

**Chapter 13 Guide
What You Need to Know About Your Chapter 13 Case
By Andrea E. Celli
Your Chapter 13 Trustee**

Welcome to the Chapter 13, a legal process designed to give you an opportunity to get relief from creditors' collection action and retain your assets while you repay your debts, to the extent that you are able.

This Guide will help you understand how your case works and answer most questions that come up during a Chapter 13 case.

**I am your Chapter 13 Trustee:
Andrea E. Celli**

**My Office (for correspondence only):
7 Southwoods Boulevard, Albany, New York 12211**

**My Address (for sending payments to Andrea E. Celli, Trustee):
Chapter 13 Standing Trustee
P.O. Box 1918
Memphis, TN 38101-1918**

****Please write your case number on all payments/correspondence**

THIS GUIDE PROVIDES INFORMATION ON THE FOLLOWING:

**YOUR CASE NUMBER
CHAPTER 13 COSTS
CALLS TO TRUSTEE'S OFFICE
YOU'VE MOVED - CHANGES IN ADDRESS
CONTACTS BY CREDITORS
CREDITORS NOT LISTED
YOUR COSIGNORS AND GUARANTORS
PLAN PAYMENTS
PAYROLL DEDUCTION WORKS!**

IF YOU LOSE YOUR JOB
YOUR OBLIGATION TO PAY
PROBLEMS MAKING YOUR PLAN
PAYMENTS
REQUESTS FOR DISMISSAL BY THE
TRUSTEE OR A CREDITOR
REQUEST FOR DISMISSAL BY YOU
PROOFS OF CLAIM FILED IN YOUR CASE
HOW CREDITORS ARE PAID BY THE TRUSTEE
CREDIT CARD AND NEW DEBT
TAKING ON NEW DEBT WITHOUT PERMISSION
SELLING YOUR PROPERTY
CRIMINAL MATTERS
CLAIMS FOR MONEY DAMAGES/LAWSUITS
INFORMATION FROM THE TRUSTEE
INCREASES IN PLAN PAYMENTS
PLAN "MINIMUM DISPOSABLE INCOME" REQUIREMENT
REQUESTING A "PLAN PAYOFF" -BALANCE
OWED ON YOUR PLAN
IF YOU ARE ENTITLED TO A TAX REFUND
DURING YOUR PLAN
LOTTERY WINNINGS/INHERITANCES AND
OTHER WINDFALLS DURING YOUR PLAN
THE END OF YOUR PLAN
CREDIT RATING
ADDITIONAL INFORMATION
ONE FINAL WORD FROM YOUR TRUSTEE

YOUR CASE NUMBER

Your Chapter 13 case number is very important. Please refer to this number whenever you call the Trustee's Office and always write your case number on payments or correspondence you send to the Trustee's Office.

CHAPTER 13 COSTS

There are basically two types of costs in each case;

(1) the fee for your attorney and (2) the Trustee's fee.

The fee for your attorney is set forth in your plan and approved by the Court.

The law requires that the Chapter 13 Trustee charge a fee based on the amounts disbursed in the case. The percentage fee will vary during the life of your case, but will not be more than 10 percent at any time.

CALLS TO THE TRUSTEE'S OFFICE

The Trustee cannot give you legal advice and cannot act as your attorney. She will be pleased to do whatever she can to assist you in completing your plan. The Trustee's Office is open Monday through Friday from 8:00 a.m. to 4:00 p.m. with the exception of federal holidays, and the Friday after Thanksgiving. If you have questions which your attorney cannot answer, you may ask the Trustee by writing her a letter with your case number and your questions.

If you cannot wait for a written response, you may call the Trustee's Office. Normally, it is not necessary for you to speak to the Trustee personally, as her staff is familiar with Chapter 13 and well qualified to discuss any question or problem which may arise.

Remember, however, that neither the Trustee or her staff can give you legal advice. Please direct all legal questions to your attorney. If you wish to see the Trustee personally, please call to make an appointment.

YOU'VE MOVED - CHANGE IN ADDRESS

It is very important for the Trustee and the Court have your exact mailing address for as long as you are in Chapter 13.

If you move, or change employment or your telephone number, you must notify the Trustee's Office, the Court and your attorney, in writing, immediately.

CONTACTS BY CREDITORS

You must list all of your creditors on your bankruptcy schedules. You cannot pick and choose the creditors that you want to list.

The creditors listed in your petition are not allowed to contact, harass, or annoy you in any way.

If this should occur, obtain the name of the person contacting you and the name of the creditor or organization he or she represents and then contact

your attorney immediately. Should the harassment continue, the creditor may be cited for contempt of Court.

CREDITORS NOT LISTED

You must list ALL of your creditors in your bankruptcy schedules. You may not receive a discharge of the claim of any creditor not listed and unlisted creditors can cause problems. If you discover a creditor who was not listed, let your attorney know the details immediately. If it is not too late, he or she will do everything he or she can to include this creditor in the plan. Time is important here so do not delay if one is discovered.

Post-petition creditors (those whose bills were incurred after you filed) are rare because you are not permitted to use credit while under Chapter 13. Under certain circumstances, post-petition creditors can be added and paid through your plan. You should contact your attorney if you think such a debt has come up.

YOUR COSIGNORS AND GUARANTORS

A cosignor or guarantor on any of your consumer (not taxes) debts is automatically protected from contact by the creditor while you are under Chapter 13. This protection for your cosignors and guarantors is available only to the extent you plan to pay on the debt. If your plan is not scheduled to pay all creditors in full, a creditor may obtain permission to proceed to collect from the cosignor, comaker or guarantor the percentage of the debt that your plan is not going to pay. If the cosignor or guarantor has given collateral for the loan, the creditor must request a hearing before the Court in order to proceed against the cosignor's or guarantor's property. If your case ends without a creditor receiving all the money which was due him, he can collect the rest from your cosignor (including interest and other charges which were not allowed in your case). Your discharge on a debt does not discharge a cosignor's obligation.

PLAN PAYMENTS

Most Chapter 13 payments are made electronically by

- (1) through a voluntary payroll deduction with the debtor's place of employment
- (2) through an automated payment through your bank account (epay.com or TFSBillPay.com)

Only in unusual circumstances does the court allow payments to be made directly by the debtor.

Direct payments must be certified check, cashier's check or money order payable to Andrea E. Celli, Chapter 13 Trustee. **NO PERSONAL CHECKS CAN BE ACCEPTED.**

Payments must be received on or before the last business day of each calendar month.

Direct payments must be sent by regular mail to: Payments should be sent to: Andrea E. Celli, Chapter 13 Standing Trustee, P.O. Box 1918, Memphis, TN 38101-1918.

Other correspondence and inquiries may be sent to the Trustee's office address at 7 Southwoods Blvd., Albany, New York 12211.

PAYROLL DEDUCTION WORKS!

It is important that both you and your employer understand that the Payroll Deduction Order issued for your Chapter 13 payment is not an attachment or garnishment. The Bankruptcy Code allows Court to issue a Payroll Deduction Order to help you carry out the terms of your plan. A letter is sent with the Payroll Deduction Order indicating that it is voluntary on your behalf and is not a garnishment.

IF YOU LOSE YOUR JOB

If there is any disruption in your income such that you cannot make your plan payments, please contact your attorney and the Trustee's Office immediately. The Trustee's Office reviews your case every month and requests dismissals of cases where payments are in default. The Trustee's Office will attempt to work with you to avoid dismissal of your case.

YOUR OBLIGATION TO PAY

You have an obligation to make sure all payments are received by the Trustee. If a payment is not received by the Trustee as required by your plan, the Trustee and/or any creditor in your case may ask the Court to dismiss your case.

IF YOU HAVE PROBLEMS MAKING YOUR PLAN PAYMENTS

If you are not able to make your regular plan payment because of illness, loss of job, family emergency, or other serious problem, you should **inform your attorney immediately**. Under some circumstances, you may be able to amend your plan to provide for a modification of the terms of your plan.

The Trustee has limited discretion to permit you to postpone one plan payment per year. A request to the Trustee for additional time within which to make a plan payment must be made in writing and must explain in detail the need for the request. An agreement by the Trustee not to seek dismissal of your case because of a missed payment does **NOT** prevent one or more of your creditors from moving to dismiss your case.

If the plan proposes that you will make ongoing payments on your car or home mortgage directly (not through the Trustee), you must remain current on these payments. If a serious problem prevents you from making such a payment, you should ask your attorney to contact the creditor to work out some other method to bring the missed payment current. Otherwise, a missed payment may result in a motion by the creditor to allow repossession your assets or conduct a foreclosure. You will receive notice of any such hearing, however, if you want your position to be considered, you or your attorney must file written opposition to the motion and appear in Court for the hearing. If you do not respond, the motion will be granted by the Court.

REQUEST FOR DISMISSAL BY THE TRUSTEE OR A CREDITOR

If you fail to make the plan payments to the Trustee, and you have not been excused, the Trustee will ask the Court to dismiss your case. Additionally, any creditor may ask the Court to dismiss your case if you do not make your plan payments to the Trustee or your direct monthly payments on your house or other real estate.

Creditors or the Trustee may also request dismissal of your Chapter 13 case if they believe your plan will not work (is not “feasible”), you fail to attend the meeting of creditors, or you fail to comply with other requirements of the Bankruptcy Code. Also, if you fail to appear at hearings, fail to file a plan or schedules, cause delays in your case, fail to file or conduct your case in good faith, file Chapter 13 cases often, or otherwise show an intention not to complete your plan, the Court has the authority to dismiss your case and you may be ineligible to be a debtor in any bankruptcy case for 180 days from the date of the Dismissal Order.

REQUEST FOR DISMISSAL BY YOU

You have the right to dismiss your case, unless you have already converted your case from another chapter of the Bankruptcy Code or the Court orders otherwise. The Bankruptcy Code provides that **if you voluntarily dismiss your case after a motion for relief from the automatic stay has been filed, you will be ineligible to file another bankruptcy case for 180 days after entry of the Dismissal Order.**

Always contact your attorney for advice before voluntarily dismissing your Chapter 13 case. No one can force you to remain under a Chapter 13 plan if you do not wish to remain. If you desire to stop your case, contact your attorney.

A dismissal will end the protection of the automatic stay. Creditors will once again have the right to attempt to collect their debts, including interest, finance charges, and late fees. A request for dismissal of your case must be in writing and filed with the Bankruptcy Court, with a copy sent to the Chapter 13 Trustee.

PROOFS OF CLAIM FILED BY YOUR CREDITORS

All creditors must file a "Proof of Claim" in order to receive any money under your Chapter 13 plan. Non-government creditors have 75 days from your filing date to file a proof of claim and government creditors have 180 days. After the 75 day period, as a general rule, the creditors will not be able to file a proof of claim. You may file a Proof of Claim on behalf of any creditor to insure payment to that that creditor through your plan. Discuss this with your attorney if you believe you should do so.

Approximately six months after your case is filed, the Trustee will send you a document entitled "Notice of Claims Filed". Review this carefully and call your attorney if any of the listed claims are objectionable and you do not want them paid. If a creditor's name or the amount they have claimed is incorrect, or if you dispute the claim for any reason, your attorney should object to the claim by filing a motion with the Court. If the Trustee does not receive an objection, she must pay the creditor based upon the amount requested, not the amount you listed.

HOW CREDITORS ARE PAID BY THE TRUSTEE

The money you owe to the Trustee is used to pay all expenses (Trustee fees and your attorney's fees) and your creditors. There are three basic types of claims: Priority (generally tax claims), Secured (e.g. house mortgages, car loans, etc.) and Unsecured. Generally, the Trustee pays secured claims, then priority, and then unsecured. As a general rule, the Trustee does not pay anything on the unsecured claims until the secured claims and the priority claims are paid. It could be many months before unsecured creditors receive their first payment.

CREDIT CARD AND NEW DEBT

The Order confirming your plan prohibits you from incurring post-petition debt without permission. This means you may not borrow from a finance company, bank, or credit union, or receive an advance of your salary. You cannot buy anything over time, like a car or an appliance. You cannot sign, co-sign or guarantee an installment note or use a credit card. If you need to incur new debt, you must first obtain written approval from the Chapter 13 Trustee. Your request may be approved if you are paying regularly into your Chapter 13 plan, if there is a good reason to incur the debt, and if your ability to pay your plan payments will not be threatened.

TAKING ON NEW DEBT WITHOUT PERMISSION

Obtaining credit without permission of the Court is not only a violation of the Court's Orders, it is subject to a reversal by the Court. Any credit purchase you make without the approval of the Court may subject your plan to dismissal.

SELLING YOUR REAL PROPERTY

You cannot dispose of any of your property, including land, without obtaining prior approval from the Trustee or the Court. If you sell any of your property for a profit, some of the profit will have to be applied to your Chapter 13 debts. If you dispose of your property without Court authorization, the transaction may be set aside and your plan could be dismissed. Please remember also that any real estate broker or attorney (other than your Chapter 13 attorney) you wish to utilize, must be approved by order of the Court. If you wish to sell any property, contact your attorney for instructions.

CRIMINAL MATTERS

The filing of a Chapter 13 case does not stop a criminal prosecution.

CLAIMS FOR MONEY DAMAGES OR LAWSUITS

If you have a type of claim for money damages or a lawsuit, either before or after the filing of your case, you cannot recover money before obtaining the approval of the U.S. Bankruptcy Court. Thoroughly discussing any legal matter with your bankruptcy attorney and make sure your non-bankruptcy attorney knows about your Chapter 13 case. Your non-bankruptcy attorney cannot receive any fees for representing you unless approved by the U.S. Bankruptcy Court.

INFORMATION FROM THE TRUSTEE

You will receive many notices/informational reports from the Trustee during the course of your Chapter 13. If you have any questions, please contact your attorney or the Trustee's Office. Often, notices/reports sent by the Trustee require some response on your part and failure to do so may adversely affect your plan. For this reason, if you change your address, it is extremely important that you advise your attorney and the Trustee's Office in writing.

A. Confirmation Order. Assuming your plan is confirmed, you will receive a copy of the Order Confirming your Chapter 13 Plan. It will indicate the amount of money you are to pay per month, the length of your plan, the amount of your attorney's fee, and how much is to be paid through the Chapter 13 plan. In addition, the order will state whether certain creditors are to be paid whether or not they file a proof of claim and finally, the order sets the minimum percentage to unsecured creditors.

B. Notices of Claims Filed. Approximately six months after your Court appearance, you will receive a mailing entitled "Notice of Claims Filed". This document will show you all the creditors that have filed a proof of claim in your case. If you have any questions, or if you have any objections to a claim for whatever reason, you must contact your attorney immediately. All objections to claims should be resolved with the Trustee or brought to the Court (by motion objecting to the claim) within ninety days of the certification date of the Notice. Unless your attorney objects to the claim, the Trustee must pay the amount the creditor has requested, not the amount you listed on your petition.

C. Periodic Reports. During the term of your plan you will receive a mailing entitled "Periodic Report". This will show all funds received and disbursed by the Trustee's Office. Please review the information on the Reports

carefully. If you have any questions or problems, please contact the Trustee's Office immediately.

D. Notice of Additional/Amended Claim. If a creditor not originally listed by you files a proof of claim requesting money from your plan, you will receive a "Notice of Additional Claim". If a creditor already included in your plan amends their claim for a greater amount, you will receive a "Notice of Amended Claim". If you disagree with the additional claim or amended claim, you should contact your attorney immediately. If an objection, in proper form, is not filed, the additional/amended claim will be paid through the plan. This could affect the length of your plan and/or the amount of your plan payment.

E. Motions to Dismiss. Should you fall behind in payments to the Trustee's Office or some other problem arises with your plan, you may receive a "Motion to Dismiss" your case. Contact your attorney or the Trustee's Office immediately or your case may be dismissed with no further notice. Do not assume that whatever problem exists has been resolved until you speak with the Trustee's Office.

INCREASE IN PLAN PAYMENTS

Although the term of your plan is confirmed for a specific amount of time and for a specific amount of money (monthly payment multiplied by the number of months in the plan or the "plan base"). These figures may increase if the amount you committed to pay is not enough ("the plan is infeasible"). This can offer if:

- A. A creditor you did not list files a proof of claim.
- B. A listed creditor files for an amount greater than was originally listed by you.
- C. Your plan is amended.

Even if your plan is not specifically amended, however, the percentage for unsecured creditors could increase depending on the amount of claims filed with the Court. Creditors filing proofs of claim will receive the benefit of those who do not file a proof of claim. If you have any questions on this aspect of your case, please contact the Trustee's Office.

DISPOSABLE INCOME REQUIREMENT (MINIMUM 36 MONTHS) AND BASE PLANS

If you are unable to repay all of your debts **in full**, you must pay all of your estimated disposable income to the Trustee for at least 36 months of your plan. Disposable income is the difference between your gross income and your reasonable and necessary expenses.

Your plan cannot be completed until you pay to the Trustee an amount equal to your disposable income for 36 months or 100% of all amounts owed, whichever is greater. If changes are made to your plan after your plan has been confirmed, be sure to ask your attorney how the change in your plan affects the minimum “plan base” you must pay. It may not be in your best interests to pre-pay your Chapter 13 case. Before you make any payment to the Trustee, other than your regular plan payments, talk to your attorney first!

REQUESTING A “PLAN PAYOFF” - THE BALANCE OWED ON YOUR PLAN

Since you cannot complete your Chapter 13 plan unless you have paid for at least 36 months or you pay all filed claims in full (100%), it may not be in your best interest to pay off your plan earlier than planned. In order to determine a “final payoff” amount for your Chapter 13 plan, the Trustee’s file and the Court’s records must be audited to verify the claims to be paid. This is an involved process and normally takes at least 4 weeks to complete. It is helpful to consult with your attorney regarding your current circumstances and plan modification options before requesting a payoff letter.

For these reasons, we require that all payoff requests be made in writing, by your attorney, and that the request specify (1) the date by which the payoff is needed, (2) the expected source of funds to pay off the plan, and (3) the expected date of payoff. If such request is received, a final payoff amount will be provided to your attorney. Once the payoff amount is provided, the funds are expected to be received in our office within 30 days.

IF YOU ARE ENTITLED TO A TAX REFUND DURING YOUR PLAN

If the Internal Revenue Service determines that you are entitled to a tax refund during your plan, any amount over \$1500 must be remitted to the Trustee to provide additional payment to your creditors under our plan. These additional funds will not reduce the amount or number of payments that you are required

to make under the confirmed plan. For this reason, you may wish to reduce your withholdings so that you will not receive a significant refund.

If you need some or all of the excess tax refund for reasonable and necessary expenses, contact your attorney immediately.

LOTTERY WINNINGS/INHERITANCES AND OTHER WINDFALLS DURING YOUR PLAN

If you receive a windfall (lottery winnings, inheritance or other unexpected lump sum of money) during your Chapter 13 plan, you have a legal obligation to contact your attorney for instructions before spending any of the funds. If you cannot reach your attorney, contact the Trustee's Office.

THE END OF YOUR PLAN

Once you have successfully completed your plan, the Trustee will file a Final Report and you will receive an Order of Discharge from the U.S. Bankruptcy Court. After you receive the discharge, you will generally not owe any debts, other than long-term debt (such as mortgage payments) and certain non-dischargeable debts not paid in your plan (such as child support, alimony or student loans).

You should keep the Final Report and the Discharge Order with your valuable papers. Should a creditor request any additional money from you on a debt included in your plan, contact your attorney's office. If you are not sure which of your debts will be discharged, you should discuss that with your attorney.

After you receive your discharge, you **may** receive a small refund check from the Trustee. This refund will be paid if you have paid more to the Trustee than is required to pay your debts pursuant to your confirmed Chapter 13 plan.

YOUR CREDIT RATING

Your credit rating during and after completion of Chapter 13 will be, as it is now and was in the past, the personal opinion of any lender who looks at your record. A credit rating is not A, B, or C, or 1, 2, 3, it is a record of all your past credit performances. This record is made available to a lender and he/she makes up his/her own mind, by his/her own standards, as to whether or not he/she wants to grant credit to you. Suits, collections, attachments, straight bankruptcy, credit counseling, and Chapter 13 are indications, in one degree or another, of credit problems. How such records are evaluated by any given

lender is impossible to say. The Trustee's Office will be pleased to speak with any potential credit grantor to explain what a Chapter 13 is and how it differs from a Chapter 7, also known as a straight or complete bankruptcy. Any credit record blemished by a payment problem can be gradually rebuilt. Chapter 13 is a good place to start.

ADDITIONAL INFORMATION

After reading this information, if you should have any questions, please contact the Trustee's Office or mention the question at your meeting with the Trustee.

ONE FINAL WORD FROM YOUR TRUSTEE

Complying with your Chapter 13 plan is not easy. You may have to make a real sacrifice to meet the obligations which you have specified in your plan and still live within your Chapter 13 budget. Thousands of families have successfully completed their Chapter 13 plans in the Northern District of New York. They have resolved their debt problems without filing straight bankruptcy and have paid most, if not all, of their obligations to their creditors. Chapter 13 will work only if you work very hard at meeting your obligations under your plan.

I wish you the best in this process. **Good luck!**

Andrea Celli