

“BUT, I DIDN’T KNOW”

In order to make your Chapter 13 Plan a success, you must follow-through on certain obligations and responsibilities. Along with our free, personal consultations, this handout is intended to help you to understand what is expected of you while you are under Chapter 13.

I DIDN’T KNOW THAT I WAS SUPPOSED TO PAY THE TRUSTEE. Most Chapter 13 cases are funded through wage deductions by the clients’ employers. However, it is **YOUR** responsibility to make sure that the trustee is being paid. It is up to you to make the payments, yourself, beginning with your first paycheck after your case is filed, and continuing **UNTIL** the payroll deductions start. Once the deductions are started, check to be sure that they are being remitted to the trustee. If you do not know how much to send, or where to send your payments, contact our office, immediately.

I DIDN’T KNOW ABOUT A 341 MEETING OF CREDITORS. In every Chapter 13 case, there are two mandatory hearings. The first, the 341 Meeting of Creditors, usually takes place about 1 month after your case is filed. It is run by an attorney from your trustee’s office. One of our attorneys will be there to assist you. That hearing gives the trustee and your creditors the opportunity to ask you questions about your case and any collateral securing creditors’ claims. If you are filing a joint case (both husband and wife), then you both must attend. You should arrange to be in the hearing room a minimum of 25 minutes early. When you go to the 341 Meeting of Creditors, you must bring the following items:

1. Two separate forms of identification – a picture id. and a document with your social security number on it.
2. If applicable, 2 copies of the declarations pages from your homeowner’s, automobile and/or boat insurance policies.
3. Proof that you are paying the trustee. Bring copies of recent pay stubs showing that the deductions are being made or copies of checks or money orders showing that you have sent in the payments yourself.
4. If applicable, proof that you have been making your mortgage, lease, rent-to-own, child support and/or student loan payments since your case was filed.
5. Any and all documents you have received from our firm, the Court or any creditor regarding your case.
6. Proof of recent income – usually, a recent paystub for each person filing or, if self-employed, bank statements of quarterly tax returns will suffice.

I DIDN’T KNOW ABOUT A CONFIRMATION HEARING. The second hearing is called the Confirmation Hearing. It usually takes place 4 to 6 weeks after the 341 Meeting. The Confirmation Hearing is set before a bankruptcy judge. It is at this hearing that the judge either approves or denies your case. In almost every case, the trustee will

file objections to the confirmation of your Chapter 13 Plan. Included in the boilerplate language of the objections is a request that the case be dismissed. **DO NOT PANIC.** Your case has not been dismissed and will not be dismissed until the judge hears the objections at the Confirmation Hearing. It, therefore, is very important that the objections be cured well in advance of the Confirmation Hearing. If you receive an objection in the mail, call our office, immediately, to discuss it with one of our attorneys or the confirmation department.

I DIDN'T KNOW ABOUT MY HEARING DATES. The Bankruptcy Court will send you a notice telling you when both the 341 Meeting and Confirmation Hearing are to take place. We also will send you a reminder letter and will make a courtesy call prior to each of your hearing dates. If you change your address or phone number, or if they are listed incorrectly in your paperwork, let us know, right away, so that we can change them and ensure that you receive your court notices. If you have not received your court notice within 3 weeks after your case was filed, please call our office, right away.

I DIDN'T KNOW THAT I HAD TO PAY MY MORTGAGE(S). In most cases, if you have a mortgage or mortgages on your residence, you are required to make those payments directly to the creditor, every month, as they come due after your case is filed. Any amount that you were behind prior to the filing of your case will be paid in your plan. Please make it a point to discuss this responsibility with our attorney and be sure about who you are to pay when.

I DIDN'T KNOW THAT I HAD TO PAY MY CHILD SUPPORT. All on-going child support payments must be paid on time, every month, after your case has been filed. Any pre-Petition delinquency **MUST** be included in your plan unless the child-support creditor agrees otherwise in writing..

I DIDN'T KNOW THAT CHAPTER 13 DOESN'T STOP CRIMINAL PROCESS. Even though bad checks might be included in your Chapter 13 Plan, the Chapter 13 will not prevent creditors from pursuing bad check warrants against you. Further, if you are under probation, you must abide by the terms of your probation order, failure to do so could lead to your probation being revoked. Finally, if you are ordered to appear in court for child support contempt, bad checks or any other court or administrative proceeding, you **MUST** appear in that court or a Bench Warrant may be issued for your arrest. Our representation of you does not extend to criminal matters.

I DIDN'T KNOW THAT I HAD TO STOP MY CREDIT UNION DEDUCTIONS. If you have borrowed money from a credit union, then that loan must be listed in your Chapter 13 papers and the payroll deductions must be stopped. The exception to this rule is where the credit union holds a mortgage against your real estate. Be sure to discuss this matter with our attorney.

I DIDN'T KNOW THAT I HAD TO LIST MY 401(k) AND/OR TSP LOANS. If you have borrowed money from a 401(k) or similar retirement plan, you must let us know about it. We are required to list the debt in your schedules, although how the debt will be

treated will depend on the type of Chapter 13 Plan you have proposed. Be sure to review this in detail with our attorney.

I DIDN'T KNOW THAT I COULD NOT CONTRIBUTE TO MY RETIREMENT PLAN. In most instances, you will be required to stop the payroll deductions for your retirement plan(s). However, this is not the case where the deductions are mandatory (for example: you are a teacher employed by the state).

I DIDN'T KNOW THAT I COULD TITHE. In Chapter 13, you are allowed to tithe up to 15% of your gross monthly income **IF YOU HAVE HAD A HISTORY OF TITHING PRIOR TO THE FILING OF YOUR CASE.** In order to get the trustee to accept this as a budget item, you will need to provide documents from your church or tax authorities showing that you have had a long-standing practice of tithing.

I DIDN'T KNOW THAT I NEEDED TO MAINTAIN INSURANCE. While you are under Chapter 13, you are required to maintain full insurance on your real estate and vehicles. At the 341 Meeting of Creditors, you will be required to produce two (2) copies of the declarations pages from your homeowners and/or automobile insurance policies. Failure to maintain proper, adequate insurance will result in the dismissal of your case.

I DIDN'T KNOW I HAD TO LIST MY TIMESHARE. A timeshare is an asset and more often than not it is financed. The timeshare property and the creditor must be listed in your schedules. Depending on the type of plan you are proposing, you may or may not be allowed to keep the timeshare. Regardless, it must be listed in your schedules.

I DIDN'T KNOW THAT I HAD TO PAY MY CAR LEASE. Car leases, rent-to-own contracts, storage units, etc., are leases which you must pay on time, each month, directly to the creditor after your case has been filed. Any delinquency that arose prior to your filing date will be included in your plan. It is up to you, however, to make the payments on time once your case has been filed. Be sure to let us know the month and year each of your leases will expire.

I DIDN'T KNOW IF MY CREDITORS WERE BEING PAID. Once every six months, the Chapter 13 trustee should send you a Case Status Report which will tell you who filed, claims, the amount of the claims, how much has been paid to a particular claim, how much the trustee has received from you, and who has not filed claims in your case. Be sure to review this report carefully and, if you have any questions about or disagreements with the information contained therein, call our office, immediately, and make an appointment to review the matter with one of our attorneys.

I DIDN'T KNOW THAT I COULDN'T BORROW MONEY. While you are under Chapter 13, you cannot borrow money (even from family or friends), use credit cards, finance any purchases, mortgage assets, or otherwise incur new debt without first getting the trustee's permission. If you find that you need to incur new debt, make an appointment to meet with one of our attorneys to discuss the procedures.

I DIDN'T KNOW THAT I COULDN'T SELL MY HOUSE. While you are under Chapter 13, you cannot sell, quitclaim, give away or otherwise dispose of any assets, including real estate, without the Bankruptcy Court's permission. If you need to sell an asset, you should obtain a proposed sales contract, make it subject to the Bankruptcy Court's approval, and provide a copy to our office. We then can file a motion with the Court to have the sale approved. Typically, once we have received a copy of the contract, it takes 45 to 60 days to get it approved by the Court.

I DIDN'T KNOW THAT I HAD TO LIST MY COSIGNERS AND COSIGNED DEBTS. Any debt that you are liable on, whether you have a cosigner or you cosigned for somebody else, must be listed in your schedules. You also must list the names and complete mailing addresses of the people who are liable on the debts with you. Under Chapter 13, we can provide to protect your co-debtors from collection activities, but we must know about these individuals and these debts, first.

I DIDN'T KNOW THAT I COULD INCLUDE TAXES, CHILD SUPPORT, STUDENT LOANS, ETC. In a Chapter 13 case, **ALL** of your debts **MUST** be listed. How they will be treated under the Plan may be a different story, but we need to know about **EVERYBODY** that you owe money. If you have a question or are uncertain, err on the side of caution and list any and every debt you can think of.

I DIDN'T KNOW THAT I HAD TO LIST ANY CLAIMS I HAD AGAINST THIRD PARTIES. In a Chapter 13 case, all of your assets **MUST** be listed in your schedules. This includes any and all claims arising out of personal injury, workers compensation, breach of contract, employment discrimination, social security, etc., whether or not a lawsuit, complaint or claim has actually been filed. Further, if any such action arises while your case is pending, then you must notify our firm so that we may disclose it to the Bankruptcy Court, as well. Failure to list these claims could result in your losing the right to recover against them. If you have a claim against a third party and wish us to assist you with it, we will be more than happy to discuss it with you. If you have retained other counsel, please let us know so that we may help your attorney to be approved by the Bankruptcy Court.

I DIDN'T KNOW WHAT A "MOTION FOR RELIEF FROM STAY" WAS. When you file Chapter 13, an injunction called the Automatic Stay goes into effect that prevents your creditors from trying to collect against you or your property. While you are in your case, if a creditor wishes to pursue collection, they first must obtain permission from the Bankruptcy Court. They do this by filing a "Motion for Relief From Stay." These motions are most commonly filed by mortgage companies, car finance companies and child support creditors. If you receive a "Motion for Relief From Stay," contact our office, immediately, and ask to speak with the MFR department.

I DIDN'T KNOW WHAT A "TRUSTEE'S MOTION TO DISMISS" WAS. After your case is confirmed, you are under a six-month, strict-compliance period in your payments to the trustee. If you miss a payment to your trustee within the first six months after your Plan has confirmed, then the Court will dismiss your case without further

notice or hearing. After that six-month period, if you default in your payments to the trustee, or if your plan is projected to last more than 5 years, then the trustee will file a motion asking that your case be dismissed. You should receive a copy of that motion and a response to the motion will have to be filed within 20 days of the date it was mailed by the trustee. Usually, these motions can be resolved with the trustee so, if you receive a "Trustee's Motion to Dismiss," call our office, right away, and ask to speak with the TMTD department.

I DIDN'T KNOW WHAT TO DO WHEN MY CAR WAS WRECKED. While you are in Chapter 13, you must keep your automobiles fully insured. If you are in an accident, contact your insurance company and follow the normal procedures for making a claim. Notify our firm right away of the accident and whether a claim is being made. Please let us know if you wish our assistance with any personal injury claim or if you wish to retain other counsel. If the vehicle is totaled and the insurance company pays the lienholder its fair market value, get documentation of the amount paid and provide it to our firm. We then can make sure that the lienholder's Proof of Claim in your Chapter 13 case is adjusted to reflect the insurance payment and that you do not overpay them.

I DIDN'T KNOW ABOUT A BAR DATE. The bar date is the date before which your creditors must file their Proof of Claims in order to be paid in your case. Typically, it is set for 90 days after your 341 Meeting of Creditors. It is important that the claims filed in your case be reviewed to be sure that the correct claims are being paid. Although we will contact you once the bar date has expired, we suggest that you monitor your case and schedule an appointment shortly after the bar date to come in and review the claims with one of our attorneys..

I DIDN'T KNOW I COULD KEEP MY BANK ACCOUNTS. In most instances, the filing of a Chapter 13 case should not affect your checking or savings account. However, if your accounts are with a bank that you owe money (loans, car financing, mortgages, credit cards, etc.) the bank could close or freeze that account. Be sure to discuss this with our attorney.

I DIDN'T KNOW I COULD INCLUDE PAST-DUE UTILITIES. You can include back payments owed for utilities. If you do, however, the utility can require a double deposit within 20 days after the filing of your case. More often than not, it is cost-effective not to include the utility and to simply work it out directly with that creditor. If a utility is a problem, please be sure to discuss it with our attorney.

I DIDN'T KNOW ... *if you have any questions regarding any aspect of your case, please do not hesitate to contact us for a free consultation. The better you are informed, the better are your chances for your case to succeed. So, please, do not hesitate to ask questions.*

Good luck!!
Robert S. Toomey