

**WHAT YOU SHOULD KNOW
ABOUT YOUR CHAPTER 13 BANKRUPTCY**

This booklet contains some basic, general information about your Chapter 13 bankruptcy. Read this pamphlet completely to understand your obligations and responsibilities and then refer to it as needed when you have a question.

REMEMBER TO PUT YOUR CASE NUMBER ON ANYTHING YOU SEND TO THE TRUSTEE.

Your Trustee is:

**Locke D. Barkley
601-355-6661**

www.barkley13.com

Your Case Number is:

Your Attorney is:

INTRODUCTION

Chapter 13 is one method under the Bankruptcy Code to obtain relief from your creditors while at the same time providing a fair means to pay them back as much as you can. It allows you to keep some or all of your property during the time you are paying creditors back and it permits you to modify some contract payments and interest rates. Your plan can eliminate late charges and penalties and allows you to extend payments on some of your debts.

YOUR CASE NUMBER

At the time your Chapter 13 petition was filed, the Bankruptcy Clerk assigned the case a number. This number is very important. You will need it whenever you write to the Trustee's office, call the Trustee's office, or when you make a payment to the Trustee. Your case number has been written on the cover of this booklet.

YOUR ATTORNEY

Under the rules of the Bankruptcy Court, your attorney must continue to appear and represent you for as long as your case is active or until the Court permits your attorney to withdraw from your case. **If you ever have a question concerning your case, a creditor, your rights, or your options, you should contact your attorney before contacting the Trustee's office.** In most cases, your attorney will be paid his or her legal fee through your Chapter 13 plan. Your attorney is allowed a set fee not to exceed \$2,500 which does not require approval by the Court. If your attorney wants to be paid any additional legal fees, those fees must be reviewed and approved by the Court. If you ever want to change attorneys, be sure that you let your attorney, the Court and the Trustee know that you have changed attorneys and who your new attorney is.

YOUR ADDRESS

We need to know your exact mailing address for as long as you are under Chapter 13. We have the address which you put on your petition and we will send all notices to that address until you or your attorney tell us to send them somewhere else. If you ever move or change your mailing address, you **must** inform your attorney, the Court and the Trustee **in writing** of your new address.

CALLS TO THE TRUSTEE'S OFFICE

The Chapter 13 Trustee's telephone number is (601) 355-6661. If you have questions your attorney can't answer, you may wish to ask the Trustee by writing a letter with your case number and your question (see address below). If you cannot wait for a written response, you may call the Trustee's office for assistance. **Please remember, neither the Trustee nor her staff can offer legal advice or make any changes to your plan.** This must be done through your attorney. Any requests for payoffs must be made in writing and sent with a self-addressed stamped envelope to:

Locke D. Barkley
P.O. Box 55829
Jackson, MS 39296-5829

If you are represented by an attorney, do not call the Trustee's attorney. Due to the rules of ethics and professional conduct, the Trustee's attorney will be unable to speak with you.

PAYMENTS

Most Chapter 13 payments are made through a payroll deduction at your place of employment unless you have no employer. Your first payment is due within thirty (30) days of the filing of your bankruptcy. If payroll deductions have not begun by that time, you will be required to make your payments directly to the Trustee. Should you make a payment personally, it is preferable to do so by money order, postal order, or cashier's check. If you pay by personal check a hold will be placed on those funds and it will not be credited to your case for a period of fifteen (15) days. For all payments be sure to include your name, address, and your Chapter 13 case number. **DO NOT SEND CASH.** Monthly payments must be received prior to the 15th of each month. Weekly, bi-weekly, or semi-monthly payments should be sent based upon that schedule.

All payments should be mailed to:

**LOCKE D. BARKLEY
CHAPTER 13 TRUSTEE
P.O. BOX 1859
MEMPHIS, TN 38101-1859**

Payments must **NOT** be mailed or brought to the Trustee's office.

PAYROLL DEDUCTION ORDERS

If your plan proposes that payments be deducted from your wages, the Court has issued an order to your employer instructing your employer to deduct your plan payment from your paycheck and send it to the Chapter 13 Trustee. It is important that both you and your employer understand that such an order is not a garnishment. A garnishment or attachment can only come from someone to whom you owe money, and you do not owe the Court or the Trustee any money. The Court is just carrying out its duty to administer the plan you voluntarily filed and in which you gave the Court exclusive jurisdiction over your future pay as long as you are subject to a Chapter 13 plan. We find that most employers understand that you are making a serious effort to repay your debts. If your employer has any questions, he or she may call your attorney or our office for an explanation.

OBLIGATION TO PAY

Even though the Court will usually order your employer to deduct plan payments and send them to the Trustee, you must remember that you have the obligation to make sure payments are made. If your employer ever fails to make a plan payment deduction, you must tell your attorney that the deduction was not made **and you must send the required plan payment to the Trustee by money order, postal order, cashier's check or personal check.** It is a good idea to keep your pay stubs to demonstrate that the deductions are taking place. If a payment is not received by the Trustee as required by your plan, any creditor in your case may ask the Court to dismiss the case or modify the automatic stay which is in place to protect your property from your creditors.

DISMISSAL

If you fail to make the payments to the Trustee as required by your plan, the Trustee will ask the Court to dismiss your case. It is very important to contact your attorney if you ever expect to miss a payment due to being laid off, fired, medically disabled or changed jobs. If your case is dismissed (including upon your request for a dismissal) your eligibility to file another bankruptcy case and/or receive protection from your creditors could be affected. Therefore, it is important to talk to your attorney if you know of any reason why the Trustee would not receive a payment. Remember, the Trustee's office has no authority to let you miss a payment or to allow you to pay less than your plan requires. Only the Court can make such a decision and you should contact your attorney soon enough to ask the Court to change the requirements of your plan if you feel that you cannot meet the obligations of your plan.

CONTACTS BY CREDITORS

All the creditors that you listed (and all your creditors **must** be listed) on your Chapter 13 petition are under an automatic restraining order (the "automatic stay") which prohibits them from bothering you in any way. If you get notices in the mail from your creditors, send them to your attorney. Delinquent notices need not cause any great concern, but if you get a more personal, direct contact from a creditor, such as a telephone call, a personal letter, a summons, or a visit in person, you should immediately inform them that you are under Chapter 13 and give them your attorney's name and address. Under no circumstances should you discuss the debt with them in any manner. Be sure you tell your attorney the name of the person who contacted you. Your attorney will want to follow up on such a call and the name of the person calling you is very important.

DEALING WITH CREDITORS

You may **not** deal directly with a creditor unless your plan proposes that you will pay that creditor direct rather than through the Trustee. You cannot pick and choose a particular creditor and pay them "on the side" because **all** of your debts must be dealt with in your plan. All creditors must be paid under the authority of the Court, by the terms of the law, and not by any personal desires. If you want to pay creditors, you must do so through your Chapter 13 plan. The only exceptions would be mortgage payments which your plan proposes to pay direct or long term debts that do not mature until after your bankruptcy would be complete. This would also have been proposed in your plan.

BALANCE DUE TO CREDITORS

Most people are very interested in knowing how much they owe to their creditors and how much they have left to pay on their Chapter 13 plan. The Trustee's office will mail you a report each year showing you the balances due to each creditor and the number of months left in the plan. However, if the Trustee is paying an on-going house payment or child support payment (this should have the word "continuing" in the debit column), the balance and number of months showing will not be accurate. If you want an accurate balance, you may write the Trustee's office. The report will not include any balances for creditors who have not filed claims. It is, therefore, only an approximate figure.

CLAIMS OF CREDITORS

While every creditor that you list is given the opportunity to file a claim for payment they must do so within a set period of time. Non-governmental creditors (e.g. banks, auto finance companies) are allowed 90 days from the Meeting of Creditors to file their claim, while governmental creditors (e.g. Internal Revenue Service, state tax commission) are allowed 180 days from the date your petition is filed to file their claim. After you have been under the plan for about four months, we will send you a complete list of every creditor who has filed a claim in your case and the amount that they claim you owe them. You should read and examine this list (õMotion to Allow Claimsö) very carefully. If a creditor is listed incorrectly or any amount claimed does not appear correct, you should contact your attorney at once. Unless your attorney objects to a claim, it will be allowed in the amount filed and treated as provided under the plan.

LATE CLAIMS

As noted above, creditors have a certain period of time in which to file their claims for payment. Generally, they are not entitled to payment if they file after that date. If we receive a claim after that time, we will send you a notice called õMotion to Allow Late Filed/Supplemental Claimö. If you do not want us to pay the claim, your attorney must object to its payment within thirty (30) days. Generally, any claim which is not allowed, will not be paid and, if you complete your plan, any claim that is not allowed or not filed will be discharged except alimony, child support, Government-guaranteed student loans not paid out in the plan and taxes. Unless your attorney objects to our paying such claim, however, we will pay the claim, even if it was filed late.

There is probably no need to object to a late filed secured claim if your plan provides for payment of this debt.

CREDITORS NOT LISTED

Creditors not listed by you when you filed can cause quite a few problems. There are two kinds of unlisted creditor. Those you owed money to when you filed your petition but forgot to list ó we call them õunlisted creditorsö, and those creditors who have a debt that was incurred after you filed. We call this type õpost-petition creditorsö. If you find an unlisted creditor, one you owed but forgot to list, you should let your attorney know the details immediately. Time is very important here, so do not delay if one shows up. Post-petition creditors are rare, because, as you know, you cannot borrow money or incur a debt while under Chapter 13 without Court approval. Post-petition debts should be brought to the attention of your attorney so that a review of your plan can be made. These may be included in your plan, should the Court allow the post-petition claim.

HOW CREDITORS ARE PAID

The money that you pay to the Trustee is used to pay expenses of administration, including payments to your attorney, and payments to your creditors. There are 3 basic types of claims ó priority, secured and unsecured. Generally, you can say that we pay administrative costs first (priority), then tax claims, child support claims, alimony claims and creditors with claims secured by your property (secured claims) and then everyone else (unsecured claims).

COSIGNERS AND COMAKERS

If there is a cosigner, co-maker or guarantor (öco-debtorö) on any of your consumer debts that person is generally protected from contact by the creditor by the öco-debtor stayö. If the co-debtor has given collateral for the loan, the creditor must obtain an order from the Court in order to proceed against the property. The co-debtor stay will only protect the co-debtor for the amount of debt your plan proposes to pay. If your plan is not scheduled to pay all of the cosigned debt in full, a creditor may obtain permission to collect from the cosigner, co-maker or guarantor, that portion of the debt that your plan is not going to pay. That would include interest which accrues under the contract but not paid through the plan.

CREDIT CARDS AND POST PETITION DEBT

When your plan is confirmed, you are prohibited from incurring any debt for as long as you are in your bankruptcy. This prohibits you from borrowing any money from a finance company, bank, credit union, check casher, title lender, or retailer. You cannot receive an advance of your salary. You cannot buy anything using credit such as a car or an appliance and you cannot incur a debt to anyone. If, for some reason you feel that it is important for you to be able to borrow money, you must obtain the Court's permission. The Court may grant permission to incur the debt if there is a good reason to do so, you have paid regularly into your Chapter 13 plan, and have the ability to repay the new debt.

OBTAINING CREDIT WITHOUT PERMISSION

Obtaining credit without permission of the Court is not only a violation of the Court's order, it is subject to reversal by the Court. Any credit purchase you make without approval of the Court would be illegal, the goods would have to be returned and you very likely would be out any payments you had made. You would also place your case in serious jeopardy if you obtain credit without approval.

SELLING PROPERTY

You cannot dispose of any of your property, including land, without Court approval. If you dispose of your property without permission, the transaction may be set aside. If you want to sell your property, trade in a car or sell your home, be sure to discuss it with your attorney first.

WHEN YOU ARE THROUGH

After you have successfully completed your plan (meaning your Trustee has received enough money from you to pay your creditors what you promised to pay them) you and your attorney will receive a öNotice of Final Paymentö. When that notice is received, your attorney must file a Motion for Discharge with the Court. You will also receive a öFinal Accountö from the Trustee's office. This öFinal Accountö will be a statement of all money paid by you, the amount of money paid to each creditor and a breakdown of the administrative expenses. After the Court approves the Motion for Discharge and receives the öFinal Accountö from the Trustee, it will issue a discharge. Please keep this öFinal Accountö and discharge in a safe place for at least ten (10) years. You may need these documents for future credit transactions.

REQUEST FOR DISMISSAL BY YOU

Federal Bankruptcy law allows you to request that your Chapter 13 case be dismissed. No one can force you to remain under a Chapter 13 plan if you do not wish to do so. If you wish to stop

your case, contact your attorney. However, you should understand that a dismissal will reactivate all unpaid or disputed debts, all interest, finance charges, all late charges not allowed by the Bankruptcy Court, and all debts of creditors who did not file their claims. In addition, you will be forced to deal with those creditors on their terms, not yours or the Courts. The request for dismissal of your plan must be in writing and sent to the Bankruptcy Court.

CONTACT BY CREDITOR AFTER COMPLETION OF CHAPTER 13

When a creditor has had its claim (other than a long term mortgage) paid through a Chapter 13 bankruptcy, whether partially or in full, that debt is considered satisfied. If the claim was secured by your property, the creditor should take the steps necessary to release its lien. If the creditor fails to do so, you should provide the creditor a copy of the Final Account and your discharge order. If the creditor still refuses to release the lien you should contact your attorney. Should you receive any request for additional money after your plan is completed, do not pay without first talking to your attorney.

ONE FINAL WORD

Complying with a Chapter 13 plan is not easy. You may have to make a real sacrifice to meet the obligations that you have specified in your plan and still live within your Chapter 13 budget. Thousands of families have successfully completed their Chapter 13 plans and know that they have resolved their debt problems and some debtors have paid most, if not all, of their obligations to their creditors. Chapter 13 will only work for you if you work very hard at meeting your obligations under your plan.

REMEMBER

This pamphlet is only a general statement as to what Chapter 13 is all about. If you have any specific questions, you should contact your attorney.