the property, do not make any further payments towards that debt.

If you change your mind and no longer wish to be bound by a reaffirmation agreement, you must notify the attorney in writing at least 14 days prior to your discharge date so that the proper documents can be prepared and filed with the court to revoke your reaffirmation. Once the bar date passes you cannot cancel your reaffirmation agreement.

5.5 Redemption

In the event that collateral you wish to retain in a chapter 7 is worth far less than the amount that you owe, it may be possible to enter into a redemption agreement with that creditor. If you wish to do this and that information was part of your initial bankruptcy statements and schedules, a letter will have been sent to that creditor requesting redemption. If the creditor responds that it is willing to redeem, that document will be forwarded to you for your signature. The document should be signed and returned with a cashiers check for the correct amount.

If for some reason you believe the amount in the redemption agreement is incorrect or the value is too high, you have the right to contact the creditor directly and negotiate a reduction in amount or you may contact our office in writing and ask us to make a counter proposal. If you do so, you should indicate the counter offer that you would like us to make. We will then contact the creditor and get back to you on whether or not they agree to a reduction. Remember that most creditors will not execute redemption agreements after your discharge date.

5.6 Post Petition Credit

5.61 Chapter 7

During the term of your Chapter 7 bankruptcy, you should not borrow or incur additional debt. Doing so could jeopardize your case. If you wish to purchase property, it is best that you wait until after attending your first meeting of creditors. You should be aware that any debt that you incur after the date of filing cannot be discharged in bankruptcy. That debt must be repaid.

If you wish to purchase a motor vehicle or other property after filing, most creditors will not extend you credit until after your case has been discharged. Some creditors will deal with you once you have actually attended the first meeting. Other creditors will ask you to provide them with some kind of documentation from the Trustee saying that you can occur new debt. The Trustees will not provide such a letter or form. If the creditor asks for proof that you have attended the First Meeting of Creditor's, please contact our office and we will provide you a letter. Remember, you will pay higher interest for debt incurred immediately after the filing of bankruptcy.

5.62 Chapter 13

After the filing of a Chapter 13 Bankruptcy, and during the term of that Bankruptcy, you may not obtain credit of any type without the express permission of the Court. This means that your attorney must file a Motion, explain the credit you wish to obtain, why it is necessary, prove that you have the ability to make the payments, and that you will be able to continue to pay your regular monthly plan payments. If the Judge agrees, you will be able to go forward with the credit transaction.

Most often, this issue arises when you need to purchase a new motor vehicle, you have the opportunity to refinance your home at a lower rate, or you would like to obtain a student loan. The Court will almost always allow you to obtain a student loan. However, you should be aware that the process may take up to two(2) months before actual permission can be obtained.

6.0 Amendments

Many debtors realize at some point after filing, that they have left creditors off their bankruptcy. The creditor is entitled to notice of your bankruptcy filing at least 30 days prior to the bar date (the deadline on your court notice for filing complaints objecting to discharge in a 7 or the deadline for filing claims in a chapter 13). If you wish creditors to be added or any changes made to your bankruptcy pleadings you must provide that information in writing to the attorney along with $50 and a signed amendment cover sheet at least 15 days before the appropriate deadline. If you do not supply complete information to the attorney, he cannot prepare the amendment for you. Because of past problems with changes being requested over the phone by individuals pretending to be our client's, all changes must be requested in writing.

7.0 Sale or Disposition of Property

7.1 In General

Once you file Bankruptcy, all of your assets are part of something called "The Bankruptcy Estate". As a result, they cannot be disposed of without the courts permission.

7.2 Chapter 7

7.21 Motor Vehicles

There are several situations in which the sale of a motor vehicle arises post petition. First, a creditor may wish to take back the collateral and sell it themselves. To do this, they must file a Motion for Relief from the Automatic Stay requesting court permission to dispose of the motor vehicle. Alternately, they may simply wait until the discharge notice is received and then act to dispose of the collateral. Under the new law they may be to take possession 30 days after the first meeting of creditors.[9]

On occasion, you will have a buyer for a motor vehicle. Most often, this buyer will not be willing to pay the full amount that is due and owing on the motor vehicle. In this case, you should put that particular individual into direct contact with the financial institution. Then the two of them can make whatever arrangements are appropriate. It is generally not recommended that you act as an agent in attempting to arrange a sale. It is generally a waste of your time and effort.

Sometimes the trustee in your Bankruptcy will want to dispose of the property. In that case, other than delivering the vehicle to him or his agent, you will not need to do anything further.

7.22 House

The sale or disposition of a home follows essentially the same pattern as that of a motor vehicle. If the creditor wants the house back, they may file a Motion for Relief from the Automatic Stay. If the motion is granted, the creditor may begin the normal foreclosure process. Alternately the creditor may wait until the stay is automatically lifted. Foreclosure is necessary so they can clear title to the property. The entire process from Motion to Sale averages between 3 to 6 months.

On occasion, a creditor will ask you to execute a Deed in Lieu of foreclosure. This is where you execute a Quick Claim Deed that gives them immediate tittle to the property, so they do not have to go through the process and expense of foreclosure. If you are requested to sign a Deed in Lieu of Foreclosure, you should bring in the document and have the attorney review it carefully. Unfortunately, some attorneys will place additional requirements or restrictions within the Deed that will waive the Bankruptcy protections you may have against a deficiency.

[9] 11 USC 362(h)

Sometimes, you will be approached by a Real Estate Agent to do a Short Sale. Usually, it is not in your best interest to enter into these agreements. The only party to benefit from a Short Sale is usually the Real Estate Agent who gets a commission on the deal. If the documents for a Short Sale are not properly drafted, you may end up waiving the protections afforded by your Bankruptcy filing and be liable for the full amount of any deficiency on the sale, which deficiency is increased by the realtor commissions. If you wish the attorney to review the Short Sale documents at closing, there will be an additional charge for doing so. As a general rule, it does not improve your credit in any way to do a short sale.

You may also be contacted by an individual indicating that he wishes to buy your home or assist you in obtaining refinancing of the home by Quit Claiming the property to him. As a general rule, this is not a wise thing to do. On a few occasions, when clients in our office have signed such agreements, the holder of the Quit Claim Deed has attempted to illegally obtain “owner” financing. A Real Estate Agent who attempts to do this could loose their licence. On other occasions, the holder of the Quit Claim Deed has simply rented out the property to third parties and pocketed the money. In these cases, the property often ends up being trashed and the mortgage company is very upset when they finally obtain possession of the property.

7.23 Tax Refunds

Any tax refund that you are entitled to but have not received, prior to the filing of the Bankruptcy or which may still be in your bank account, belongs to the court. You should not spend these funds without the expressed written permission of the Trustee. If you receive a tax refund or become entitled to a tax refund after the filing of your case, you should immediately notify your attorney, so he can provide that information to the Trustee. If the Trustee requests the tax refund, you should immediately provide the refund check to your attorney in the form of a certified check for the amount of the taxes made out to your Chapter 7 Trustee or the actual unendorsed tax check. You should also be aware that if you file you bankruptcy in August or later in the year, the trustee may request a pro rata share of the next years refund.

7.24 Other Assets

The Bankruptcy Court has the right to take and dispose of any non-exempt assets in which you have an ownership interest on the date of filing. You are expressly prohibited from selling or otherwise disposing of any of your property during your Bankruptcy without Court permission. If the Trustee requests’ that you turn over property, you should immediately do so. Failure to cooperate with the Trustee can result in your case being Dismissed.

7.3 Chapter 13

As part of a chapter 13 a debtor may propose the sale of assets. However, once a buyer is found the court must still approve the transaction including any sales commissions. As a general rule all of the proceeds must be provided to the trustee for distribution to creditors. There are some exceptions that you may wish to speak to the attorney about. Post confirmation sales require not only permission to sell property, but modification of any existing plan.

8.0 New Address

If your address and/or phone number change after the date of filing, it is necessary for your attorney to file a Notice of Address Change with the Court. Therefore, you should immediately provide this information to your attorney (in writing). If you do not notify your attorney of any change in address, you may not receive notice of your court hearing, and your case could be dismissed. Please keep the attorney informed of your address and phone number at all times during the pendency of your case.

Chapter 14
The First Meeting of Creditors

1.0 In General

The bankruptcy code and rules require the attendance at a first meeting of creditors of both the attorney and the debtor.[10] Failure of either to attend will result in dismissal of the case. The first meeting, often called a 341 hearing[11] by attorneys, provides the trustee and creditors an opportunity to examine the debtor and obtain clarification regarding the statements and schedules that have been filed with the court as well as the bankruptcy estate.[12]

The trustee is an experienced attorney appointed by the court to manage the case for the court. The trustee generally has a separate legal practice. In a chapter 7 the trustee is paid by receiving a portion of your filing fee and a percentage of any assets from your estate that can be used to pay the claims of creditors. In a 13 he is paid by receiving a percentage of your monthly payments.

2.0 Notice of Hearing

Within two to three weeks of your Bankruptcy filing, the Court will send out notice of the time and date of your First Meeting of Creditors.[13] This notice is sometimes called the 341 Hearing Notice. These notices are sent to each of your creditors, to your attorney, and to you. Everyone tends to receive them about the same time except for your attorney who will often receive them up to a week after you do. Once you have received the notice of your First Meeting of Creditors, you should call the attorneys office and make an appointment to come in for a “Hearing Prep”. At this appointment, the attorney will give you specific instructions as to what to expect at the hearing. Each Trustee handles the hearings a little differently. As a result, the attorney will not be able to tell you what to expect until he knows who your Trustee will be.

As soon as the attorney receives notice of the hearing he will send you a letter reminding you of your court date and asking you to make an appointment to come

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[10] 11 USC 341, 343 and _____.

[11] Because the requirement for the hearing is found in 11 USC 341.

[12] The bankruptcy estate is composed of all of the things in which you have an ownership interest including any property you may have transferred in the last 10 years.

[13] 11 USC 342

in and see him if you have not already done so. The letter will also list various items that you may be required to bring with you to the first meeting of creditors, such as your Drivers License and Social Security Card. The trustee may also send you a letter requesting that you bring items to the hearing.

3.0 Changing the Hearing Date

The Court will not change the date of your hearing. You must appear at the time and date scheduled. If you do not appear, your case will be dismissed. If you are married and are filing jointly, the failure of one spouse to appear will result in their part of the case being dismissed, while the case will go forward for the party who does appear.

In the event that you know you will be in the hospital on the date of your hearing or you are currently under a doctors' care, and he has ordered you not to appear, you should immediately provide that information (in writing) to your attorney. In limited situations, the attorney may be able to excuse your appearance at the hearing and have it re-scheduled. However, any motion to excuse your appearance must be filed with the court prior to your hearing and will require a written, signed statement from a medical provider indicating that you are not able to attend the hearing. The unwillingness of your employer to allow you to appear at the hearing or the fact that you will be out of town is not an excuse that the Court will accept. You should also be aware that filing a motion to excuse your appearance will result in an additional charge.[14]

4.0 Meeting With the Attorney

Adequate preparation for the first meeting of creditors can mean the difference between a swift and easy hearing (usually under 40 seconds of actual questioning) and a protracted, embarrassing one for both the attorney and the client. Proper preparation of the original bankruptcy pleadings is a good start, but there is more that should be done. This includes meeting with the attorney prior to the hearing.

When you meet with the attorney, he will go over a map with you, telling you how to find the hearing room where your first meeting of creditors will occur.[15]

[14]In most cases it is more economical to pay a new filing fee and start over than to pay the motion fee.

[15]In a chapter 7: If you live in the Northern District (Box Elder, Cache, Rich, Weber and Davis Counties) your hearing is held in Ogden in Rm 6026 of the Federal Building. If you live in the North Central District (Toole, Salt Lake, Wasatch, Summit, Duchesne, Daggett, and Uintah Counties) your hearing is on the first floor of 9 Exchange

The attorney will also review with you the personality of the trustee who has been appointed to your case and how he or she typically run their hearings. The first meeting is rather informal in nature and the judge is not allowed to be present.[16] Even so, the meeting follows a regular format. The Attorney will walk you through the hearing process and will review with you each of the questions, which the Trustee is likely to ask. He will also indicate what the Trustee means by each of his questions, so that you can answer them properly. Finally, as part of your meeting, the attorney will review each page of your pleadings one more time, to ensure there are no errors or problems with your paperwork. If there are errors in your paperwork and you meet with the attorney early enough, corrections can be made to your paperwork prior to the hearing.

5.0 Financial Management Class

New sections 727(a)(11) and 1328(g) require you to attend "an instructional course concerning personal financial management" after the filing of your case. Once you have completed your meeting with the attorney one of the paralegal's will provide you with any additional log in codes so you can complete this course over the internet. By this time you should also have received in the mail a manual that you must read before taking the class. Reading the book and completing the internet class takes about two hours. Upon completion you will receive a certificate. This document must be filed with the Court prior to your first meeting of creditors. Be sure to give it to a member of the attorney's staff.

6.0 The Actual Hearing

6.1 Chapter 7

6.11 In General

When you arrive for the hearing you should first check in with your attorney. He may have final questions or items for you (such as an amendment or reaffirmation that needs to be signed). You should hand him your identification (drivers license and/or social security card) which he will place in your file. He will check that your documentation is complete and will then direct you to enter the

Place, Salt Lake City, Utah. If you live in the South Central District (Utah, Juab, Sanpete, Carbon, Millard, Sevier, Emery, Grand and San Juan Counties) your hearing is held in on the 3rd Floor of the Provo City Library, 550 N. University, Provo, Utah. If you live in the Southern District (Piute, Wayne, Garfield, Kane and Washington Counties) your hearing is held in St. George. Chapter 13's are held in St. George, Salt Lake, and Ogden.

[16]11 USC 341(c)

actual hearing room.

All of the debtors on the hourly calendar, usually nine to twenty, meet in a small room. In Provo at the head of the room is a table. Some trustees like a square table, some a long narrow table. The trustee sits at the head of the table and on the remaining sides of the table are chairs for the attorney, the debtors, and creditors.

The trustee will begin the hearing by making a statement on how the hearing will be handled. This statement will also include information about Court deadlines and procedures, as well as an encouragement to cooperate with any requests made by the trustee or court. It takes about 2 to 5 minutes.

After this introduction, the cases will be called one at a time. When the name of a debtor is called, the debtor and their attorney will come forward and sit at the table. The trustee will then swear in the debtor. While this is happening the attorney will hand his clients identification and other documents to the trustee. The trustee will then ask a number of questions.

6.12 The Questions

All questions should be answered in a clear audible voice since the proceedings are being recorded. If you do not understand a question, you should not guess; but should either indicate you do not understand or turn to your attorney for additional instructions. Listen carefully and keep your answers short and to the point. The trustee is generally not interested in (nor does he have the time to listen to) your personal feelings or life history. He is primarily interested in determining the facts regarding your financial affairs as quickly as possible. The trustee is encouraged by the OUST to ask the following questions:

State your name and address for the record.

Have you read (and did you understand) the Bankruptcy Information Sheet provided by the United States Trustee?

Did you sign the petition, schedules, statements and related documents you (or your attorney) filed with the court?

Did you read the petition, schedules, statements and related documents before you signed them and is the signature your own?

Please provide your picture ID and social security number card for review.[17]

Are you personally familiar with the information contained in the petition, schedules, statements and related documents?

To the best of your knowledge, is the information contained in your petition, schedules, statements and related documents true and correct?

Are there any errors or omissions to bring to my, or the court's, attention at this time?

Are all of your assets identified on the schedules?

Have you listed all of your creditors on the schedules"

Have you previously filed bankruptcy?

What is the address of your current employer?

Is the copy of the tax return you provided a true copy of the most recent tax return you filed?

Do you have a domestic support obligation?

It is rare for these questions to be asked exactly as indicated above. Each trustee has their own set of questions they tend to ask in every case.

Other common questions include the following:

Have there been any changes in your income or financial circumstances since the date of filing?

Do you currently have an ownership interest in Real Property?
When did you buy your [home]?
What was the original purchase price?

Have you made any substantial improvements to the property since you purchased it?
What do you think the [home] is worth?
How did you arrive at that value?

[17]This is usually the first question.

How is the [home] Titled?
What is your Intent with regard to the [home] ?

(If you have a Second Mortgage or recently Refinanced)
When did you get the loan?
How much did you receive at closing?
What happened to those funds?
Were the creditors paid direct by the title company or did you receive the money and then pay the creditors?

(If you have no property now)
Have you ever had an interest in land or real property?
Are you now or will you in the future be entitled to any money from the sale or disposition of that property?

(If a motor vehicle is listed)
What do you think the .... is worth?
What is its current condition?
What is your intent with regard to the ... ?

(If no vehicles are listed)
What do you do for transportation?

Were you employed on the date of filing?

Do you have a Retirement Plan, 401K, stock options, or investments of any kind?

Do you have (or have you had in the last 8 years) an ownership interest in any business?

Have you filed your tax returns?
Did you receive a refund?
How much did you receive?
When was it received?

(If no home is listed)
Are you renting?
Are you related to your landlord?
Are you current on your rent?

Often the trustee will inquire as to any values on the schedules that may appear to be questionable. If the property is sufficient to bring a dividend to creditors, the

trustee may ask that the debtor turn over the property to an agent of the trustee (such as an auctioneer). In complex cases, the trustee may need additional time to examine the financial affairs of the debtor. In such cases the hearing may be continued.

After the trustee is finished, he will usually ask if any creditors are present with questions. Usually there are few, if any, creditors present; but if so, they may ask questions or give information to the trustee regarding your bankruptcy estate. The questions that the creditors may ask are severely limited. They may not ask abusive or irrelevant questions. Most often the only creditors which appear are those that wish you to reaffirm on their debts or who have information for the trustee on additional property of the estate. Sometimes the creditors questions will prompt additional questions by the trustee. When all of the parties are finished, the debtors and their attorneys are dismissed and the next case is called.

6.13 After the Examination

When your case is finished you and your attorney will go out in the hall and speak to any creditors who may have appeared who have a secured interest in any of your property. Arrangements may then made regarding surrender, reaffirmation, or redemption. The attorney will also answer any questions you may have.

6.14 The Trustee's Concerns

Upon appointment, which occurs when the case is filed, the trustee will examine the papers that were filed with the court on your behalf. In a chapter 7 the trustee is particularly concerned with the schedules of your assets, any voluntary transfers or sales of property during the last year, payments on debts exceeding $600 in the last three months, the status of your secured debts, your exemptions, and any unusual debt. After examining your schedules the trustee will typically note any enquiries to be made at the first meeting of creditors on a form. He uses this form during the hearing to ask questions.

The trustee may also make an initial analysis of your bankruptcy estate to determine if you have any property that could be available to pay the claims of your creditors. This determination is made roughly as follows:

The Bankruptcy Estate
- Secured Debts
- Exemptions
= Trustee's Gross Estate
- Nominal or Burdensome Property (which is abandoned)
- Projected Costs of Sale (about 7-15% depending on the asset)

= Trustee's Net Estate

If the Net Estate is more than a $1,000 the trustee will likely convert some of your assets to case so a dividend can be paid to your unsecured creditors. For more detailed analysis of your own case you should consult with the attorney.

6.2 Chapter 13

6.21 In General

When you arrive for the hearing you should first check in with your attorney. He may have final questions or items for you (such as an amendment that needs to be signed). You should hand him your identification (drivers license and/or social security card) and your first payment which he will place in your file. He will review that your documentation is complete and will then direct you to enter the actual hearing room.

All of the debtors on the hourly calendar, usually nine to twenty, meet in a large room. In Salt Lake at the head of the room is a large table. The trustee sits at the head of the table and on the remaining sides of the table are chairs for the attorney, the debtors, the IRS, the USTC, and other creditors.

The trustee will begin the hearing by making a statement on how the hearing will be handled and a few suggestions for being successful in your chapter 13. It takes about 2 to 5 minutes. Mr. Anderson uses a power point presentation.

After this introduction, the cases will be called one at a time. When the name of a debtor is called, the debtor and their attorney will come forward and sit at the table. The trustee will then swear in the debtor. While this is happening the attorney will hand his clients identification, first plan payment, and other appropriate documents to the trustee. The trustee will then ask a number of questions.

6.22 The Questions

All questions should be answered in a clear audible voice since the proceedings are being recorded. If you do not understand a question, you should not guess; but should either indicate you do not understand or turn to your attorney for additional instructions. Listen carefully and keep your answers short and to the point. The trustee is generally not interested in (nor does he have the time to listen to) your personal feelings or life history. He is primarily interested in determining the facts regarding your financial affairs as quickly as possible. He may ask the following questions:

State your name and address for the record.

Please provide your picture ID and social security number card for review.

Did you sign the petition, schedules, statements and related documents you filed with the court and is the signature your own?

Did you read the petition, schedules, statements and related documents before you signed them?

Are you personally familiar with the information contained in the petition, schedules, statements and related documents?

To the best of your knowledge, is the information contained in your petition, schedules, statements and related documents true and correct?

Are there any errors or omissions to bring to my attention at this time?

Are all of your assets identified on the schedules?

Have you listed all of your creditors on the schedules?

Have you previously filed bankruptcy?

What is the address of your current employer?

Is the copy of the tax return you provided a true copy of the most recent tax return you filed?

Do you have a domestic support obligation?

Have you filed all required tax returns for the past four years?

It is rare for these questions to be asked exactly as indicated above. Each trustee has their own set of questions they ask in every case.

Other common questions include the value of your home, if you regularly receive tax refunds, if any older children are contributing to the family budget, or if you anticipate any changes in income or expenses in the next three years.

After the trustee is finished,[18] he will usually ask if any creditors are present with questions. The representatives of the IRS and USTC will indicate if you are current on your tax filings and may ask questions about your tax status. Secured creditors may be present to ask about stipulations regarding the value of collateral or their interest rate. When all of the parties are finished, the debtors and their attorneys are dismissed and the next case is called.

6.23 After the Examination

When your case is finished you and your attorney will go out in the hall and he will answer any questions you may have. He will also provide you with a number of documents that were given to him by the trustees assistant. They will include address labels and case number labels to place on future payments. In the past a trustee's directive (a list of things which must be done before the case can be confirmed) was also provided. That document is now filed with the court and sent electronically to the attorney.

6.24 The Trustee's Concerns

Upon appointment, which occurs when the case is filed, the trustee will examine the papers that were filed with the court on your behalf. In a chapter 13 the trustee is particularly concerned with your ability to pay, that your monthly expenses are reasonable, that your debts have been properly identified, that your repayment plan meets all the legal requirements, and that your attorney has used the proper forms. After examining your schedules the trustee will typically note any enquiries to be made at the first meeting of creditors on the pleadings themselves. He uses these notes during the hearing to ask questions.

[18]Mr. Anderson usually has an employee from his office handle the hearing.

Chapter 15
Chapter 7 Interim Administration

1.0 In General

Interim administration might be defined as what occurs between the first meeting of creditors and the obtaining of a discharge. This is usually the time when proofs of claims are filed by creditors, property may be abandoned or turned over to the trustee for liquidation, amendments made, petitions or adversary proceedings filed, and reaffirmations, redemptions, or surrenders completed. About two months will pass between your first meeting and the issuing of your discharge.[19]

2.0 Trustee Requests

2.1 In General

In about 10% of all Chapter 7 cases, the trustee will request additional information at the first meeting of creditors. Most often this could have been avoided if the client had brought to the meeting those papers requested by the attorney. Although upon occasion, there will be unanticipated requests.

It is very important that you comply with any request made of you by the Trustee at the First Meeting of Creditors as quickly as possible. Local bankruptcy rules state that debtors must comply with trustee requests within 10 days. Failure to comply can result in your case being dismissed and/or penalties being assessed against you. If you have any questions about the trustees requests, be sure to consult with the Attorney.

2.2 Property Turnover

If the debtor has an item of property that the trustee believes could be sold to help pay the claims of unsecured creditors, he may direct that the property be taken to the court appraiser, Tom Erkelens at 430 W. 300 N., Salt Lake City, Utah 84103.[20] Mr. Erkelens will appraise the property, provide the trustee with a written statement of value, and the Trustee will then make a final determination as to whether the value of the property warrants it's sale. In many cases, the property is of such inconsequential value that the trustee abandons the property back to the debtor. On occasion Mr. Erkelens will be instructed to keep the property if it

[19]In the past this took as much as 6 months.

[20]Phone: 801-355-6655, web site: www.salesandauction.com.

exceeds a certain value. If you take a car to be valued, make you have arranged to have someone take you home if he keeps the vehicle. If the trustee requests delivery of property to the court auctioneer that is titled, he will want you to deliver the title to the auctioneer at the same time.

If you have a large amount of cash in the bank on the date of filing, the trustee is likely to request turnover of that property to him. Trustees cannot accept cash, so it must be delivered as a check, cashiers check, or money order made out to "_____, Trustee".

If the trustee determines that an item should be sold that you wish to keep, you may be able to purchase the estates interests from him. While the trustee prefers a lump sum payment, he may be willing to accept payments over a six month period. If you are in this situation, you should speak to the attorney.

2.3 Books and Records

If the debtor has operated a business, has investments, is owed money, is recently divorced, or is anticipating a large tax refund; the trustee is likely to request all of the documents the debtor may have in connection with the trustees area of interest. These documents should be delivered to the attorney within 6 days of the hearing so they can be provided to the trustee within 10 days of the hearing.

If you have unusually high budget expenses, have made recent large payments to creditors, or recently received a large sum of money that you no longer have; the trustee will request copies of your financial records to verify the disposition of these funds. In some cases he may ask that creditors or third parties refund the monies they received. If you have real estate with substantial equity or have recently sold a large item (like a house or car), the trustee may request copies of all documents relating to that property.

2.4 Tax Refunds

During the period of mid September thru mid July, the trustees will enquire whether debtors are entitled to receive a tax refund. If you are entitled to a tax refund that has not been received and spent prior to filing, the trustee will request that the funds, when received, be turned over. He will then distribute these funds to creditors. If a debtor fails to turn over tax refunds as requested, the Trustee can file a motion with the court requesting that the debtors discharge be denied and/or revoked. This means that the debtor has no protection from the bankruptcy filing and cannot file on these same debts at a future time.

3.0 Trustee Actions

3.1 Abandonment

Abandonment is governed by 11 U.S.C. 554. The trustee will ordinarily abandon property which is particularly burdensome or of inconsequential value to the estate. Property is ordinarily not abandoned to anyone in particular and thus reverts to the debtor. Abandonment in and of itself does not release property from the affect of the automatic stay. It only releases it from the direct control of the trustee. If a creditor has a particular interest in obtaining a certain piece of property, they will usually request abandonment along with a lift of the automatic stay. Otherwise the stay automatically terminates upon the issuance of a discharge, dismissal, or closure of the case.[21]

3.2 Distribution to Creditors

If the Trustee thinks he will be able to obtain sufficient assets that a return can be made to creditors, he will notify the Bankruptcy Clerks Office. The Clerk of the Court will then issue a notice to each individual or company on the Debtor's mailing matrix and request they file Claims. Each creditor is required to complete the Claim form and return it to the Court if they wish to participate in the distribution. Debtor's and the attorney for the debtor are generally prohibited from filing claims. If you have a question in your particular case, please feel free to contact the attorney.

Once the date for filing claims has passed, the Trustee will review each Claim for accuracy. He will then make a determination as to which claims are entitled to payment and how much your creditors should receive. He will then file a Motion with the Bankruptcy Court and obtain a Judge's permission to sell and then distribute the proceeds to your creditors. In rare cases, the property may be worth more than the total amount of claims filed. In such a case, the Trustee may refund some of the money to you. As long as the Court is appraised of your current address, you should receive copies of all the documents the Trustee files with the Court.

Occasionally a creditor will file a proof of claim which is inaccurate or improper. As a general rule this will not be important in a no asset chapter 7. However, if the debtor has assets which are to be distributed to his creditors he may wish a fair distribution to be made. If a claim comes to your attention that is

[21] 11 USC 362(c). As previously indicated there are other dates under the new code that the stay is automatically lifted as to certain property.

inaccurate you should immediately let your attorney know.

3.3 Random Audits

Under the new code the Office of the United States Trustee will be conducting random audits to verify information supplied by debtors on their statements and schedules. At a minimum one of every 250 cases will be audited. Failure to supply adequate proof can result in dismissal of the case.[22]

4.0 Debtor Actions

4.1 Lien Avoidance

These actions are generally filed by the debtor and involve the removal of a lien or perfected security interest that may exist on certain of the debtors property. Section 522(f) provides that the debtor may set aside a creditor's non-purchase money security interest in household goods, tools of the trade, professionally proscribed health aids, or the debtor's homestead. If you would like the attorney to file such a motion you must request that he do so in writing. There is an additional fee for this service.

The new law has made a few changes to this section. First, judgement liens for domestic support orders may not be set aside.[23] Second, household goods has been defined to mean: clothing, furniture, appliances, 1 radio, 1 television, 1 vcr, linens, china, crockery, kitchenware, educational materials and educational equipment primary for the use of minor children of the debtor, medical equipment and supplies, furniture exclusively for the use of minor children or elderly or disabled dependents of the debtor, personal effects (including toys and hobby equipment of minor dependent children and wedding rings) of the debtor and dependents of the debtor, and 1 personal computer with accessories.[24] And third, household good do not include: works of art (unless by or of the debtor or a relative of the debtor), electronic equipment valued more than $500 (other than 1 tv, 1 vcr and 1 radio), antiques with a fair market value of more than $500, jewelry valued at more than $500 other than wedding rings, a computer (except as above), motor vehicle

[22] 11 USC 727(d)(4)

[23] 11 USC 522(f)(A) and 523(a)(5).

[24] 11 USC 522(f)(A); It is uncertain whether these changes will also impact the Utah exemption statute as well.

(including tractor or lawn tractor), boat, or a motorized recreational device.[25]

4.2 Conversion

Conversion occurs when a debtor changes from a Chapter 7 to a Chapter 13 bankruptcy. Most often this happens in order to protect non-disclosed assets or income from a Trustee who is attempting to seize and dispose of those items. A chapter 13 allows you to repay your creditors over time in order to keep items of property. The debtor has an absolute right to convert from 7 to 13, if the case has not already been converted from an 11, 12, or 13.[26]

If you believe conversion is in your best interest, you should immediately make an appointment with the attorney to discuss the matter. Conversion is not always possible, and it must occur before your Bar date passes or your case is discharged, which ever comes first.

4.3 Dismissal

Occasionally a client will ask that their case be dismissed. Usually the court will not grant such motions if (a) the trustee objects or (b) the debtor cannot show that creditors would receive more money form the debtors handling of the debt on their own than they would receive if the trustee liquidated the debtors non-exempt assets. Trustees usually do not object in no asset cases, but if the debtor has substantial property, the trustee will almost always object.[27]

4.4 Order to Show Cause

If a creditor acts in ways that are inappropriate, such as violating the automatic stay by garnishing wages or bank accounts post filing and refuses to return the funds, an attorney can file an action in the bankruptcy court asking the court to order the return of your property. In some case the judge will even impose court costs and penalties on the other side if their behavior offends the court. Our office does not handle these types of cases. You may wish to refer to the list of attorneys on page 64.

[25] 11 USC 522(f)(B)

[26] 11 USC 706(a).

[27] 11 USC 707

5.0 Undelivered Mail

Based upon a new procedure, the bankruptcy court lists the debtors attorney's address as the return address on any mail sent by the court. If an address is incorrect, mail will be returned to our office. This generally means that this particular person did not receive notice of the bankruptcy filing. As a result, it is necessary to attempt re-delivery of this mail.

The first step will be to double check the file to see if the wrong address was inadvertently entered into the bankruptcy preparation software. If this is the case we will prepare a new envelope with the correct address and re-send it. If the address on the returned envelope matches the address provided to us, we will send you a letter asking you to forward the mail. Be aware that if a creditor is not served a copy of your bankruptcy notice they may still attempt to collect from you.

6.0 Tax Returns

It will be important under the new code to file any tax returns that come due after the date of filing. Failure to file such returns can result in an order of dismissal un 11 USC 521(f) and (j).

7.0 Pre-Discharge Hearing

New section 727(a)(12) now requires a hearing 10 days prior to the issuance of the discharge to determine if the debtor is in violation of 522(q)(1). This section deals with debts that include: (1) violations of securities laws, (2) fraud in connection with a security, (3) any civil remedy under 18 USC 1964 (racketeering), or (4) serious injury or death to another person in the last 5 years.. If any of these debts exist, a discharge will not be granted.

Chapter 16
Chapter 13 Interim Administration

1.0 In General

Interim administration might be defined as what occurs between the first meeting of creditors and the obtaining of a discharge. As much as five years or more may pass before you receive a discharge.

2.0 Pre-Confirmation

2.1 Trustee Directives

It is very important that you comply with any request made of you by the Trustee at the First Meeting of Creditors as quickly as possible. Failure to comply can result in your case being dismissed. If you have any questions about the trustees requests, be sure to consult with the Attorney.

2.2 Motions

2.21 In General

There are a number of items that may need to be resolved by a judge prior to your confirmation hearing. Motions will be filed by the attorney shortly after your case is filed, but they will usually not be heard by the judge until after your first meeting of creditors.

2.22 Lien Avoidance

These actions involve the removal of a lien or perfected security interest that may exist on certain of the debtors property under section 522(f). This can be important to the feasibility of your plan (your ability to pay the correct amounts within the 3 to 5 year time limit). If a lien is removed it becomes unsecured debt that is paid at a percentage of the obligation. If a lien is not removed it must be paid at 100% plus interest. If you would like the attorney to file such a motion you must request that he do so in writing. He will then explain to you the special notice and other requirements of such actions.[28]

[28] Rule 7004(h)

2.23 Valuation Hearings

Occasionally there will be a dispute as to the value of secured collateral. If this dispute can not be resolved voluntarily, it may be necessary to schedule a valuation hearing. At this hearing, both parties will present evidence, and the Court will make a final determination as to the amount of secured debt that the creditor is entitled to receive as part of your Chapter 13 Plan. If such a hearing becomes necessary you will be required to hire an expert witness at your own expense to testify on your behalf. If you have any questions, be sure to consult with the attorney.

2.24 Sale of Property

In the event that it is your desire to sell property as part of your Chapter 13 Plan, there is a specific procedure that must be followed. First, once you have obtained a bonafide offer for the purchase of the property, that offer should be reduced to writing. In your acceptance to the offer, you must state that the offer is accepted "contingent upon Court approval". Next, the written offer and acceptance is provided to you attorney. Once the attorney receives that document, if it is complete, the attorney will prepare a motion for permission to sell property of the estate. If the court grants the motion and issues a written order, the property can be sold. You should be aware that this process can take between two(2) to three(3) months. Thus, any potential buyer should be warned of the time constraints imposed by the Bankruptcy Court.

2.3 Objections

Occasionally, a creditor will object to Confirmation of your Chapter 13 Plan.[29] Usually this is because you have not properly listed the creditors claim. For example, you may have listed a secured debt as unsecured. Alternately, you may not have valued the property properly or given the correct interest rate. Most objections could have been prevented by providing accurate information to the attorney on your questionnaire. These types of problems can often be resolved by correcting your Bankruptcy paperwork, although that may delay confirmation of your case. The taxing authorities may also object to your Chapter 13 Plan if you are delinquent in the filing of tax returns or fail to make tax payments post filing.

2.4 Undelivered Mail

Based upon a new procedure, the bankruptcy court lists the debtors attorney's address as the return address on any mail sent by the court. If an address is

[29] 11 USC 1324(a)

incorrect, mail will be returned to our office. This generally means that this particular person did not receive notice of the bankruptcy filing. As a result, it is necessary to attempt re-delivery of this mail.

The first step will be to double check the file to see if the wrong address was inadvertently entered into the bankruptcy preparation software. If this is the case we will prepare a new envelope with the correct address and re-send it. If the address on the returned envelope matches the address provided to us, we will send you a letter asking you to forward the mail. Be aware that if a creditor is not served a copy of your bankruptcy notice they may still attempt to collect from you.

3.0 Confirmation

The Confirmation hearing is held not less than 20 days nor more than 45 days after the first meeting of creditors.[30] You should attend this hearing.[31] At the hearing the trustee will make a recommendation as to whether you proposed plan of repayment should be approved or "confirmed". The trustee will explain to the judge any problems that may exist with respect to your case and anything that you have failed to do. If a judge does not think your case is ready for confirmation and that you have not done all you could to further your case, the case will be dismissed. If the judge determines you have made a best effort and the case might be confirmable, even if not ready at the moment; your case will be continued to a later date. If everything appears to be in order, the case will be confirmed.

4.0 Post Confirmation

4.1 Business Reports

If the debtor is involved in business, the court may require the filing of monthly or quarterly reports to ensure that taxes are being paid and that the debtor is generating enough net income to make the plan payments. Failure to file these reports will result in dismissal of the case.

4.2 Payments

You must make a payment to the trustee each month (even if your case is continued rather than confirmed) in the amount set forth in your plan in the form of cashiers check or money order. Failure to make a payment will result in

[30] 11 USC 1324(b)

[31] It is anticipated that the court will develop "consent" procedures so client's will not need to appear at the hearing if the case is ready for confirmation.

dismissal of your case.

4.3 Distributions

Once the plan is confirmed the trustee will begin making distributions to your creditors. Once each quarter the trustee will send you a report indicating how much he has paid to each creditor. These reports also list the payments you have made. You should review them carefully to ensure that all of the payments you have made have been properly credited to you. If you neglect to put your case number on a payment you may not receive credit for having made that payment. Be sure to keep all your payment stubs in a safe place.

4.3 Claims Review

Once the date for filing claims has passed, the attorney and the trustee will review each claim for accuracy. Occasionally a creditor will file a proof of claim which is inaccurate or improper. The attorney will file objections to these claims. In some cases valid claims will be filed that are greater in amount than the client disclosed in his or her questionnaire making the plan not longer be feasible (meaning it will not pay out the required percentages to all creditors). If this happens the trustee will file a motion with the court to dismiss because the plan is not feasible. If you receive such a motion in the mail you should immediately make an appointment to see the attorney. Is some (actually very few) cases it may be possible to amend your plan. However, such amendments must be filed with the court within 10 days of receiving the motion.

4.4 Case Closing

Once the claims review period has passed and the trustee has determined that the case is still feasible, you will be sent a letter giving you two (2) weeks to obtain any documents which you may want from your file. After that date, your file may be disposed of except for the signature pages that the attorney is required to retain. If you need copies of documents after that date, the only documents that will be available are those that have been scanned into the "Pacer" system by the Court. You can obtain copies of those documents by contacting the Bankruptcy Court directly, or through your attorney. However, there is a charge for downloading these documents from the Court Website.

4.5 Conversion or Dismissal

Conversion occurs when a debtor changes from a chapter 13 to a chapter 7. You have an absolute right to convert from 13 to 7.[32] However, you must convert prior to discharge.

Dismissal means your case has been cancelled and you are no longer under the jurisdiction of the court. You will lose any payments that you have already made to the trustee, you may have a continuing obligation for fees to the attorney, and creditors are free to collect against you. You have an absolute right to dismiss a chapter 13, unless you previously converted to 13 from a chapter 7. In that case, the court may require a conversion back to chapter 7 rather than simply allowing you to dismiss the case.

4.6 Tax Returns and Annual Budget Statement

It will be important under the new code to file any tax returns that come due after the date of filing. Failure to file such returns can result in an order of dismissal under 11 USC 521(f) and (j).

New section 521(f)(4)(B) provides that the debtor must file an annual statement of "income and expenditures" during the prior tax year. As a result, you will be required to keep good records during the term of your plan. This report is due 45 days after the anniversary date of plan confirmation.

4.7 Domestic Support Obligation

New section 1328(a) provides that a discharge will not be granted to a debtor who is not current on any Domestic Support Obligation at completion of the case. As a result, if you have ongoing support obligations you must remain current on them.

4.8 Motions

4.91 To Dismiss

If at any time during the term of your plan you fail to comply with any part of the confirmation order, the trustee will file a motion with the court to have your case dismissed. If a written response is not filed within 20 days of the motion it will be automatically granted. If you wish the attorney's assistance you must make

[32] 11 USC 1307(a)

an appointment to see him within 10 days of receipt of the motion and bring in proof that you are actually in compliance with the confirmation order. There is an additional cost for responding to such a motion.

4.72 To Lift the Automatic Stay

See, page 64.

4.73 To Modify the Plan

On rare occasions it may be possible to modify a chapter 13 plan after the claims review period has passed. If you find yourself in this situation you should make an appointment to see the attorney as soon as possible.

4.75 For Hardship Discharge

Section 1328(b) provides that in certain hardship circumstances the debtor may be granted a discharge prior to completing the plan. However, this is limited to cases where modifying the plan is not practical and the unsecured creditors have been paid what they would have received in a chapter 7.

4.9 Pre-Discharge Hearing

New section 1328(h) now requires a hearing 10 days prior to the issuance of the discharge to determine if the debtor is in violation of 522(q)(1). This section deals with debts that include: (1) violations of securities laws, (2) fraud in connection with a security, (3) any civil remedy under 18 USC 1964 (racketeering), or (4) serious injury or death to another person in the last 5 years.. If any of these debts exist, a discharge will not be granted.

Chapter 17
Chapter 7 Discharge

1.0 Availability

A chapter 7 discharge under 11 U.S.C. § 727 is available only to individual debtors. This means that a corporate debtor does not receive a discharge. If the debtor has committed certain acts and an adversary proceeding is brought against him or her, the entire discharge may be denied. In addition, a discharge is not available in a chapter 7 if a discharge has been granted previously in a chapter 7 or 11 within the previous six years. Thus, such a case should never be filed. A discharge in chapter 7 is also not available if the debtor has obtained a discharge in a chapter 13 within less than 1 year, unless 100% payment was made on unsecured claims or there was a 70% repayment on unsecured debt and this was purposed in good faith and was the debtor's best effort.

Under the new law there are additional restrictions. First, you must have complete the Financial Management class.[33] Second, under 727(a)(12) the court must certify that the debtor has not been convicted of (nor is there pending an action for) a securities law violation or intentional injury to an individual in the last 5 years.

2.0 Extent

The chapter 7 discharge, discharges debts arising before the commencement of the case, as well as those arising under §502 which are treated as having risen before the petition was filed. It does not effect the validity of liens (other than judicial liens) on the debtors property, but only the debtors personal liability on those debts. This means that a lien can be collected post discharge upon the property of the debtor securing that lien but by no other assets of the debtor. Further, the discharge is limited by 523 and 727 (non-dischargeable debts) and does not effect a trustees ability to continue to administer the case or its assets. As a result, if the trustee has asked you to turn over property of the estate you must still do so even if a discharge has been entered.

3.0 Revocation

A discharge obtained by fraud may be revoked under section 11 U.S. C. § 723(d) within one year of issuance if the fraud is not discovered until after the discharge is granted. A discharge may also be revoked within the latter of one year

[33] 11 USC 727(a)(11)

after issuance or the date the case is closed if the debtor acquires property of the estate and fails to report it's acquisition and turn it over to the trustee, or if the debtor refuses to obey any lawful order of the court or to answer a material question where no 5th Amendment privilege applies.

4.0 Effect

11 U.S.C. §523(a) operates as a permanent injunction to protect the debtor from any action to collect discharged debts as a personal liability of the debtor. It also protects the debtors post -bankruptcy property from the claim of discharged debts. A violation of this injunction is punishable by the bankruptcy court. It may be brought before the court by an order to show cause. It should be noted again, however, that a creditors lien remains on any property of the debtor unless otherwise avoided during the bankruptcy proceeding, and the creditor may enforce such lien, only to the extent of the property's value. 11U.S.C. §525 also gives other protections regarding employment and licensing.

5.0 Notice

Once the Bar Date has passed, the Court will begin processing your discharge. Approximately one (1) to two (2) weeks after the discharge date, you will receive your discharge notice in the mail. A copy of that notice is sent to each of your creditors and to the attorney.

6.0 Case Closing

Once the attorney receives a copy of your discharge, you will be sent a letter giving you two (2) weeks to obtain any documents which you may want from your file. After that date, your file may be disposed of except for the signature pages that the attorney must retain.

If you need copies of documents after that date, the only documents that will be available are those that have been scanned into the "Pacer" system by the Court. You can obtain copies of those documents by contacting the Bankruptcy Court directly, or through your attorney. However, there is a charge for downloading these documents from the Court Website.

Chapter 18
Chapter 13 Discharge

1.0 Availability

A chapter 13 discharge under 11 U.S.C. §1328 is available only to individual debtors. In addition, a discharge is not available in a chapter 13 if a discharge has been granted previously in a chapter 7 or 11 within the previous four years. Thus, such a case should never be filed. A discharge in chapter 13 is also not available if the debtor has obtained a discharge in a chapter 13 within less than 2 years.[34]

Under the new law there are additional restrictions. First, you must have complete the Financial Management class.[35] Second, under 1328(h) the court must certify that the debtor has not been convicted of (nor is there pending an action for) a securities law violation or intentional injury to an individual in the last 5 years. And third, the debtor must be current on all Domestic Support Obligations.[36]

2.0 Extent

The chapter 13 discharge, discharges debts arising before the commencement of the case, as well as those arising under §502 which are treated as having risen before the petition was filed.[37] It does not effect the validity of liens (other than judicial liens) on the debtors property, but only the debtors personal liability on those debts. This means that a lien can be collected post discharge upon the property of the debtor securing that lien but by no other assets of the debtor. Nor does it affect tax liabilities for returns due after filing. Further, the discharge is limited by 1322(b)(5), 507(a)(8)(C), 523(1)(B), 1(C), (2), (3), (4), (5), (8), or (9), and 1328(a)(3) or (4).[38]

3.0 Revocation

A discharge obtained by fraud may be revoked under section 11 U.S. C. § 1328(e) within one year of issuance if the fraud is not discovered until after the

[34] 11 USC 1328(f)

[35] 11 USC 1328(g)

[36] 11 USC 1328(a)

[37] 11 USC 1328(c)

[38] Non-dischargeable debts.

discharge is granted.

4.0 Effect

11 U.S.C. §523(a) operates as a permanent injunction to protect the debtor from any action to collect discharged debts as a personal liability of the debtor. It also protects the debtors post -bankruptcy property from the claim of discharged debts. A violation of this injunction is punishable by the bankruptcy court. It may be brought before the court by an order to show cause. It should be noted again, however, that a creditors lien remains on any property of the debtor unless otherwise avoided during the bankruptcy proceeding, and the creditor may enforce such lien, only to the extent of the property's value. 11U.S.C. §525 also gives other protections regarding employment and licensing.

5.0 Notice

In a Chapter 13, once you have made the final payment on your plan, the Chapter 13 Trustee's office will do an audit of your case. Once that audit is completed, a notice will be sent to the Court and a Discharge will be issued. This notice will come in the mail and a copy will also be sent to each of your creditors. This process can take a month or more.

Chapter 19
Typical Post Discharge Issues

1.0 In General

A number of issues typically occur post discharge. A number of these will be discussed in the following material.

2.0 Chapter 7

2.1 Amendments

Once a Discharge Notice has been issued in a chapter 7 it is not possible to add creditors to your Bankruptcy. The local Court in the case In Re Matthew & Debra Cox, 02-23363 has ruled that a Bankruptcy case may not be re-opened for the purpose of adding additional creditors in a no asset case. This is based upon the case of In Re Parker, 264 B.R. 685 (10th Cir. BAP 2001). This case ruled that unsecured obligations are automatically discharged even if not listed in a Bankruptcy, if (a) a case has been determined to be a no asset case, (b) no Bar date for filing claims has been set, and (c) the Trustee has made no distribution of assets to creditors. Thus, if the trustee did not make a distribution to your creditors the debts are discharged even if not listed. Conversely, if a distribution was made, the creditors debt is not discharged because they did not have an opportunity to file a proof of claim.[39]

Even though all of your unsecured debts may have been discharged, creditors may not believe they have been discharged unless the debt has been listed on your Bankruptcy. If you find yourself in this situation, the attorney can prepare a letter for you, for a nominal charge, that you can provide to the creditor discussing In Re Parker and its application to your situation. However, a lending institution or broker is not required to issue you credit or complete a transaction if they feel uncomfortable about doing so.

2.2 Reaffirmations and Redemptions

Once the Bar date has passed, it is too late to file a Reaffirmation or Redemption Agreements with the Court. This does not prevent a creditor from executing a "new" contract with you under such terms as may be acceptable. However, most creditors (other than R C Willey) do not understand that they have the capability of doing this and will not enter into such an agreement.

[39] 11 USC 523(a)(3)

You may still be able to retain the collateral by making a cash payment to the creditor in an amount acceptable to that creditor. As indicated previously, if you remain current on your payments, you may be able to retain the collateral, even though you have not formally Reaffirmed.

2.3 Revocation of Reaffirmation Agreements.

Once your Bar date has passed, it is no longer possible to revoke a Reaffirmation Agreement. As a result, if you default on your Reaffirmation Agreement, the collateral can be sold and you can be sued for any deficiency.

3.0 Chapter 13

3.1 Amendments

Once the bar date for filing proofs of claim have passed you may not add creditors to your bankruptcy. These creditors may continue their collection efforts and are not dischargeable.

4.0 All Cases

4.1 Credit Report Errors

Once your Bankruptcy has been completed, your credit report should indicate that all of the debts listed on your Bankruptcy have been discharged. Many companies will send a notice to the Credit Bureau indicating the filing of your Bankruptcy or that their debt has been charged off. Unfortunately, not all creditors will update their information with the Credit Bureau. As a result, approximately two (2) to three (3) months after the Bankruptcy Discharge, you should obtain a copy of your Credit Report from each of the major Credit Reporting Agencies. If incorrect information is reported on your report, you should contact each of these agencies and follow their in-house procedures for correcting your credit report. You will be required to provide to the credit reporting agency a copy of the Bankruptcy schedule listing the particular creditor that has been discharged, and a copy of your Discharge Notice.

TansUnion, LLC
Consumer Disclosure Center
PO Box 1000
Chester, PA 19022
1-800-888-4213
www.transunion.com

Equifax Credit Information Services, Inc.
PO Box 740241
Atlanta, GA 30374
1-800-685-1111
www.equifax.com

Experian
PO Box 2002
Allen, TX 75013
1-888-397-3742
www.experian.com

Occasionally, a creditor may continue to report your obligation as current and past due, even after discharge. If the creditor does not respond to the normal process for correcting erroneous credit information, it may become necessary for you to sue that particular creditor in the Bankruptcy Court. This is an expensive process, but if you are successful, the creditor will be required to pay your attorney's fees and any damages that their erroneous reporting may have cost you.[40]

4.2 Home or Car Purchase Problems

Most often, errors on your credit report will come to your attention when you attempt to purchase a motor vehicle or home and are denied credit because of erroneous information on your credit report. Some financial institutions will still extend you credit regardless of errors on your Credit Report if you can prove to them that the particular obligation was in fact listed on your Bankruptcy and you did receive a Discharge. If you have lost or misplaced your documents, the attorney may be able to obtain copies for you from the Court Website. However, there is a charge for doing so.

4.3 Liens Against Real Property

On occasion a bank will deny financing on a home because of a judgment that has been recorded against you. Judgments recorded post filing are invalid and the attorney involved will generally remove them for you if requested to do so. You will need to provide proof of the date of filing of the bankruptcy. Judgements recorded prior to filing are valid if you owned real property in the county in which the judgement was recorded or transcripted at the time. These liens survive bankruptcy and must be paid if you refinance or sell the property. A third situation exists in the case of a pre-filing judgment when you did not own any real property.

[40]The Fair Debt Reporting Act.

These liens are extinguished because there was nothing for them to attach to and the bankruptcy has discharged the underlying debt.[41]

4.4 1099 Forms

Occasionally a creditor that you have discharged in Bankruptcy may send you a 1099 Form. Under the law, if a creditor forgives your debt outside of Bankruptcy, the amount of that debt forgiveness becomes taxable income. However, if you have filed Bankruptcy (except for federal guaranteed Mortgages), a debt discharged in Bankruptcy is not taxable income. You prepare your taxes just like normal. However, you also include a copy of the discharge notice and the schedule listing the particular debt. Then you do not include the amount on the 1099 Form as income on your taxes.

[41] See, In Re Grogan, 498 US 279 (1991)

Chapter 20
Fees and Costs

1.0 In General

The "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005" substantially increases the work involved in handling a bankruptcy case. The Congressional Budget Office estimates that the cost of a typical bankruptcy will increase as much as $500. Some experts suggest that a reasonable increase in a chapter 7 should be as much as $2,000 or more in a 7 and $2,500 or more in a 13. A reasonable attorneys fee in a simple case under the old law was established by the OUST at $900 for a typical 7 and $2,000 for a typical 13. At the present time a reasonable attorneys fee in this District for a simple chapter 7 is $1400 and for a simple chapter 13 $2750. Please note that this does not include costs.

Under the old law the attorney typically billed his time at $190 and his paralegal's at $40. The normal chapter 7 involved 5 to 9 hours of attorney time and 2 to 4 hours of paralegal time, for a range of $1030 to $1870. However, clients were not actually charged these amounts. The cost of a typical chapter 7 was $600. The new law requires an additional 3 to 5 hours of time.

In addition to these changes the filing fees have also increased under the new law. The chapter 7 filing fee has gone from $209 to $299 and the chapter 13 filing fee has increased from $194 to $274.

Next, the new law requires debtor to participate in an online briefing prior to filing and an online class after filing. Depending upon the provider these can cost as much as $150.00.

Finally, the new law mandates that attorneys verify the information supplied to them. One of the ways this is done is through credit service companies that can provide credit and asset information. Again the attorney must pay for these services. The cost can be $100 or more depending upon the provider.

2.0 No Payment Plans

Many jurisdictions are adopting the ruling of the 9th Circuit Court of Appeals in *In Re: Bethea*. The *Bethea* Court stated that attorneys in chapter 7's are not legally entitled to collect their fees after a case is filed because any unpaid amount has been discharged by the Bankruptcy. As a result, if an attorney does not collect his fee in full prior to filing, he is not entitled to be paid any balance that may still be owing on the date of filing.

Judge Thurman of our local Bankruptcy Court has publicly stated that he agrees and will so rule in any case brought before him. In addition, Mr. Jones was told by the former Region 19 United States Trustee that if he did not collect his entire fee in advance he would be sued by the local Office of the United States Trustee and would be forced to refund to every client he had ever represented (in 23 years of practice) any funds he had collected after a client's case was filed. Please do not ask if you can make payments after filing.

3.0 No Personal Checks

Notwithstanding new legislation that is supposed to speed up the processing of checks, the bank will often not inform us that a check has bounced for as much as a month (or more) after it is deposited. As a result we can no longer depend upon checks clearing within a week. And since payment in full must be received prior to filing, we can no longer accept checks.

4.0 Funds Earned upon Receipt

The Agreement you signed with the attorney provides that all funds received by this office are considered earned upon receipt. This means that once funds are received they are no longer yours, the attorney has earned them, he can spend them as he wishes, and you cannot ask for them back - even if you decide you no longer want us to do any work for you. Your Agreement also states that the attorney is responsible for all of the costs associated with your case. The fee is a net amount and you will not pay additional sums for the court filing fee, the credit briefing, or the education class. This is so the attorney is not required to maintain a Trust Account. Under current Bar rules any attorney with a trust account must collect interest on the funds in that account and turn that interest over to the Bar Foundation rather than to his clients (to whom that money would rightfully belong).

5.0 Keeping Costs Down

5.1 In General

Most individuals who need bankruptcy services could not pay the amounts suggested in section 1.0 above. Further, each bankruptcy case is different. In an attempt to render services at the lowest price possible to the majority of our clients who have relatively simple cases, a fee schedule has been developed that is based upon the complexity of the case.

5.2 Consumer Chapter 7 Cases

The base rate for a simple chapter 7 is $945 for an individual and $995 for a couple (which is an increase of only $395 over that previously charged, $235 of which is related to increased costs).

Under the new law there are additional requirements for those whose income or expenses are above the Utah Median as established by the Internal Revenue Service. These requirements include justification of budget expenses and may include requests for additional information from the Office of the United States Trustee as well as a hearing before a judge. For these cases there is an additional $400 charge.

Experience has taught that if you are involved in substantial business activities or you have a lot of business debt your case will take more time, and may involve depositions or additional requests from the trustee. The attorney will also be required to field more questions from creditors. There is an additional $400.00 charge in these cases.

Under the new law there are additional requirements in cases where a foreclosure sale was pending on the date of filing. As indicated in Booklet 1 a creditor could foreclose property in violation of the automatic stay and get away with it if the buyer doesn't know about the bankruptcy filing. As a result, a notice must be filed with the county recorder in each case where a foreclosure is pending and someone from the attorneys office must appear at the sale to warn potential buyers. There is an additional $100 fee in these cases.

One of the most time consuming parts of preparing bankruptcy pleadings for the paralegal is entering creditor information. A typical case will have no more than 20 creditors. As a result, if your case includes more than 30 creditors it will take longer to prepare and limit the time available to do paying work for other clients. There is an additional $100 fee in these cases.

5.3 Chapter 7 Business Cases

Bankruptcies filed for businesses traditionally take more time than consumer cases. Those with assets, even more time. Please be advised that no bankruptcy will be filed by this office in any case where a business is operating on the date of filing. The sole exception is a consumer case in which the debtor operates a personal service sole proprietorship with no employees. Cases with operating businesses are extremely complex and are so time consuming and expensive that the attorney has elected not to do them. The excess creditor circumstances discussed in the previous section also applies to business cases.

5.4 Amendments

Amendments require the preparation of additional documents, a filing fee which must be paid to the court, the mailing of documents to any effected parties, and the payment of applicable postage. No amendment will be filed until the Amendment Questionnaire has been completed and a $50 fee received.

5.5 Contract Limitations

Some individuals are under the misapprehension that if they hire an attorney to perform one task the attorney is then obligated to perform every other legal task they may need without additional payment. An attorney is entitled to reasonable compensation for all of the services he might render. After all, you wouldn't work overtime hours for your employer if you knew he didn't intend to pay you. Further, fees are kept low by limiting the work to be performed and not making you pay for services rendered to someone else.

5.6 Chapter 13

In a 13 a portion of the attorneys fees must be paid prior to filing. The attorney is paid the balance of his fee out of the payments you make each month to the court. As long as you complete your plan the attorney will be paid in full. If you do not complete your plan you will still owe the attorney the difference between the value of his services and what the court has paid him. Further, any work you need performed in your case more than 6 months after confirmation is not included in the base fee. As is the case with Chapter 7, all initial costs are paid by the attorney.

6.0 The Retainer

In the past many individuals would start a bankruptcy case. However, once the bankruptcy papers were prepared they would fail to sign them. As a result, a great deal of work was performed that was never paid for. The non-refundable initial retainer is to partially defray the cost of pleading preparation for those individuals who decide not to file.

7.0 Additional Services

Occasionally a client will need additional services in connection with a bankruptcy. The following is a list of standard rates at the time this booklet was prepared. Each requires a separate legal contract with the attorney and payment in full prior to rendering the service.

Time and experience have shown that certain tasks take a minimum amount of time and effort to complete. The following represents some of those tasks and their approximate cost. However, it is impossible to determine in advance the exact amount of time that will be necessary in your case. Therefore, the actual time spent by Counsel at $210/hr will govern if it exceeds the minimums set forth below:

Finding and Copying a Discharge Notice	$5.00
Notice of Bankruptcy Filing	$10.00
Phone Calls	$20.00
Correspondence	$20.00
Downloading a Copy of a File from the Court	$20.00
Court Notice of Automatic Stay	$30.00
Certified Document From Court	$30.00
Preparing a Proof of Claim	$40.00
Research Court Files	$40.00
Finding and Copying a Closed File	$60.00
Abatement Request	$100.00
Status Review Hearing	$300.00
An Objection to Confirmation	$300.00
Motions[42]	
Motion to Excuse Appearance	$350.00
Motion to Set Aside Lien	$300.00
Motion to Convert to 7 or 13	$150.00
Motion to Abate Payments	$300.00
Motion to Sell Property of the Estate	$400.00
Motion to Dismiss	$600.00
Motion Objecting to Proposed Dismissal	$500.00
Motion Objecting to a Proof of Claim	$350.00
Motion for Early Payoff	$400.00
Other Motions	$700.00
Responding to a Motion	
Motion for Relief from Stay - Vehicle	$250.00
Motion for Relief from Stay - House or Business Equipment	$400.00
Motion to Dismiss - By Trustee	$200.00
Motion to Dismiss with Prejudice	$400.00

[42] All motions include: preparation of the motion, any necessary affidavits, obtaining a hearing date, mailing notices, filing the certificate of service, attendance at the hearing if necessary, and preparation of the final order. It does not include expert witness fees, research, responses to contested motions, or other services.

Chapter 21
Bankruptcy Reform

1.0 In General

For those interested in the topic of bankruptcy reform the following material may be of interest to you. Section two discusses the typical causes of filing. Section three is an article on bankruptcy reform by Mary Rouleau.

2.0 What are the Typical Causes of Bankruptcy Filing

2.1 In General

Many people ask why the news reports that bankruptcy filings are so high, especially in Utah. Before answering this question more fully, it is important to beware of statistics. They may not be truly accurate of what you think they represent. Upon inquiry the author learned that the statistics upon which the Utah ranking is based is determined by "total bankruptcy filings" rather than the actual number of different individuals filing. Of the two basic types of consumer bankruptcy (7 and 13) more Utahns file 13's (repayment plans) than the national average. Traditionally Utah has also had some of the most restrictive laws on the approval of chapter 13 payment plans. Thus a large percentage of cases are not confirmed (through technical failure) or are not really feasible (based upon budget limitations). Thus, many individuals who wish to repay their debt or save their homes file multiple times to try and get it right, before they file a chapter 7 as a final alternative. Further, there appears to have been a recent drop (about 46%) in Utah bankruptcy filings. Thus, news reports can be inaccurate and misleading.

2.2 Credit Card Debt

Credit Card debt is the number one cause of bankruptcy filings. Congress and the Courts have known for years that Bankruptcy Filings are directly related to the amount of National Consumer Debt. You can directly calculate the number of cases that will be filed if you know the National Numbers. The recent policy of credit card companies issuing cards to people who do not qualify for credit has dramatically affected the number of filings. And all attempts by congress to stop this practice have failed. Credit card companies contribute to political campaigns, and they are currently making record profits regardless of the number of bankruptcy filings.

You must also factor in that in a declining economy, larger number of individuals are using credit cards to make up the difference in rising living expenses that wage increases have not matched. We are staving off a major

depression through the use of consumer credit.

2.3 Medical Costs, Job Losses, and Divorce

The majority of people filing bankruptcy do so because of Medical Expenses, Job Loss, and/or Divorce. These people do not *want* to get out of paying their debts. Due to a an event often beyond their control they are no longer *able* pay their bills.

Statistics tell us that most individuals are two paychecks away from Bankruptcy. Thus no income for a 30 day period often results in bankruptcy. A 3 month cushion of cash would prevent 70% of all bankruptcies filed. The LDS Church recommends 6 months to a year cash reserve.

It should also be noted that medical insurance does not help. Because of the astronomical current cost of medical services, the co-pays alone (often totaling 20,000 to 200,000 dollars for major surgery) are enough to cause bankruptcy.

This problem is particularly apparent among seniors who are the fastest growing group of bankruptcy filers. 85% of seniors file due to medical or job problems.

This is compounded by the fact that most seniors now retire with mortgage debt. 30 years ago their houses were paid for at retirement and they had a company pension in addition to social security. Most retirement plans have failed in the last 15 years and are currently unfunded. 401K's are a joke and at a retirement most individuals have only 11% or less of their actual contributions. (The rest going to prop up the stock market or into the hands of "profit takers".) Social security is not sufficient to even make the monthly mortgage payment, nor does medicaid cover their medical debt.

Another problem for Seniors is co signed debt. 80% of cosigners do not pay. Thus mom and dad get stuck with the repossessed car debts.

2.4 The Utah Economy

Utah has some unique economic problems. First, our tax base is very small. Most of the land is Utah is owned by the federal government and cannot be used or developed without government approval. Hence all of the miners currently out of work in Southern Utah. Since this land cannot be developed, Utah lacks heavy industry and the economy is mostly service based. This generally does not promote wealth, high wages, and large tax revenues.

Second, traditionally Utah families have been larger than the national average. This means it costs more to maintain a family (even under the best of conditions) than elsewhere. If the local economy were more agrarian this might not be a problem, but in an urban environment it is. This same phenomenon increases the per capita cost of education in Utah (in other words higher taxes).

Third, we have more institutions of higher learning, and more students per capita than other states. This creates a worker pool that lowers wages without increasing productivity.

Fourth, in the mid 80's Utah had a large influx of individuals moving here from California. This artificially inflated the real estate market. As a result, homes were appraised at higher than actual value and many loans given far above value. We are now experiencing the result as Homes cannot be sold for the amount of debt and most sales are short sales (sales that do not pay off all the mortgage debt). A bankruptcy then becomes the only way out.

2.5 The Second Mortgage Problem

People have been bombarded in the media (and as a result of tax legislation), that the best way to get out of debt has been to acquire a second mortgage to pay off the credit cards. There are a number of problems with this. First, unless there is fundamental economic change, the person will simply continue to use the credit cards and escalate debt.

Second, second mortgages directly impact a families base financial survival. Because a second mortgage raises basic living expenses, most families find they can no longer pay their regular bills. In the author's experience most individuals lose their homes within 6 months to 2 years after obtaining a second mortgage. Getting a second mortgage has not gotten you out of debt, it has simply secured it with a home. Now if you can't pay you lose the home. Otherwise a bankruptcy would have wiped out the unsecured debt and you could have kept the home. 80% of current filers lose theirs homes as opposed to 20% ten years ago.

Third, there is a great deal of fraud related to second mortgage debt in addition to fraudulent appraisals as to value and false statements as to income. Many individuals are promised one rate and payment, but are then given a higher rate and payment at closing. Because of the pressure to go forward they sign agreements they cannot keep. Often the interest rates on second mortgages are actually higher than credit card rates, but the payment seems lower because it is stretched over 30 years. You are usually better off to refinance the first. Excessive fees are also often added to second mortgage loans.

Fourth, only a portion of the interest is deductible. If you pay $9,600 in interest a year [which is typical today]. Most can deduct only $1,632 of it against taxes. You've paid over $9000 in mortgage payments for a $1600 deduction.

Fifth, Church leaders have long counseled members of their congregations to pay off their homes and not to subject them to debt. Placing debt against a home endangers a families security and ones ability to survive at retirement.

2.6 Post Date Check and Title Loans

Related to a declining economy is high interest post dated check and title loans. These loans are often at 500 to 740% interest. Over a period of one year a $1,000 loan will require repayment of $8400. The amount due doubles every 2.8 months. Plus there are finance changes in addition to the interest. Many bankruptcy clients have these types of loans.

2.7 Cultural Factors

Next there are a number of Cultural Factors that contribute to bankruptcy filing. First, in the past debt was considered abhorrent, now only failure to repay is considered a character fault.

Second, due to a number of factors including the media; people expect to live "the American life style" People are no longer willing wait for nice things. They want them now. Of course, they cannot pay cash for such things so they must obtain them on credit. This is contrary to LDS Church teaching that debt is only approved for a "modest home", an education leading to employment, and"reasonable transportation".

Third, is an LDS Cultural Phenomenon that the "appearance" of wealth is equated with spirituality or a religious life. This seems to effect about 70 to 80% of church membership (usually those who are social rather than believing [testimony holding] members). Related to this, at least in Utah, is the concept of social acceptance. If you do not participate in approved activities or have the right possessions, you do not fit in. Thus, there is great pressure to get into debt to fit in.

Finally, there are the growing numbers of married working mothers. This floods an already saturated job market reducing wages. In addition, statistics show that married working mothers often contribute less than 10% of their gross wages to household debt. This is because of increased costs for food, clothing,

transportation, and day care.[43] Further the increased stresses upon such women results in an 80% divorce rate within 5 years of going to work. This contributes to the factors already indicated above.

3.0 The Truth About Bankruptcy Reform

The following is a statement prepared by the national Association of Consumer Bankruptcy Attorneys (NACBA.org)

The several-years debate over reform of the Bankruptcy system has been long on credit industry rhetoric and short on attention to the facts. The credit industry would have you believe that there is widespread, deliberate abuse of the system. There is not. Yet the Bankruptcy Conference report in the 107th Congress [HR333] would have adversely affected honest and hard working American families facing financial crises. The credit lobby is promoting passage of HR 333 in the 108th Congress– with the backing of influential Members of Congress.

1. Let's start at the beginning: Who asked for "reform" of consumer bankruptcy laws? Bankruptcy Judges? No. The on-going battle over consumer bankruptcy "reform" legislation really began in 1995 when creditors urged president Clinton and Congress to establish the National Bankruptcy Review Commission (NBRC). The NBRC was charged by Congress to undertake a review of the Bankruptcy Laws. For well over a year, the NBRC conducted public meetings throughout the country, gathering testimony from witnesses that rarely included users of the system. The credit industry was well represented at those meetings. It pitched a highly restrictive "means test" for consumer bankruptcy–as it had without success to Congress for well over 50 Years–as well as a host of other restrictions on consumers using the system. The NBRC had nine members representing a variety of political perspectives, but none of these members primarily represented consumer interests. In 1997, the NBRC began to issue drafts of it's report. It was apparent from these drafts that the NBRC did not believe that the credit industry had met the burden of proof in demanding a radical restructuring of Chapter 7 [the so-called "fresh start" form of bankruptcy] by forcing people into Chapter 13 [which requires at least partial repayment of certain debts]. The industry sent a letter to Congress denouncing the direction the NBRC was taking and escalated its multimillion dollar public relations and lobbying campaign to discredit the NBRC. Turning to Congress for relief, the industry found sponsors for a bill to their liking [HR2500], which was introduced in September 1997, about a month before the NBRC issued its final report.

[43]Research shows that many Utah women work simply to get out of the home and that more women per capita in Utah with children work than their counterparts with children outside of the state.

2. Okay, so this is a credit industry effort, but can't a substantial number of people who file bankruptcy actually repay their debts? No. In a study commissioned by the nonpartisan American Bankruptcy Institute, two researchers from Creighton Law School conducted a case-by-case analysis to determine whether debtors currently in Chapter 7 could plausibly repay some portion of their debts. They concluded that up to 3.6% of chapter 7 debtors would be candidates for any repayment in chapter 13-a finding that was subject to learning about the debtors' expenses. Further, "studies" conducted by the credit industry ostensibly demonstrating that a substantial number of bankruptcy filers could afford to pay back many of their debts were criticized by both the Congressional Budget Office (CBO) and the U.S. General Accounting Office (GAO). There simply is no credible evidence that a significant number of debtors would be able to pay their bills if they were prevented from filing for Chapter 7. This is especially true since the nation's economy has weakened in the last two years as unemployment and underemployment has increased.

3. Who files for bankruptcy? Academic research demonstrates that individuals filing for bankruptcy on average earn under $20,000 a year after taxes. This research shows that, as a group, the debtors who filed for bankruptcy in the 1990's were worse off than their counterparts who filed inthe1980's. their incomes were lower and their debt loads are higher. The top three reasons for filing bankruptcy are clear and have not changed: (1) layoff, furloughs, cutbacks or other job problems, (2) a medical crisis [this is the leading cause for those over 50]; and (3) divorce, particularly for women. These three problems alone jobs, medical, and family break-ups account for more than 90% of all filings. It is true that consumer bankruptcy filings are at an all time high. This reflects the prolonged economic downturn; business bankruptcies are also high. But even in tough times, most households pay their debts and do what they can to avoid bankruptcy–even though, from an economic standpoint, it would make better sense for many of these families to seek a fresh financial start. In fact, one academic study concluded that a much higher number of households would benefit financially from filing bankruptcy than actually file: about 15% compared to the about 1% that file on average. Attorneys who represent consumer debtors report that the stigma associated with bankruptcy remains very real. Clients are anxious to repay their debts and to keep their financial difficulties quiet. Most people find their attorney as the result of advertising because they are too embarrassed to ask family or friends for recommendations.

4. Opponents of HR 333 say that the credit industry-in particular the credit card lenders–is responsible for most of its losses because of reckless extensions of high levels of credit. What is the relationship between bankruptcy and consumer debt? While about 90% of bankruptcy filings are ultimately triggered by one or more of the three factors listed above, debtor who file often have higher levels of consumer

debt, particularly credit card debt. Studies by the Congressional Budget Office, the Federal Deposit Insurance Corporation, and independent economists link the rise in consumer bankruptcies directly to the rise in consumer debt. Deregulation of consumer credit interest rates has no produced a significant decrease in credit card interest rates. Instead, deregulation has prompted aggressive marketing and a loosening of underwriting standards that have contributed to a rise in consumer bankruptcies. About of 60% of card holders carry credit card debt from month to month. The average credit card debt for households that carry a balance is more than $10,000. Since 1997, credit card issuers have nearly doubled the amount of credit they offer to consumers, to more than $3 trillion dollars– about $30,000 per household. Revolving debt, which is entirely card debt, increased from $554 billion to $730 Billion between 1997 and 2002. During the same period, credit card companies sharply increased the number of solicitations they mailed from 3 to 5 billion per year. Credit use over all has grown fastest in recent years among debtors with the lowest incomes. In the early and mid 1990's, Americans with incomes below the poverty level nearly doubled their credit card usage, and those in the $10,000-25,0000 income bracket came in close second in the rise in credit card debt. By 2000, about 1/3 of lower income families spent more than 40% of their income on debt repayment, compared to 20% of moderate income households and 14% of middle income families. Riskier borrowers typically carry a higher debt burden, pay more interest, and suffer more defaults. With so many more at risk families further in debt, it is hardly surprising that these families are vulnerable to the financial emergencies that lead to default and bankruptcy.

5. Why do lenders continue to extend credit to high risk borrowers, knowing that they may never be able to repay it? Isn't this costing the industry a lot of money? No. The truth is that high risk lending is high profit lending. These profits have encouraged many institutions to substantially lower their consumer credit standards. Credit card profits continue to be significantly higher than for other bank lending activities. Bankcard profits increased in 2001 to their second highest level in the last five years (3.24% of outstanding balances.) Growing profits were largely driven by the increasing "interest rate gap" between the benchmark rate set by the Federal Reserve, which has dropped significantly, and interest rates charged by card issuers to consumers. In 2001, the Federal Reserve cut interest rates by 4.75%, but major bankcard issuers cut their rates by only 1.35% on average. Credit card issuers earn about 75% of their revenues from the interest paid by borrowers who do not pay in full each month. Several companies have even attempted to instituted charges or cancel credit cards for customers who pay in full each month, preferring customers with large credit balances who pay minimum monthly payments. Using a typical minimum monthly payment rate on a credit card with 18% APR, it would take 34 years to pay off a $2,500 loan. Total payments would exceed three times the amount of the original principal. It would take a family with a balance of $10,000-the national average-more than 57 years to pay off at a typical

;minimum rate, with total payments just under four times the amount of the original principal. Credit card statements, unlike those for mortgage and car loans, do not disclose the amortization rates or the total interest payout at the minimum payment rate. In fact, major credit card lenders successfully sued to block the state of California from requiring them to disclose this type of information to credit card consumers. Industry consultants estimate that credit card companies would cut their bankruptcy losses by more than 50% if they instituted minimal credit screening.

6. What is the difference between chapters 7 and 13? Chapter 7 is used for those with substantial unsecured debt problems. Generally, a family that files for chapter 7 bankruptcy is relieved of repaying its short-term, high-interest unsecured debt, principally credit card debt, along with some medical bills. After bankruptcy, however, the family must continue to make all payments on the family home, including interest, late charges and penalties, or they will lose their home. Any other debt secured by a home mortgage or home equity loan also must be repaid. These debtors must continue to make car payments, pay back taxes, and satisfy educational loans. Those who have outstanding child support or alimony obligations must also pay those in full. chapter 7 is not total debt relief. Debtors often leave bankruptcy court with heavy financial obligations. For those debtors who can afford to reorganize and pay some money to their creditors, chapter 13 provides a well-defined and accessible method to adjust those debts. It is also the only way families in bankruptcy can cure defaults on home mortgages or pay defaulted car loans to avoid losing their homes and their cars. Debtors who file for chapter 13 voluntarily agree to pay some portion of their debts over a three to five year period. Despite the good faith of those who choose this approach, the reality is that two out of every three debtors who file for chapter 13 do not make it through the repayment plan. many face repeated unemployment and some encounter significant and unexpected expenses.

7. Much has been made of the "means test" for chapter 7 in HR 333. But I've been told by the credit industry that HR 333 won't hurt honest families of modest and low means. that's simply not true. Virtually all of the dozens of consumer provision in HR 333 apply to all debtors in bankruptcy, not just those above median income. Here are just some of the provisions that would make it difficult for those of modest and low means to successfully file for chapter 7:

Definition of Household Goods - This provision would allow finance companies who take security interests in families' household goods (not purchased with the money loaned) to threaten to repossess household items that have little or no resale value, but high replacement value, in order to coerce debtors to enter into agreements to pay debts that would otherwise be eliminated.

Restricting the Automatic Stay of Evictions - The bill would virtually eliminate the stay of tenant evictions in current law that gives bankruptcy debtors, once they have eliminated most other debts, a chance to catch up on back rent.

Burdensome Paperwork Requirements - The bill would require all debtors to provide numerous additional documents, which will increase the cost of filing for every debtor. Some of these documents, such as tax returns and pay stubs, may be difficult for debtors to obtain if they must be obtained from a former employer or a hostile ex-spouse. In addition, the bill would allow creditors to continue to harass debtors if they do not receive "effective notice" at an address that debtors may not be able to obtain (or that may be time-consuming for their attorneys to obtain), even if they have actual notice of the bankruptcy.

Eliminating Protections for Mobile Home Residents - The bill would eliminate chapter 13 protections for mobile home residents, and would often require them to pay far more than their mobile homes are worth to prevent loss of their homes.

Providing Multiple Opportunities for Creditors to Threaten Litigation - The bill creates numerous opportunities for creditors to bring or threaten to bring litigation against debtors, based on new provisions that allow creditors to seek dismissal of cases, repossession of property, or to prevent discharge (liquidation) of debts. families who cannot afford the $1,000 or more it would take to defend against such actions will have no choice but to give in to creditor payment demands.

8. As I understand it, HR 333 seeks to put more people into chapter 13. What's wrong with that? Encouraging people who can afford to file chapter 13 makes senses. Putting them into a program that is doomed to failure for most people--as HR 333 does - is a recipe for disaster. HR 333 not only won't improve the dismal success rate in chapter 13, it will increase the number of people who fail. Before fundamentally altering chapter 13, shouldn't we figure out why so many plans fail today and design a better approach? the trustees who currently administer chapter 13 plans have said that HR 333 contains many fundamental flaws that will increase the number of plan failures. HR 333 requires a five-year payback period from all debtors over state median income, squeezing more payments from the debtor and increasing the change of failure by greatly lengthening the time the family will be vulnerable to income interruptions or emergency expenses. Moreover, these families' payments to creditors would be determined by the arbitrary means test using Internal Revenue Service expense standards, which may bear no relation to their true expenses. In addition, under HR 333, many creditors who are treated as unsecured under current law would become secured, and others would be deemed secured for larger obligations. that is: secured and unsecured creditors would be entitled to greater repayment of their debt. That means the size of the repayment plan would be bigger even though the debtor's income on average would not grow.

Moreover, because HR 333 would prevent a debtor who cannot pass the means test from being eligible for a chapter 7 case, if the chapter 13 plan fails, the debtor is removed from protection of the courts, subject to loss of his/her home, car, household goods and likely to be continually harassed by creditors.

9. So you're saying that HR 333 would accomplish exactly the opposite of what its supporters claim. The credit industry says it wants debtors to repay more of their debts in chapter 13, but the bill would make that outcome less likely. How did that happen? Early on, some secured creditors realized that there was an opportunity to gain ground on the current system, which already provides secured creditors a preferred position. Led by the auto lenders, they obtained special interest provisions that, as described above, create a lot more secured debt for the debtor. this creditor feeding frenzy was detailed in an editorial in a leading bankruptcy journal, which asked: "Why Does Congress want to Kill chapter 13:" and which noted that "bankruptcy reform has been hijacked by car lenders". Bankruptcy judges, trustees and scholars have been outspoken about the destructive nature of the type of changes to chapter 13 proposed by HR 333. In fact, some opponents of HR 333 believe the real agenda of much of the credit industry is to keep debtors out of both chapter 7 and chapter 13, eliminating the protection of the courts.

10. The bill's proponents say it will hep women and children who are dependent on child support. Is that true? No, for three major reasons. First, supporters of the bill claim that it "puts child support first" because women owed child support will be first in line among unsecured creditors if there are assets to distribute in a chapter 7 case. However, even today, with no means test limiting access to chapter 7, over 96% of chapter 7 debtors have no assets to distribute, according to the Department of Justice. The bill will let women and children wait at the head of the line in chapter 7 - to receive nothing. Second, after bankruptcy, women trying to collect support will face increased competition from credit card companies and other creditors. Under current law, child and spousal support are among the few debts that survive bankruptcy. Under HR 333, more debts - especially high-interest credit card debt - will continue after bankruptcy, putting women and children owed support in competition with the sophisticated collection departments of commercial creditors for the debtor limited income. Being "first priority" during the bankruptcy process is legally irrelevant the minute the bankruptcy proceedings end. Third, as described above, changes in chapter 13 will mean that many creditors will be entitled to larger payments from the debtor's limited income - so payments of past-due child support will have to be stretched out over a longer time period.

11. Does the bill fix the homestead laws that allow wealthy debtors to keep their multimillion dollar mansions in certain states like Florida and Texas, even if they pay creditors nothing? No. Today, state law determines what property shall remain exempt from creditors in a bankruptcy. Homestead exemptions are highly

variable. six states (Arkansas, Florida, Iowa, Kansas, South Dakota, Texas) and the District of Columbia now have literally unlimited exemptions, while twenty-two states have exemptions of $15,000 or less. the central purpose of creating a uniform federal cap on the "homestead exemption," which was adopted by an overwhelming vote in the Senate, was to fix this fundamental injustice. Residents of one state should not be allowed to protect an asset worth millions, while residents of other states cannot even protect the least expensive home. Allowing this inequity is of even greater concern when it is part of a bill that creates so many harsh new barriers to bankruptcy for moderate-income Americans. The "compromise" proposal in HR 333 would cap the equity of a home that can be shielded from creditors only for persons liable for a very limited number of frauds and felonies. Even then, the cap would be $125,000 per person [$250,000 per couple]. A diverse group of professors who teach bankruptcy and commercial law, wrote to urge change to this HR 333 provision. they said: "The compromise proposal does not cure the homestead problem. Although the homestead compromise was reach in good faith and with good intentions, its modest improvements are overwhelmed by the negative consequences it will have ... On balance, the compromise compounds the unfairness of the homestead exemption. Instead of offering a hard, uniform cap that brings the state exemptions into closer alignment, the proposal makes it more difficult for people to use any homestead exemptions."

12, It's my understanding that HR 333 requires debtors to undergo credit counseling before they file for bankruptcy. what's wrong with that? There is nothing wrong with encouraging people to seek credit counseling. Given the serious consequences associated with bankruptcy, most people consider it a last resort to be tried when all else has failed. Indeed, debtors usually seek out credit counseling and/or attempt to make special arrangements with their creditors to repay their debts before ultimately filing for bankruptcy. However, there is a reason to be concerned about the specific credit counseling provisions in HR 333, which deny access to the bankruptcy system in virtually all cases until a debtor has sought the assistance of a credit counseling program. Although the legislation seeks to ensure some measure of creditability with respect to the credit counseling organizations by requiring that they be approved by the local trustee or bankruptcy court, the conference report does not authorize funds to investigate these agencies, their fees, practices or success rates. This will make it much harder to prevent shady operators from getting placed on the approved list maintained by the courts and trustees and to ensure ongoing compliance by these counseling organizations with the requirements of the law. Newspapers and television news shows have been filled of late with stories about credit counseling scam artists, and "non-profit" counseling organization that charge high fees and pay their officers "for profit" salaries. A number of states have enacted or are considering tougher oversight of credit counseling agencies. Most experts in the field acknowledge that it is getting

much harder for consumers to find high-quality assistance that offers a range of counseling options, as opposed to a "one size fits all" consolidation plan that only helps some consumers get their finances under control. As with chapter 13 plan, credit counseling consolidation plans, in which the debtor pays the agency and the agency pays most creditors, have a high failure rate. Debtors who fail to complete a consolidation plan have a good change of ending up in bankruptcy. In addition, the cost of credit counseling has risen significantly in recent years. Although the conference report attempts to ensure that counseling fees are reasonable, the credit counseling requirement will place debtors with extremely limited funs in the position of having to use money that would otherwise go to debt repayment. additionally, some debtors will only learn about the credit counseling requirement upon seeing a bankruptcy attorney. this is often too late int eh process for credit counseling to make a difference. As mentioned above, many debtors delay filing for bankruptcy well beyond when it would make economic sense. It will only be upon make the difficult decision to seek bankruptcy that these people would be told that, first, they must receive credit counseling. At this point, credit counseling is unlikely to help the debtors in the most financial trouble, and the delay in filing for bankruptcy may actually harm them. HR 333 does not give bankruptcy judges enough discretion to ensure that debtors facing an emergency, such as the imminent shut off of electricity, will be able to file for bankruptcy immediately.

13. Finally: The consumer credit industry claims that bankruptcies are costing each American family $400 per year. Is that true? Absolutely not. This claim has obvious rhetorical appeal, but no basis in fact. A lengthy article in the American Banker reveals the unsubstantiated origin of the number. It is not the bankruptcy system that causes creditors' losses. Indeed, the credit industries' own studies concede that a majority of consumer in financial trouble will not be able to pay their debts, whether or not they file for bankruptcy. On the other hand, some borrowers who file for chapter 7 relief pay some of their debts in spite of the fact that they can legally wipe them away. the industry wants you to believe that it is the bankruptcy system that causes them to have to write off some loans, not their own bad business decisions. Equally important, there is no evidence that lenders would reduce rates on unsecured consumer lending if they could avoid these bankruptcy losses. In recent years, credit card profits have been largely driven by the increasing "interest rate gap" between the benchmark rate set by the Federal Reserve, which has dropped significantly, and interest rates charged by card issuers to consumers, which have dropped by far less. Given this, how likely is it that additional savings realized by lenders will be passed on to consumers? The simple truth is that bankruptcy laws do not result in an increase in the cost of credit for bill-paying consumers. Credit card companies have never show that interest rates have risen or fallen due to increases or decreases in bankruptcy filing rates or changes in bankruptcy laws. In fact, it can be argued that the high interest rates and the various and substantial penalties paid by marginal borrowers on their

outstanding balance each moth subsidize the cost of credit for all borrowers who pay their credit card balance in full each month.

4.0 Conclusion

If you find after reading this material (and from your own experience) that congress and the media have misrepresented bankruptcy reform, you might let your Senators and Congressmen know what you think and how it might affect their re-election chances. Who knows, if enough people complain we might actually get true bankruptcy reform someday.

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It is common for Bankruptcy clients to have questions about their case and/or the decisions that they need to make. Please be aware that while the attorney's employees can help you with many matters, they are not allowed to give you legal advice. Certain matters can ONLY be handled by an attorney. For example, only an attorney can give you advice whether or not it is in your best interest to file Bankruptcy. Whether or not it is in the best interest of your spouse to file Bankruptcy with you. Or, if Bankruptcy filing is advisable, only the Attorney can indicate which Chapter of the Bankruptcy Code you should file under. In short, any *legal advice* requires the assistance of the attorney. A paralegal may not: (1) accept an individual as a client, (2) set fees, (3) give direct legal advice, (4) negotiate legal matters on behalf of a client, or (5) represent clients in court settings. However, subject to these restrictions, a legal assistant or paralegal can do almost anything else that an attorney could do.

If you have a question regarding your case, you should first look for the answer in this booklet. If you do not find the answer, please call our office. Ask for the Paralegal in charge of your type of case. If it is a procedural question (such as wanting to know when your hearing date is or if a reaffirmation agreement has arrived) she will help you with those matters. If it is something she cannot handle, provide her with all of the information, and the attorney will then help you.