

Frequently Asked Questions for Chapter 13 Bankruptcy

What is going to happen now that I have filed a Chapter 13 bankruptcy?

Since you have just filed a Chapter 13 Bankruptcy, you probably have a lot of questions! The following series of "Questions and Answers" is provided to you only for purposes of introduction and to give you some idea of what to expect. The Bankruptcy Code will determine what actually happens in your case. You need to discuss your individual concerns, legal rights, and specific questions about your specific situation and how the Bankruptcy Code will affect your case with your attorney.

What is a Chapter 13 Bankruptcy and how does it work?

Chapter 13 is one form of bankruptcy in which you obtain relief from your creditors and submit a plan to pay your debts over a period of generally no less than 36 months and not more than 60 months. The Court prohibits creditors from trying to collect any money or recover any property from you during the time you are in your Chapter 13 plan. You must make a regular payment by Official Bank Check, Cashier's Check, (E-Pay through the Trustee's website) or Postal Money Order to the Chapter 13 Trustee within 30 days after filing your plan and payments must be for the period of time designated in your plan. Your "first plan payment" must be delivered to the Trustee within 30 days of your case being filed. We prefer you deliver your first payment to our office within 10 days of filing so that we can establish your account with the Trustee. You will be required to make continuing payments to the Trustee on a monthly basis thereafter. Payments are due on or before the day of the month your case was filed.

Where is a Chapter 13 case filed?

Your Chapter 13 petition is filed with the Clerk of the Bankruptcy Court in the Federal District where you have lived, had your principal place of business, or had your principal assets located for the greater part of 180 days preceding the date of filing. The Bankruptcy Court is part of the system of federal courts and is a special court that was created by Congress just to hear cases and make decisions about disputes between debtors and creditors involved in a bankruptcy case.

Depending upon where you reside in the State, your Chapter 13 Bankruptcy case has been filed in the United States Bankruptcy Court for the Northern or Southern District of Indiana.

What fees are charged in a Chapter 13?

The Clerk of the Bankruptcy Court charges a \$310.00 filing fee when the case is filed. The standard "no-look" Chapter 13 legal fee for a non-business case is \$4,000.00 for all basic or "base fee" services. These fees are established by federal law and local court rules. Almost all additional or "non-base" fees are also paid under your plan. The Chapter 13 Trustee receives an administrative fee of up to ten percent (10%) of the amount paid under your plan.

How does the Trustee receive his fees?

Fees for the Trustee are taken only when a distribution is made to your creditors, including your attorney. The Trustee takes a small percentage of all money disbursed. The Trustee continues to take fees until all of your creditors have been paid according to your confirmed plan. Your annual financial reports issued by the Trustee show you how much money the Trustee has received to date.

Why is your Chapter 13 case number important?

At the time your Chapter 13 petition is filed, the Bankruptcy Clerk will assign you a seven digit case number. The first two digits represent the year in which your case was filed. Your case number is very important. When you make a payment to the Trustee your case number should be clearly written on the check or money order.

Your address and employer

The Trustee and your attorney need to know your exact mailing address for as long as you are under the Chapter 13. The Trustee has the address which you put on your petition, and the Trustee will send all Notices and annual reports to that address until you or your attorney notify them of a different address. If you move or change your address, you **MUST INFORM OUR OFFICE** of your new address. The Trustee also needs to know your current employer's name and address. If you provide us with this information we will notify the Court and Trustee on your behalf.

"My friend went through bankruptcy and he says..."

You have probably already received or will receive advice on what to do from well-meaning friends and relatives who have themselves experienced financial problems. Just like no two people are alike, no two "Chapter 13 Bankruptcies" are alike. Take the advice of your well-meaning friends and acquaintances with the proverbial "grain of salt". If you have a specific question about anything related to your bankruptcy, make it your rule to ASK YOUR ATTORNEY, and he/she will try to provide you with an answer that applies to your specific circumstances.

What should I expect my attorney to do in a Chapter 13 Bankruptcy?

Exactly what you may expect of your attorney will be governed by the representation agreement you have signed. Under the rules of the Bankruptcy Court, your attorney must continue to appear and represent you until the judge permits your attorney to withdraw from your case. An attorney may only withdraw from a case for "good cause" after proper notice to you.

Your attorney's function is to aid and assist you in successfully completing your Chapter 13 plan. Your attorney is there to receive notice of any documents filed with the Court in your case, and to answer any questions or concerns regarding your plan and the legal consequences of your case. Remember, your attorney is your legal advisor, not the Trustee. The Trustee and his staff are not allowed to give you legal advice regarding your case.

What may I expect from the Chapter 13 Trustee?

The Trustee's main function is to administer the funds received from you pursuant to the terms of your plan and to represent the interest of the creditors. Do NOT contact the Trustee on your own; call your attorney with any questions or concerns.

When will I have to appear in court in a Chapter 13 case?

In the United States Bankruptcy Court for the Northern and Southern District of Indiana, you will have to appear for at least one proceeding generally known as the First Meeting of Creditors or 341 meeting. This meeting is conducted by the Chapter 13 Trustee. The bankruptcy judge will not be attending this meeting. This meeting will be held within 30 to 60 days after your case is filed. You will be notified of the time, date and place of this hearing by your attorney and by the Clerk of

Courts. This is a mandatory appearance on your part. Your failure to appear at this meeting will result in the dismissal of your Chapter 13 case.

Confirmation hearings (i.e., final approval of your plan) are handled by your attorney and the Chapter 13 Trustee. You will not normally be required to attend this hearing. Should your attendance be required you will be notified.

May I change to Chapter 7 if my Chapter 13 case is still open?

In many cases, a Chapter 13 case may be converted to a Chapter 7 case. You should contact your attorney if you are considering converting your case. Additional legal and court fees must be paid before a case can be converted to Chapter 7. If your case is not eligible for conversion to one under Chapter 7, changed circumstances may justify a change in your Chapter 13 Plan. Alert your attorney immediately to any significant changes in your income, expenses or family size.

What effect does filing under Chapter 13 have on lawsuits and attachments previously filed against me?

Under federal law, the filing of a Chapter 13 case automatically stops or stays all lawsuits, attachments, foreclosures, garnishments, repossessions, and other actions by creditors against either you or your property. A few days after your case is filed a notice is mailed by the Bankruptcy Clerk to all of your creditors advising them of this automatic stay. The creditors may be notified sooner by either you or your attorney if necessary.

Once your case is filed, you are protected from your creditors under the Federal Bankruptcy Laws of the United States of America. You should inform any creditors that contact you that you have filed for Chapter 13 relief and provide them with your case number and the name and phone number of your attorney. This is all you need to say to any creditor.

If you receive any verbal or written demands from creditors more than two weeks from the date your case was filed, please notify our office immediately. If the contact is by telephone, then you need to obtain the telephone number of the person calling you, the name of the creditor or the collection agent, the mailing address for such party, the name of the person who called you, and how much money they want you to send. The best way to get this information is to "act stupid" and "be nice". If the contact is by mail then you need to save the envelope for proof of the postmark date.

Please note that creditors who contact you after being advised of your bankruptcy case are subject to various sanctions for contempt of Court and other violations of Federal Law. In many cases, the Bankruptcy Court will order such creditors to pay money damages to you (including legal fees to your attorney) for such violations. Our office always takes these cases on a contingency fee arrangement as set forth in the fee disclosure agreement. In short, unless we recover money damages from these creditors you will not owe any additional legal fees for pursuing these claims. Please be assured that the Bankruptcy Court takes these matters very seriously and that they are vigorously pursued.

Will my creditors be able to take my wages or property while the Chapter 13 case is in effect?

No. The automatic stay above remains in effect during the entire Chapter 13 case and your creditors will not be permitted to take or otherwise proceed against any of your property or assets, including your earnings. However, if secured creditors to whom you are in default are not being paid under

the plan or if you are not making payments on secured debts for property you want to keep, these creditors may go to the Bankruptcy Court and seek permission to repossess the property upon which they have a valid lien. (Creditors secured by vehicle loans may also have your vehicle stored if you fail to maintain insurance on the vehicle securing the loan.)

There are some exceptions to this general rule. The most common being child support, income tax refunds and certain property tax situations. For example, the IRS may apply your tax refund against any taxes included in your plan. The IRS must notify the Trustee of this action, but it is otherwise lawful. Specific questions regarding your situation and whether these exceptions apply to your case should be discussed with your attorney.

May I repay some of my creditors and not others under Chapter 13?

You cannot selectively "pick and choose" some particular creditors and decide to pay them "on the side." All of your debts must be dealt with through the Court. Any payments which you make to a creditor 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.

Are student loan debts dischargeable?

Most student loans are not discharged in bankruptcy. You should refer more specific questions to your attorney.

How are debts that have been co-signed or guaranteed by another person handled under Chapter 13?

If a consumer debt which has been co-signed or guaranteed by another person is being paid off in full under the Chapter 13 plan, the automatic stay that was entered when the case was filed will prevent the creditor from collecting the debt from the other person. However, the creditor may ask the Court's permission to collect from the other person the portion of the debt that is not being paid off under the plan.

The Trustee will only pay in full those co-signed debts that are specifically provided for in your plan. Please call your attorney if you have any questions.

What is required for court approval of a Chapter 13 plan?

The Court will confirm a Chapter 13 plan if:

- (a) the plan complies with the requirements of Chapter 13 generally;
- (b) all required fees, charges, deposits and payments have been made;
- (c) the plan has been proposed in good faith;
- (d) each secured creditor is allowed to retain his lien on his collateral and/or is paid the full amount of the secured claim under the plan;
- (e) each unsecured creditor will receive under the plan at least as much as the creditor would have received if you had filed a Chapter 7; and
- (f) it appears that the debtor will be able to make the required payments and to comply with the plan.

What if the court does not approve my Chapter 13 plan?

It is not unusual to have the objections raised by the Trustee to your plan. If this occurs, do not panic, it is all part of the give and take negotiations to secure the most cost effective plan for you. If the Court does not ultimately confirm the Chapter 13 plan you have proposed, it will usually state the reasons for such disapproval so that the plan may be appropriately modified, amended, converted to a Chapter 7 or dismissed. Once a case is dismissed your creditors may again pursue the collection of your debts. We will not file a Chapter 13 case unless we are very confident the plan will be approved by the Court.

When must the Chapter 13 payments begin and how often must they be made?

A first payment must be made to the Chapter 13 Trustee within thirty (30) days of filing your bankruptcy plan. Your plan payments should be sent only to the Trustee's payment address. Be sure to keep the receipt for each payment. Do not send your payments to the Clerk of the Bankruptcy Court or to your attorney.

All payments must be in the form of personal check, bank money order, postal money order, (E-Pay through the Trustee's website) or cashier's check. Be sure to include your name, address, and your **bankruptcy case number** on the money order or check. The Chapter 13 Trustee's office cannot accept cash payments.

Payroll deduction orders

You may find it easier to have your employer deduct your plan payments from your paycheck. This is voluntary, unless ordered by the Court. If you fall behind in your plan payments, the judge may order your employer to deduct your plan payments from your paycheck. It is important that both you and your employer understand that such an order is not a garnishment. If your employer has any questions, he or she should contact their legal counsel. Be sure to notify us if you change or terminate your employment.

What if I am temporarily unable to make my Chapter 13 payments?

It is very important to contact your attorney if you ever expect to miss a payment due to layoff, medical disability, etc. If you are temporarily out of work, injured, or otherwise unable to make the payments required under the Chapter 13 plan the Court may, upon proper application, allow you to suspend payments for a period of time. If it appears that your inability to make the required payments will continue for an extended period, you may be permitted to amend your plan, or the case may be dismissed or converted to Chapter 7. Remember -- the Trustee's office has no authority to let you miss a payment or allow you to pay less than your plan requires. Only the judge can make such a decision. Your lawyer can ask the judge to change the requirements of your plan if you feel that you cannot meet the obligations of your plan.

May I make a higher payment than is required under the plan?

If you are ever in a position to increase your plan payments to the Trustee, you should contact us for advice on prepaying your plan payments.

What if I later decide that I no longer want to make payments and to continue with the Chapter 13 plan?

Federal bankruptcy law allows the debtor to dismiss a Chapter 13 case at any time. No one can force you to remain under a Chapter 13 plan. If you desire to terminate your case, contact our office immediately.

If you stop making the Chapter 13 payments, any creditor in your case may ask the Court to dismiss your case. The Trustee will ask the Court to dismiss your case or place you on payroll deductions if:

1. You fail to make your first payment within 30 days of your case being filed; and/or
2. If you fail to make your required payments regularly during any months of your plan.

You should understand that a dismissal will reactivate all unpaid or disputed debts, all interest, finance charges, legal fees, all late charges not allowed by the Bankruptcy Court, and all debts of creditors who did not file their claims. Consider also that you will be forced to deal with those creditors on their terms, not yours or the Court's.

How do I find out how much is owed to creditors under my plan?

The Trustee's office will send you a yearly report of what has been paid to all your creditors. Be sure to review this report carefully and contact our office immediately if you have any questions or concerns. The report will list the creditor's claim amount and the amount paid to date to each of your creditors. The balance due on your plan is noted in the report. Also, it is possible that one or more of your creditors is receiving interest and therefore the balance will change from month to month. The balance due is, therefore, only an approximate figure.

How are the claims of creditors handled under Chapter 13?

Unsecured creditors must file their claim with the Chapter 13 Trustee within 90 days after the first date set for the First Meeting of Creditors in order for their claims to be allowed. Government agencies have 180 days from the date of filing to file their claims. If an unsecured creditor fails to file their claim within this time period, the Trustee will bring a motion objecting to the late claim. If the claim is disallowed or not filed, then the creditor will not be paid by the Trustee and the debt will be discharged or canceled upon the completion of the plan.

A secured creditor can file a claim at any time while your case is open. A creditor must file a claim in order to be paid. The Trustee pays the amount claimed by the creditor, not the amount you state in your petition. If you disagree with the creditor's claim amount, you should contact us immediately. The debtor may file a claim on behalf of a creditor if he or she wishes to do so. A creditor may file an amended claim increasing or decreasing the claim amount at any time.

How are creditors paid?

The money which you pay to the Trustee is used to pay expenses of administration, including payments to your attorney, and payments to your creditors. So that you will have some idea as to how the creditors are paid, you should understand that there are three (3) basic types of claims: priority (such as tax claims), secured (holding liens on property) and unsecured (consumer debt with no liens on property). Generally, your Trustee will pay secured creditors first, then administrative costs, then priority and finally unsecured.

What happens to creditors who were not listed on my schedules?

Creditors not listed by you when you filed can create problems. There are two (2) kinds of unlisted creditors: those who were owed money at the time of your filing but were forgotten ("unlisted creditors") and those creditors who have a bill that was incurred after you file ("post-petition creditors"). If you find an unlisted creditor, you should let us know the details immediately.

What if I don't agree with how much a creditor is receiving?

The Trustee pays creditors the amount listed on their proofs of claim. If you disagree with the amount a creditor claims you owe, then contact our office.

Can I incur new debt after I file my Chapter 13 plan?

You may find yourself in a situation where you need to incur additional debt after you have filed your Chapter 13 plan. The following are the guidelines on incurring additional credit provided by the Bankruptcy Code:

1. the debt must be a consumer debt and "for a property or services necessary for the debtor's performance under the plan";
2. you must be able to prove you have the ability to pay the debt; and
3. the Trustee must approve or deny such additional credit. If you wish to secure such credit, contact us first.

Will a Chapter 13 bankruptcy affect my credit rating?

Your credit rating during and after completion of Chapter 13 will ultimately be based upon the personal opinion of any credit-grantor who looks over your credit record. Your credit record is a record of all your past credit performances. This record is made available to a creditor, and he or she makes up his or her own mind, by his or her own standards, as to whether or not he or she wants to grant credit to you.

Your bankruptcy will remain on your credit report anywhere from 7 to 10 years, depending on the credit reporting agency's policy. The maximum time it can be reported is 10 years.

What happens when all payments have been completed?

Once enough money has been paid to the Trustee to complete all of your required payments, the Trustee will begin the process of closing your case. The closing process normally takes 6 to 8 weeks and is completed in the following order:

1. Court Audit. The Trustee's office verifies that all claims filed in your case were paid correctly and all court orders were properly administered. If any problem is discovered, you and your attorney are notified.
2. Notice of Plan Completion-once the Trustee determines that your Plan has been completed a Notice is issued.
3. Final Report. The Trustee's office prepares a final report for the judge.

4. Motion for Discharge-Once we are notified of your Plan completion we will file a Motion requesting Discharge Order on your behalf.
5. Case Discharged. The judge signs an order discharging you from your scheduled debts.
6. Notice of Discharge. The Trustee sends a notice to you, to your attorney and to your creditors. This tells you when your case was discharged by the judge.
7. Refund. After the judge discharges your case, you receive a refund from the Trustee if there is money remaining in your case.

How do I inform the credit agencies of my Chapter 13 completion?

You and your attorney will both receive copies of the Discharge Order directly from the Bankruptcy Clerk.

Additionally, our office will mail a copy of the Discharge Order, along with letters which we will ask that you mail to each credit reporting agency and detailed instructions on how to properly send these letters.

Where do I obtain title to my property after completion of my Chapter 13?

When a Secured creditor has had its claim paid by the Chapter 13 Trustee, whether partially or in full, he should, and usually does, send the "paid-in full" papers to you. Contact the creditor holding title, not the Trustee's office, to obtain your titles. If you have any problems, contact our office. Creditors who refuse to deliver titles may violate the bankruptcy laws.

What does the Chapter 13 Trustee expect of me?

The Trustee expects you to be cooperative and truthful. They also expect you to ask questions when you do not understand any aspects about the administration of your case. Do not incur new debts, sell any property, or enter into any leases without the court first approving it. Finally, the Trustee expects you to handle your payments in a prompt, regular and business-like manner. Failure to make your payments on time will result in your case being dismissed. Additional legal fees will be incurred if you elect to seek re-instatement of your case.