

UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT

67 Merchants Row, Post Office Box 6648
Rutland, Vermont 05702-6648
Tel. (802) 776-2000
Fax (802) 776-2020
Website: www.vtb.uscourts.gov

The attached material is provided to assist you in understanding bankruptcy procedures. The Bankruptcy Court employees are not allowed to give legal advice, however if you have any procedural questions, please feel free to call us at the number listed above. If you have access to the Internet, our web site has a great deal of useful information. (www.vtb.uscourts.gov). The Local Rules may also be obtained either from the Clerk's Office or the web site.

November 2003

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PRO SE PACKET

Introduction

Most people know very little about the bankruptcy process. This packet is designed to assist the general public by providing basic answers to some of the most commonly asked questions. For additional information, please go to the Court's web site (www.vtb.uscourts.gov).

This packet includes an introduction, a brief overview or time line of what to expect when you file chapter 7 or chapter 13 bankruptcy, some frequently asked questions and answers, and a detailed description of chapter 7 and chapter 13 cases. A glossary of bankruptcy terms is included at the end of the packet. You will find some repetition throughout this packet, as each of the sections progressively goes into more detail.

While the information presented herein is accurate as of the date of publication, it should not be cited or relied upon as legal authority. This information should not be used as a substitute for reference to the United States Bankruptcy Code (Title 11, United States Code) and the Bankruptcy Rules, both of which may be reviewed at local law libraries, or to any local rules of practice adopted and disseminated by Vermont Bankruptcy Court. For filing requirements, please refer to the United States Bankruptcy Code (Title 11, United States Code), the Federal Rules of Bankruptcy Procedure (Bankruptcy Rules), and the Local Rules of the United States Bankruptcy Court for the District of Vermont.

THIS FACT SHEET IS NOT A SUBSTITUTE FOR THE ADVICE OF COMPETENT LEGAL COUNSEL.

What does the Clerk's Office do?

The Clerk's Office provides clerical and administrative support to the Court by managing cases, collecting authorized fees, sending notices, entering judgments and orders on the docket, informing parties of scheduled hearings, and handling inquiries from attorneys and the general public.

What is Bankruptcy?

Bankruptcy is a legal process which allows a person (known as a debtor) to either (1) repay a portion of the money over time under chapter 11, 12 or 13, or (2) have the entire debt forgiven ("discharged") under chapter 7. Under chapter 7, a debtor may be required to surrender assets to a trustee. Bankruptcy is available to individuals, businesses, corporations, and partnerships. Even municipal governments can file bankruptcy (under chapter 9).

After a debtor has commenced a case by filing a petition, creditors must stop all collection efforts against the debtor during the time the bankruptcy case is pending, unless they get permission from the Bankruptcy Court to continue. This protection from collection efforts is referred to as the "automatic stay."

The Bankruptcy Code [Title 11 of the United States Code (11 U.S.C. sections 101-1330)] and Federal Rules of Bankruptcy Procedure determine which chapter a person is eligible to file, which debts can be eliminated, how long repayment must continue, which possessions can be kept, etc. A debtor must abide by these federal laws and rules. These may be found in the larger libraries around Vermont. The Vermont Statutes Annotated describes homestead exemptions in Title 27, Chapter 3, Section 101, and lists other exemptions in Title 12, Chapter 11, Section 2740. These can be found on line at <http://www.vermont.gov>, (select State Statutes and Constitution) or in local libraries.

The following is a list of the forms you need to file with the Court in order to commence a case:

2-Page Petition

Schedules A thru J*

Statement of Financial Affairs

Statement of Intention*

Mailing List

Declaration of Social Security Number (Form 21)

Filing fee (or Application to Pay by Installments)

If you are filing chapter 13, you also need to file a chapter 13 Plan.

*Schedules I and J and the Statement of Intention are only required for individual debtors. They are not required when debtor is a corporation, LLC, partnership, etc.

**OVERVIEW OF THE BANKRUPTCY CASE PROCESS
UNDER CHAPTER 7 AND CHAPTER 13**
(Chapter 12 is for Family Farmer Reorganization)

CHAPTER 7

(See Questions & Answers Section, #8, for detailed description.)

1. DEBTOR COMPLETES AND FILES PETITION (Original plus one copy)

Forms may be purchased from an office supply store or legal stationery store. They may be handwritten, but must be legible. In addition to the Bankruptcy Petition and Schedules, a typed list of creditors (mailing list) must be filed and the filing fee paid in order to commence a bankruptcy case.

Note: The mailing list must be typed with the names and addresses listed in a single column with a space between each creditor. The following addresses need to be included on your mailing list if:

-you owe taxes to the IRS:

IRS/SPF Insolvency Unit
JFK Fedl Bldg, Rm 800
Cambridge Street
PO Box 9112
Boston, MA 02203-9112

-the papers filed in your case disclose a debt, other than taxes, to the United States:

(Name of Federal Agency)
United States Attorney, District of Vermont
11 Elmwood Avenue - 3rd Floor
PO Box 570
Burlington, VT 05402

-the papers filed in your case disclose a tax debt or potential tax claim to the State of Vermont:

Vermont Department of Taxes
Bankruptcy Unit
PO Box 429
Montpelier, VT 05601-0429

-the papers filed in your case disclose a debt other than taxes to the State of Vermont:

(Name of State Agency)
c/o VT Attorney General
109 State Street
Montpelier, VT 05609-1001

All paperwork filed with the Clerk must be on 8 ½" x 11" paper. Your petition and payment of \$209, should be filed by coming to the Clerk's Office (67 Merchants Row, Rutland, VT), or by mailing it to: USBC, PO Box 6648, Rutland, VT 05702-6648. You must pay the filing fee in full by cash, money order or cashier's check at the time of your filing, or submit an application to pay the filing fee in installments. The Court does not accept personal checks or credit cards from a person filing bankruptcy.

2. TRUSTEE IS ASSIGNED TO YOUR CASE

An impartial trustee is appointed to administer your case. The trustee may collect your non-exempt assets and convert them to cash (liquidation). Any money resulting will be used to make payments to your unsecured creditors.

3. MEETING OF CREDITORS IS HELD ("341 Meeting") (Section 341 is the section of the Bankruptcy Code requires this meeting to be held.)

You will receive a notice with the date, time and location of the creditors meeting. All creditors are also notified of this meeting, but their attendance is not required. You have a duty to appear and testify under oath and answer questions by the trustee. This meeting is presided over by the trustee assigned to your case, and is held 20-60 days after your petition is filed. See next page for a list of items that the trustee may need to see. You are also required to provide photo identification and proof of social security number to the assigned trustee. Your failure to appear may result in dismissal of the case. If you need to change the date of the hearing, the trustee must be contacted.

4. CREDITORS HAVE 60 DAY PERIOD FOR COMPLAINTS TO BE FILED

Creditors have the opportunity to object to your discharge or to dispute the discharge of their debt until 60 days after the date set for the first meeting of creditors.

5. ORDER OF DISCHARGE GRANTED

Unless the Court has ruled to the contrary based upon a lawsuit filed by a creditor, when the deadline for filing objections to your discharge passes, the order of discharge is issued. This permanently relieves you from having to pay certain debts. Most, but not all, types of debts are discharged if they existed on the date the bankruptcy case was filed and were listed on the schedules in your petition. See #11 in the Questions & Answers Section for a list of some of the debts that are not discharged.

6. TRUSTEE COMPLETES DUTIES

The trustee continues to distribute any assets.

7. FINAL DECREE ISSUED

Your case is closed. Under the provisions of the Fair Credit Reporting Act, the bankruptcy filing will remain on your credit report for a maximum of 10 years.

POTENTIAL REQUESTS FROM THE CHAPTER 7 TRUSTEE

1. If you own real estate, the trustee will probably request a copy of the warranty deed (the document by which you gained ownership of the property); the mortgage deed (the lien which you granted the bank or lender on your property); and the tax bill or Lister's card or recent appraisal of your property. If you do not have the original or a copy of the recorded deed, a copy can be obtained from the Town Clerk where the property is located. The trustee will only need the first page of the mortgage deed, the description of the property and all signature pages.
2. If you own a car, the trustee may request a copy of the title to the car and a statement of the amount owing to the bank or lender. If you do not have the title, you may request it from your bank, or may obtain a copy from the Vermont Department of Motor Vehicles with form TA-VG-116.
3. If you have a retirement plan, the trustee will request a copy of the most recent statement for the plan and a letter from the plan administrator to insure ERISA and tax qualifications.

CHAPTER 13

(See Questions & Answers, #8, for detailed description.)

1. DEBTOR COMPLETES AND FILES PETITION (Original plus one copy)

Forms may be purchased from an office supply store or legal stationery store. They may be handwritten, but must be legible. In addition to the Bankruptcy Petition and Schedules, a typed list of creditors (mailing list) must be filed and the filing fee paid in order to commence a bankruptcy case.

Note: The mailing list must be typed with the names and addresses listed in a single column with a space between each creditor. The following address needs to be included on your mailing list if:

-you owe taxes to the IRS:

IRS/SPF Insolvency Unit
JFK Fedl Bldg, Rm 800
Cambridge Street
PO Box 9112
Boston, MA 02203-9112

-the papers filed in your case disclose a debt, other than taxes, to the United States:

United States Attorney, District of Vermont
615 Federal Bldg.
PO Box 570
Burlington, VT 05402

-the papers filed in your case disclose a tax debt or potential tax claim to the State of Vermont:

Vermont Department of Taxes
Bankruptcy Unit
PO Box 429
Montpelier, VT 05601-0429

-the papers filed in your case disclose a debt other than taxes to the State of Vermont:

(Name of State Agency)
c/o VT Attorney General
109 State Street
Montpelier, VT 05609-1001

All paperwork filed with the Clerk must be on 8 ½" x 11" paper. Your petition may be filed by coming to the Clerk's Office, or by mailing it to: USBC, PO Box 6648, Rutland, VT 05702-6648. You must also pay the filing fee (\$194.00) in full by cash, money order or cashier's check at the time of filing your petition, or submit an application to

pay the filing fee in installments. The Court does not accept personal checks or credit cards from a person filing bankruptcy.

Your chapter 13 plan (how you plan to pay back some of your creditors) may be filed at this time. You have 15 days to file it if you wish to file it separately. Your first plan payment must be paid to the trustee within 30 days of the filing of your plan. Failure to make timely payments to the trustee may result in dismissal of your case.

2. TRUSTEE IS ASSIGNED TO YOUR CASE

Jan Sensenich, an impartial trustee, will be appointed to oversee your case. He will collect plan payments and disburse funds to your creditors in a specific order required by law.

3. MEETING OF CREDITORS (“341 Meeting”)

You will be notified of the date, time and place of the meeting of creditors. All creditors are also notified of this meeting, however, their attendance is not required. You have a duty to appear and testify under oath and answer questions by creditors. This meeting is presided over by the trustee and is held approximately 25-60 days after your petition is filed. You are required to provide photo identification, proof of social security number, and proof of home and auto insurance to the trustee. Your failure to appear may result in dismissal of the case. If you need to change the date of the hearing, you must contact the trustee directly as soon as possible.

4. CONFIRMATION HEARING

This hearing is generally scheduled on the same day as the Meeting of Creditors (the Meeting of Creditors will be held in the morning and the Confirmation Hearing will be held at 1:30 p.m.). Creditors have an opportunity to object to your plan. If this happens, you may ask the Court to overrule the objection, or you may file an amended plan. If your plan is not approved by the Court, you may file an amended plan, convert to a chapter 7, or your case can be dismissed.

5. CREDITORS FILE CLAIMS

Creditors have 90 days from the date you file your case to file a Proof of Claim, which is a form stating the amount they believe you owe to them.

6. PLAN PAYMENTS

You must pay the trustee a sum of money each month, according to your plan. Payments must be made starting within 30 days of filing your plan. You are encouraged to make these payments through a voluntary wage deduction.

7. TRUSTEE'S REPORT

After a plan is confirmed and until your plan is completed, the trustee periodically will file reports with the Court summarizing your payments to him and the payments he has made to your creditors under the plan. Once the plan is completed, the trustee will file a final report and account, which must be approved by the Court.

8. ORDER OF DISCHARGE

The order of discharge relieves you from having to pay certain remaining debts. The order is issued promptly after your plan is completed. Most, but not all types of debts are discharged if they existed on the date the bankruptcy case was filed and were listed on the schedules in your petition, and you made all payments required under your confirmed plan. See #11 for a list of some of the debts that are not discharged.

9. FINAL DECREE

Your case is closed. Under the provisions of the Fair Credit Reporting Act, the bankruptcy filing will remain on your credit report a maximum of 10 years.

Questions and Answers

1. *What happens when a bankruptcy petition is filed?*

When you file your petition, an “estate” is created. The estate technically becomes the temporary legal owner of all of your property. The estate consists of all legal or equitable interests that you have in any property as of the date your case is filed, including property owned or held by another person, if you have an interest in the property. The “automatic stay” is immediately in effect the instant you file your bankruptcy case. This prohibits creditors from taking collection action against you or your property without Bankruptcy Court approval. The Clerk issues a notice advising all interested parties of the filing of the bankruptcy case. This notice provides the case number, trustee, date of the meeting of creditors, deadline to file a proof of claim (if applicable), and deadline to file an objection to the discharge (if applicable). Note: All files of the Bankruptcy Court are public record and accessible in person or through electronic means.

2. *Do I need an attorney to represent me in my bankruptcy case?*

Each debtor filing an individual bankruptcy case has a right to represent him or herself (Pro Se Debtor); however, the use of an attorney is recommended. Ignorance of the law may cost an individual far more than an attorney’s fee. By law, a corporation is required to have an attorney. Note: Individuals who choose to represent themselves will not be able to obtain legal advice from Court personnel or from the trustee appointed to their case.

3. *What is a Pro Se Debtor?*

A Pro Se Debtor is one who files bankruptcy without an attorney. A Pro Se Debtor is responsible for all proceedings of his/her case. Failure to comply with the Bankruptcy Code and Rules or with Court orders may cause dismissal of the Debtor’s case. It is recommended that all Debtors seek legal advice before filing bankruptcy.

4. *Where can I obtain the necessary forms for filing bankruptcy?*

The Court cannot supply forms. Forms are available from office supply stores or legal stationery stores. Forms are also available on our website. The forms may be handwritten, but must be legible. The mailing list (list of creditors) must be typed. Names and addresses must be listed in a single column with a space between each

creditor. All paperwork filed must be on 8 ½" x 11" paper. The original paperwork and one copy are required at the time of filing.

5. What are the current filing fees for filing bankruptcy?

Chapter 7 is \$209.00	Chapter 13 is \$194.00
Chapter 12 is \$239.00	Chapter 11 is \$839.00

The filing fee, if paid by the debtor, must be in cash, cashier's check, or money order made payable to Clerk, United States Bankruptcy Court. The Court does not accept personal checks or credit cards from debtors. Fees are not refundable.

6. Can the Court waive the bankruptcy petition filing fee?

The Court cannot waive the bankruptcy petition filing fee. However, the Bankruptcy Rules do provide that individuals may pay the filing fee in installments if they obtain Court approval. To pay the fee in installments, you must submit an application, and the application must be approved by the Court and provide for full payment within 120 days. The application should be part of the bankruptcy form packet that you purchase.

7. Which chapter is right for me?

Your decision whether to file bankruptcy and under which chapter depends on your particular circumstances. In general, chapter 7 is appropriate when you are not seeking to keep non-exempt property. Otherwise, if you have an income or property and can afford to repay at least some of your debts, chapter 11, 12 or 13 may be appropriate, depending on whether you are an individual, farmer, partnership or corporation. The decision whether to file bankruptcy and under which chapter is an extremely important decision and has tremendous financial impact. Consequently, this decision may require expert advice from a bankruptcy attorney. You may contact The Vermont Bar, Legal Aid, or the local Lawyer Referral Service found in your local telephone directory to inquire about obtaining legal representation and about whether you may be eligible for free or reduced fee legal services in a bankruptcy case.

8. What is the difference between a chapter 7, 12, 13 and 11?

Chapter 7 - in a chapter 7 case, you are permitted to retain certain "exempt" property, while the remaining assets which will be taken and converted to cash by the trustee. The trustee will distribute the funds from this liquidation to holders of claims (creditors) according to the provisions of the Bankruptcy Code. You should be aware that the filing of a petition under chapter 7 might result in the loss of non-exempt property.

Chapter 13 - Chapter 13 is only available to individuals who have regular income. It allows them to repay a portion or all of their debt over a 3 to 5 year period of time.

chapter 13 may be appropriate for you if you seek to retain certain assets and are able to make monthly payments according to a repayment plan.

Chapter 11 - Chapter 11 allows corporations, partnerships, and certain individuals (even those who do not qualify under chapter 12 or 13), to reorganize without having to liquidate all assets. As in a chapter 13, the debtor (called the “debtor-in-possession” because a trustee is not normally assigned) is required to present a repayment plan. If the plan is accepted by the creditors and subsequently approved (“confirmed”) by the Court, this allows the debtor to reorganize his/her/its personal, financial, or business affairs.

Chapter 12 - Chapter 12 is a family farmer reorganization.

9. *Where can I get more information about bankruptcy and bankruptcy procedures? Is there a place I can get free or inexpensive legal advice before I file?*

Attorney Richard Scholes, 802-223-1111
(Will provide telephone assistance on a limited basis)

Vermont Volunteers Lawyers Project (e-mail: acourt@lawlinevt.org)
802-853-7153 (from the Burlington area)
800-639-8857 (outside the Burlington area)

Vermont Bar Association Lawyer Referral Service (Website: www.vtbar.org)
802-223-2020 (from the Montpelier area)
800-639-7036 (outside the Montpelier area)

10. *How is a debt classified as secured, unsecured, priority, or administrative?*

A **secured debt** is a debt which carries with it a lien on some property. In other words, something you own can be taken away if the debt is not paid, such as a house or car. A creditor whose debt is “secured” has a right to foreclose or take property to satisfy the debt if you fail to make payments or comply with the contract.

An **unsecured debt** arises when you promise to repay someone a sum of money at a particular time, but you have not pledged any property as collateral for the debt.

A **priority debt** is a debt entitled to be paid ahead of other debts, such as taxes. Please refer to § 507 of the Bankruptcy Code for a listing of priority claims.

11. *What debts can be discharged?*

Generally, all debts listed on the petition are dischargeable. However, certain types of debt listed in § 523 of the Bankruptcy Code are not dischargeable.

The non-dischargeable debts listed in § 523 include, but are not limited to:

- a. Certain taxes and fines;
- b. Debts arising from certain fraudulent conduct;
- c. Debts not listed in your bankruptcy petition;
- d. Alimony, child maintenance or support, and certain other related debts arising out of a divorce decree or separation agreement;
- e. Debts caused by the Debtor's willful and malicious injury to another;
- f. Government guaranteed student loans;
- g. Debts caused by a death or personal injury related to your operation of a motor vehicle while intoxicated; and
- h. Post-bankruptcy condominium or cooperative owner's association fees.

This list includes only examples of non-dischargeable debts; see § 523 of the Bankruptcy Code for a complete list. Under § 523, a creditor or party in interest may also file a complaint to have their debt declared non-dischargeable. In a chapter 13 case, the discharge is broader. See § 1328(a) of the Bankruptcy Code.

12. *How do I change or correct information in the petition, schedules, and statements I already filed with the Clerk's Office?*

The information contained in your petition, schedules, and statement of financial affairs is filed under penalty of perjury. Therefore, you must be certain that it is correct when you sign these documents. If, however, you later discover that something is inaccurate, the documents may be corrected by filing an amendment with the Clerk's Office. New schedules or statements must be filed showing the corrected information along with a certificate of service. A fee of \$20.00 must be paid when amending schedules D, E, or F (or the mailing list). You must provide copies of all amendments you file with the United States Trustee and case trustee, and to the creditors affected by the amendment. The amendment must also contain an original signature.

13. *What is a bankruptcy discharge?*

A discharge releases you from personal responsibility for dischargeable debts. Thus, it prevents the creditors owed those debts from taking any action against you to collect the debts. Most, but not all, types of debts are discharged if they existed on the date the bankruptcy case was filed and were listed on the schedules. Some of the debts that are not discharged are listed in Question #11. Bankruptcy law regarding the scope of a discharge is complex, and you should consult competent legal counsel prior to filing. For example, the discharge of a debt does not extinguish a lien that exists because of a debt, nor does it discharge the liability of co-signers or guarantors.

14. *Can a discharge be denied?*

Under certain circumstances, § 727 of the Bankruptcy Code provides that the debtor's discharge may be denied in a bankruptcy case. Grounds for denial exist when the

debtor: (1) failed to keep or produce adequate books or financial records, (2) failed to satisfactorily explain any loss of assets, (3) committed a bankruptcy crime such as perjury, (4) failed to obey a lawful order of the Bankruptcy Court, or (5) fraudulently transferred, concealed, or destroyed property that would have become property of the estate. Refer to § 727 for a complete list.

15. *What is the difference between a discharge being denied and a debt being declared non-dischargeable?*

The Court can deny the debtor's discharge of all debts, or determine that a particular debt or debts are non-dischargeable. If only certain debts are ruled non-dischargeable, the debtor will still receive a discharge order, but the debtor will remain legally responsible for the debts the Court has declared to be non-dischargeable. If the Court denies the discharge of all debts, then the debtor will still be legally responsible for all the debts as if no bankruptcy petition had ever been filed (although the bankruptcy will still remain on the debtor's credit history).

For a discharge to be denied, either as to a particular debt or as to all debts, a creditor or trustee must file an adversary proceeding (lawsuit) with the Court. That party must then prove one of the grounds for denial of the discharge, or for a debt to be declared non-dischargeable.

16. *What is the role of a Trustee assigned in a chapter 7 or 13 case?*

Under chapter 7, an impartial trustee is appointed to administer the case by collecting and liquidating the debtor's non-exempt assets in a manner that maximizes the return to the debtor's unsecured creditors.

Under chapter 13, an impartial trustee is also appointed to administer the case. The primary role of the chapter 13 trustee is to make a recommendation to the Court as to the feasibility of a debtor's repayment plan and to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors.

17. *What is the function of the United States Trustee (UST)?*

The Office of the U. S. Trustee is an agency of the Department of Justice, with responsibilities that include monitoring the administration of bankruptcy cases and detecting bankruptcy fraud. It is also responsible for appointing and supervising interim trustees to administer chapter 7 cases, overseeing the debtor-in-possession, and appointing a standing Trustee in chapter 12 and 13 cases.

18. *What is a 341 meeting?*

This meeting is referred to as the "meeting of creditors." All creditors are notified so that they may attend, but their attendance is not required. You have a duty to appear and

testify under oath and answer questions by creditors. This meeting is presided over by the trustee assigned to the case and is held approximately 40 days after the petition is filed. You are required to provide photo identification, proof of social security number and proof of insurance to the trustee. Your failure to appear or provide the required information may result in dismissal of the case. If you need to change the hearing, you must make a written request to the trustee assigned to your case.

19. *If I file for bankruptcy, will it stop an eviction?*

The Clerk's Office is prohibited by federal statute from providing legal advice. Questions pertaining to how a bankruptcy filing affects enforcement of an eviction proceeding should be directed to a bankruptcy attorney.

20. *How long does a bankruptcy filing remain on my credit report?*

Your bankruptcy filing will remain on your credit report for a maximum of ten years under provisions of the Fair Credit Reporting Act.

21. *How do I get a bankruptcy filing removed from my credit report?*

The Bankruptcy Court has no jurisdiction over credit reporting agencies. The Fair Credit Reporting Act, 6 U.S.C. § 605, is the law that controls credit-reporting agencies. The law states that credit reporting agencies may not report a bankruptcy case on a person's credit report after ten years. You may contact the Federal Trade Commission, Bureau of Consumer Protection, Education Division, Washington, D.C. 20580; their phone number is (202) 326-2222. That agency can provide further information on reestablishing credit and addressing credit problems. You can also directly contact the credit bureau(s) reporting the information — e.g., Equifax, Experian, TransUnion.

22. *What can I do if a creditor keeps trying to collect money after I have filed?*

You should immediately notify the creditors in writing that you have filed bankruptcy, and provide them with the case name, case number, and filing date, or a copy of the petition that shows it was filed. If a creditor continues to attempt to collect, you may be entitled to take legal action against the creditor to obtain a specific order from the Court prohibiting the creditor from taking further collection action. However, a formal motion must be filed, in accordance with the Bankruptcy Code and applicable Rules. If the creditor is willfully violating the automatic stay, the Court can hold the creditor in contempt of Court and impose monetary sanctions on the creditor. Any such legal action brought against the creditor will be complex and you are strongly advised to be represented by a qualified bankruptcy attorney for this (under certain circumstances, the creditor may be required to pay your legal fees if you are successful in this).

23. *What should I do if I cannot make my chapter 13 payment?*

If you cannot make a chapter 13 payment on time pursuant to the terms of the confirmed plan, you should contact the chapter 13 Trustee by phone and by letter advising the Trustee of the problem and whether it is temporary or permanent. If it is temporary, you should advise the Trustee of the time and manner in which you will make up the payments. As long as the Trustee agrees, the payments can be made up over time (provided the plan payments are all made within 5 years). If the problem is permanent and you are no longer able to make payments under the plan, the Trustee will request that the case be dismissed or converted to another chapter, or you may seek to modify your plan. The determination of whether to modify the plan or dismiss or convert a case requires legal analysis. You should seek counsel from a qualified bankruptcy attorney before deciding how to proceed.

24. *What is a reaffirmation agreement?*

A reaffirmation agreement is an agreement between the debtor and a creditor that the debtor will pay all or a portion of the money owed, even though the debtor has filed bankruptcy. This means that the debtor will remain personally liable for that debt even though he or she has filed for bankruptcy. This gives the creditor extra rights and is only available for secured debts and in chapter 7. If you are not represented by an attorney, you will need to appear at a hearing. Refer to 11 U.S.C. § 524 Bankruptcy Code for detailed information.

25. *What is a Motion?*

A motion is a written formal document in which the party (“movant”), who is requesting an action, sets forth the grounds for the action or result requested. The party against whom the action is requested is called the respondent.

26. *How do I get a hearing date?*

It is not necessary to contact the Court for a hearing date. Upon receipt of properly filed documents, a hearing will be set automatically, and proper notice of the hearing date and time will be given to interested parties.

27. *Who can I call if I have a question about a pending case?*

Call the Clerk’s Office at 802 776-2000. Please have the debtor’s name and/or case number handy when you call. This will make it easier for the Clerk’s Office to assist you promptly. You may also call our automated voice case information system (VCIS) at 1-800-260-9956.

Chapter 7

Liquidation Under The Bankruptcy Code

Alternatives to Chapter 7

Debtors should be aware that there are several alternatives to chapter 7 relief. For example, debtors who are engaged in business, including corporations, partnerships, and sole proprietorships, may prefer to remain in business and avoid liquidation. Such debtors should consider filing a petition under chapter 11 of the Bankruptcy Code. Under chapter 11, the debtor may seek an adjustment of debts, either by reducing the debt or by extending the time for repayment, or may seek a more comprehensive reorganization. Sole proprietorships may also be eligible for relief under chapter 13 of the Bankruptcy Code.

In addition, individual debtors who have regular income may seek an adjustment of debts under chapter 13 of the Bankruptcy Code. Indeed, the Court may dismiss a chapter 7 case filed by an individual whose debts are primarily consumer rather than business debts, if the Court finds that the granting of relief would be a substantial abuse of the provisions of chapter 7. See § 707(b) of the Bankruptcy Code. A number of Courts have concluded that a chapter 7 case may be dismissed for substantial abuse when the debtor has the ability to propose and carry out a workable and meaningful chapter 13 plan.

Debtors should also be aware that out-of-court agreements with creditors or debt counseling services may provide an alternative to a bankruptcy filing. The State of Vermont Department of Banking can provide the names of licensed debt counseling services. Its telephone number is 802 828-3307.

Background

The potential chapter 7 debtor should understand that a chapter 7 bankruptcy case does not involve the filing of a plan of repayment as in chapter 13. The chapter 7 Trustee collects and sells the debtor's nonexempt assets, and holders of claims (creditors) will receive distributions in accordance with the provisions of the Bankruptcy Code. Part of the debtor's property may be subject to liens and mortgages that pledge the property to other creditors. In addition, under chapter 7, the individual debtor is permitted to retain certain "exempt" property. The debtor's remaining assets are liquidated by a trustee. Accordingly, potential debtors should realize that the filing of a petition under chapter 7 may result in the loss of property.

In order to qualify for relief under chapter 7 of the Bankruptcy Code, the debtor must be an individual, a partnership, a corporation, or a qualified multilateral clearing

organization, per 11 U.S.C. §§ 101(41), 109(b). Relief is available under chapter 7 no matter what the amount is of the debtor's debts or whether the debtor is solvent or insolvent. An individual cannot file under chapter 7 or any other chapter, however, if during the preceding 180 days a prior bankruptcy petition was dismissed due to the debtor's willful failure to appear before the Bankruptcy Court or comply with orders of the Bankruptcy Court, or the debtor voluntarily dismissed the previous case after creditors sought relief from the Bankruptcy Court to recover property upon which they hold liens. 11 U.S.C. §§ 109(g), 362(d)-(e).

One of the primary purposes of bankruptcy is to discharge certain debts to give an honest individual debtor a "fresh start." The discharge has the effect of extinguishing the debtor's personal liability on dischargeable debts. In a chapter 7 case, however, a discharge is available to individual debtors only, not to partnerships or corporations, per 11 U.S.C. § 727(a)(1). Although the filing of an individual chapter 7 petition usually results in a discharge of debts, an individual's right to a discharge is not absolute, and some types of debts are not discharged. Moreover, a bankruptcy discharge does not extinguish a lien on property.

How Chapter 7 Works

A chapter 7 case begins with the debtor's filing a petition with the Bankruptcy Court Clerk's Office.¹ The petition should be filed with the Bankruptcy Court serving the area where the individual lives or where the business debtor has its principal place of business or principal assets, per 28 U.S.C. § 1408. In addition to the petition, the debtor is also required to file with the Court several schedules of assets and liabilities, a schedule of current income and expenditures, a statement of financial affairs, and a schedule of executory contracts and unexpired leases, per Bankruptcy Rule 1007(b). A husband and wife may file a joint petition or individual petitions, per 11 U.S.C. § 302(a). (The Official Forms may be purchased at legal stationery stores or downloaded from the internet at www.uscourts.gov/bankform/. They are not available in hard copy from the Court.)

In order to complete the Official Bankruptcy Forms which make up the petition and schedules, the debtor(s) will need to compile the following information:

1. A list of all creditors and the amount and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.
5. Form #21, declaration of social security number.

Currently, the Courts are required to charge a total filing fee of \$209. The fee must be paid to the clerk of the Court upon filing or may, with the Court's permission, be paid by individual debtors in installments, per 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b); Court Miscellaneous Fee Schedule, Item 8. Bankruptcy Rule 1006(b) limits to four the number of installments for the filing fee. The final installment is payable not later than 120 days after filing the petition. For cause shown, the Court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition, per Bankruptcy Rule 1006(b). If a joint petition is filed, only one filing fee is charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case, per 11 U.S.C. § 707(a).

The filing of a petition under chapter 7 "automatically stays" most actions against the debtor or the debtor's property, per 11 U.S.C. § 362. This stay arises by operation of law and requires no judicial action. As long as the stay is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors normally receive notice of the filing of the petition from the clerk.

One of the schedules that will be filed by the individual debtor is a schedule of "exempt" property. Federal bankruptcy law provides that an individual debtor² can protect some property from the claims of creditors either because it is exempt under federal bankruptcy law or because it is exempt under the laws of Vermont, per 11 U.S.C. § 522(b). Vermont has taken advantage of a provision in the bankruptcy law that permits it to adopt its own exemption law and gives the individual debtor an option of choosing between a federal package of exemptions or exemptions available under Vermont State Law. Thus, whether certain property is exempt and may be kept by the debtor is often a question of state law. (The Vermont Statutes Annotated describes homestead exemptions in Title 27, Chapter 3, Section 101, and lists other exemptions in Title 12, Chapter 11, Section 2740.) These laws can be found on line at <http://www.vermont.gov>, (Select State Statutes and Constitution) or in local libraries.

A "meeting of creditors" (known as the 341 meeting) is usually held 20 to 60 days after the order for relief (which is the same date as the case is filed), per Bankruptcy Rule 2003(a). The debtor must attend this meeting where creditors may appear and ask questions regarding the debtor's financial affairs and property, per 11 U.S.C. § 343. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The meeting is conducted by the case trustee. Debtors must bring identification and their social security card with them to the meeting. It is important for the debtor to cooperate with the trustee and to provide any financial records or documents that the trustee requests. The trustee is required to examine the debtor orally at the meeting of creditors to ensure that the debtor is aware of the potential consequences of seeking a discharge in bankruptcy, including the effect on credit history, the ability to file a petition under a different chapter, the effect of receiving a discharge, and the effect of reaffirming a debt. The trustee may provide written information on these topics, at or in advance of the meeting, to ensure that the debtor is

aware of this information. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending the meeting of creditors, per 11 U.S.C. § 341(c).

In order to accord the debtor complete relief, the Bankruptcy Code allows the debtor to convert a chapter 7 case to either a chapter 11 reorganization case, a chapter 12 farm reorganization, or a case under chapter 13,⁴ as long as the debtor meets the eligibility standards under the chapter to which the debtor seeks to convert, and the case has not previously been converted to chapter 7 from another chapter, per 11 U.S.C. § 706(a)-(d). Thus, the debtor will not be permitted to convert the case repeatedly from one chapter to another.

Role of the Case Trustee

Upon the filing of the chapter 7 petition, an impartial case trustee is appointed by the United States Trustee to administer the case and liquidate the debtor's nonexempt assets, per 11 U.S.C. §§ 701, 704. If, as is often the case, all of the debtor's assets are exempt or subject to valid liens, there will be no distribution to unsecured creditors. Typically, most chapter 7 cases involving individual debtors are "no asset" cases. If the case turns out to be an "asset" case, unsecured creditors⁵ who have claims against the debtor must file their claims with the clerk of Court within 90 days after being sent notice to file claims, per Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed, per 11 U.S.C. § 502(b)(9). In the typical no asset chapter 7 case, there is no need for creditors to file proofs of claim. If the trustee later recovers assets for distribution to unsecured creditors, creditors will be given notice of that fact and additional time to file proofs of claim. Although secured creditors are not required to file proofs of claim in chapter 7 cases in order to preserve their security interests or liens, there may be circumstances when it is desirable to do so. A creditor in a chapter 7 case who has a lien on the debtor's property should consult an attorney for advice.

The commencement of a bankruptcy case creates an "estate." The estate technically becomes the temporary legal owner of all of the debtor's property. The estate consists of all legal or equitable interests of the debtor in property as of the commencement of the case, including property owned or held by another person if the debtor has an interest in the property. Generally speaking, the debtor's creditors are paid from nonexempt property of the estate.

The primary role of a chapter 7 trustee in an "asset" case is to liquidate the debtor's nonexempt assets in a manner that maximizes the return to the debtor's unsecured creditors. To accomplish this, the trustee attempts to liquidate the debtor's nonexempt property (i.e., property that the debtor owns free and clear of liens), and the debtor's property which has market value above the amount of any security interest or lien and any exemption that the debtor holds in the property. The trustee also pursues causes of action (lawsuits) belonging to the debtor and pursues the trustee's own causes of action to recover money or property under the trustee's "avoiding powers." The trustee's

avoiding powers include the power to set aside preferential transfers made to creditors within 90 days before the petition; the power to undo security interests and other pre-petition transfers of property that were not properly perfected under non-bankruptcy law at the time of the petition; and the power to pursue non-bankruptcy claims such as fraudulent conveyance and bulk transfer remedies available under state law. In addition, if the debtor is a business, the Bankruptcy Court may authorize the trustee to operate the debtor's business for a limited period of time, if such operation will benefit the creditors of the estate and enhance the liquidation of the estate, per § 721 of the Bankruptcy Code.

The distribution of the property of the estate is governed by section 726 of the Bankruptcy Code, which sets forth the order of payment of all claims. Under section 726, there are six classes of claims, and each class must be paid in full before the next lower class is paid anything. The debtor is not particularly interested in the trustee's disposition of the estate assets, except with respect to the payment of those debts which for some reason are not dischargeable in the bankruptcy case. The debtor's major interests in a chapter 7 case are in retaining exempt property and in getting a discharge that covers as many debts as possible.

Discharge

A discharge releases the debtor from personal liability for most debts and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The bankruptcy law regarding the scope of a chapter 7 discharge is complex, and debtors should consult competent legal counsel in this regard prior to filing. As a general rule, however, excluding cases which are dismissed or converted, individual debtors receive a discharge in more than 99 percent of chapter 7 cases. In most cases, unless a complaint has been filed objecting to the discharge or the debtor has filed a written waiver, the discharge will be granted to a chapter 7 debtor relatively early in the case, that is, 60 to 90 days after the date first set for the meeting of creditors, per Bankruptcy Rule 4004(c).

The grounds for denying an individual debtor a discharge in a chapter 7 case are very narrow and are construed against a creditor or trustee seeking to deny the debtor a chapter 7 discharge. Among the grounds for denying a discharge to a chapter 7 debtor are that the debtor failed to keep or produce adequate books or financial records; the debtor failed to explain satisfactorily any loss of assets; the debtor committed a bankruptcy crime such as perjury; the debtor failed to obey a lawful order of the Bankruptcy Court; or the debtor fraudulently transferred, concealed, or destroyed property that would have become property of the estate, § 727 of the Bankruptcy Code; Bankruptcy Rule 4005.

A reaffirmation is a voluntary agreement between the debtor and a secured creditor that the debtor will assume personal liability for all or a portion of the money owed, even though the debtor has filed bankruptcy and has no obligation to do so. If the debtor

elects to reaffirm the debt, the reaffirmation should be accomplished prior to the granting of a discharge. A written agreement to reaffirm a debt must be filed with the Clerk's Office and, if the debtor is not represented by an attorney, must be approved by the judge, per § 524(c) of the Bankruptcy Code. The Bankruptcy Code requires that reaffirmation agreements contain an explicit statement advising the debtor that the agreement is not required by bankruptcy or non-bankruptcy law. In addition, the debtor's attorney is required to advise the debtor of the legal effect and consequences of such an agreement, including a default under such an agreement. The Bankruptcy Code requires a reaffirmation hearing only if the debtor has not been represented by an attorney during the negotiating of the agreement, per § 524(d) of the Bankruptcy Code. The debtor may repay any debt voluntarily, however, whether or not a reaffirmation agreement exists, per § 524(f) of the Bankruptcy Code.

Most claims against an individual chapter 7 debtor are discharged. A creditor whose unsecured claim is discharged may no longer initiate or continue any legal or other action against the debtor to collect the obligation. A discharge under chapter 7, however, does not discharge an individual debtor from certain specific types of debts listed in section 523 of the Bankruptcy Code. Among the types of debts which are not discharged in a chapter 7 case are alimony and child maintenance and support obligations, certain taxes, debts for certain educational benefit overpayments or loans made or guaranteed by a governmental unit, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, debts for death or personal injury caused by the debtor's operation of a motor vehicle while the debtor was intoxicated from alcohol or other substances, and debts for criminal restitution orders under title 18, United States Code. 11 U.S.C. § 523(a). To the extent that these types of debts are not fully paid in the chapter 7 case, the debtor is still responsible for them after the bankruptcy case has concluded. Debts for money or property obtained by false pretenses, debts for fraud or defalcation while acting in a fiduciary capacity, debts for willful and malicious injury by the debtor to another entity or to the property of another entity, and debts arising from a property settlement agreement incurred during or in connection with a divorce or separation are discharged unless a creditor timely files and prevails in an action to have such debts declared excepted from the discharge, per § 523(c) of the Bankruptcy Code; Bankruptcy Rule 4007(c).

The Court may revoke a chapter 7 discharge on the request of the trustee, a creditor, or the United States Trustee if the discharge was obtained through fraud by the debtor or if the debtor acquired property that is property of the estate and knowingly and fraudulently failed to report the acquisition of such property or to surrender the property to the trustee, per § 727(d) of the Bankruptcy Code.

Notes:

1. An involuntary chapter 7 case may be commenced under certain circumstances by the filing of a petition by creditors holding claims against the debtor. 11 U.S.C. § 303.

2. Each debtor in a joint case (both husband and wife) can claim exemptions under the federal bankruptcy laws. 11 U.S.C. § 522(m).
3. United States Trustees and bankruptcy administrators are responsible for establishing a panel of private trustees to serve as trustees in chapter 7 cases and for supervising the administration of cases and trustees in cases under chapters 7, 11, 12, and 13 of the Bankruptcy Code. Bankruptcy administrators serve in the judicial districts in the states of Alabama and North Carolina.
4. A fee is charged for converting, on request of the debtor, a case under chapter 7 to a case under chapter 11. The fee charged is the difference between the filing fee for a chapter 7 and the filing fee for a chapter 11. Currently, that fee is \$645. There is no fee for converting from chapter 7 to chapter 13.
5. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay, as opposed to secured debts, for which the extension of credit was based upon the creditor's right to seize pledged property on default, in addition to the debtor's ability to pay.

Chapter 13

Individual Debt Adjustment Bankruptcy

Background

Chapter 13 is designed for individuals with regular income who desire to pay their debts, but are currently unable to do so. The purpose of chapter 13 is to enable financially distressed individual debtors, under Court supervision and protection, to propose and carry out a repayment plan under which creditors are paid over an extended period of time. Under this chapter, debtors are permitted to repay creditors, in full or in part, in installments over a three-year period, during which time creditors are prohibited from starting or continuing collection efforts. A plan providing for payments over more than three years must be “for cause” and be approved by the Court. In no case may a plan provide for payments over a period longer than five years, per § 1322(d) of the Bankruptcy Code.

Any individual, even if self-employed or operating an unincorporated business, is eligible for chapter 13 relief as long as the individual’s unsecured debts are less than \$290,525 and secured debts are less than \$871,550, per § 109(e) of the Bankruptcy Code. A corporation or partnership may not be a chapter 13 debtor.

An individual cannot file under chapter 13 or any other chapter if, during the preceding 180 days, a prior bankruptcy petition was dismissed due to the debtor’s willful failure to appear before the Court or comply with orders of the Court, or was voluntarily dismissed after creditors sought relief from the Bankruptcy Court to recover property upon which they hold liens, per §§ 109(g), 362(d) and (e) of the Bankruptcy Code.

How Chapter 13 Works

A chapter 13 case begins with the filing of a petition with the Bankruptcy Court serving the area where the debtor has a domicile or residence. Unless the Court orders otherwise, the debtor also shall file with the Clerk: (1) schedules of assets and liabilities, (2) a schedule of current income and expenditures, (3) a schedule of executory contracts and unexpired leases, (4) a statement of financial affairs, per Bankruptcy Rule 1007(b), and (5) Form 21, declaration of social security number. A husband and wife may file a joint petition or individual petitions, per § 302(a) of the Bankruptcy Code. (The Official Forms may be purchased at legal stationery stores or downloaded from the Internet at www.uscourts.gov/bankform/. They are not available from the Court.)

Currently, the Courts are required to charge a filing fee of \$194. The fee should be paid to the Clerk of the Court upon filing or may, with the Court’s permission, be paid in installments, per 28 U.S.C. § 1930(a); Bankruptcy Rule 1006(b); Bankruptcy Court

Miscellaneous Fee Schedule, Item 8. Bankruptcy Rule 1006(b) limits to four the number of installments for the filing fee. The final installment shall be payable not later than 120 days after filing the petition. For cause shown, the Court may extend the time of any installment, provided that the last installment is paid not later than 180 days after the filing of the petition, per Bankruptcy Rule 1006(b). If a joint petition is filed, only one filing fee and one administrative fee (total \$194) are charged. Debtors should be aware that failure to pay these fees may result in dismissal of the case, per § 1307(c) (2) of the Bankruptcy Code.

In order to complete the Official Bankruptcy Forms which make up the petition, statement of financial affairs, and schedules, the debtor will need to compile the following information:

1. A list of all creditors and the amounts and nature of their claims;
2. The source, amount, and frequency of the debtor's income;
3. A list of all of the debtor's property; and
4. A detailed list of the debtor's monthly living expenses, i.e., food, clothing, shelter, utilities, taxes, transportation, medicine, etc.
5. Form #21, declaration of social security number.

When a husband and wife file a joint petition or each spouse files an individual petition, the above detailed data must be gathered for both spouses. So that financial responsibilities can be accurately assessed when only one spouse files, the income and expenses of the non-filing spouse should be included in the debtor's schedules and statement of financial affairs.

Upon the filing of the petition, an impartial trustee is appointed to administer the case, per § 1302 of the Bankruptcy Code. In Vermont, the United States Trustee has appointed a standing trustee to serve in all chapter 13 cases, per 28 U.S.C. § 586(b). The primary role of the chapter 13 trustee is to serve as a disbursing agent, collecting payments from debtors and making distributions to creditors, per § 1302(b) of the Bankruptcy Code.

The filing of the petition under chapter 13 "automatically stays" most collection actions against the debtor or the debtor's property, per § 362 of the Bankruptcy Code. As long as the "stay" is in effect, creditors generally cannot initiate or continue any lawsuits, wage garnishments, or even telephone calls demanding payments. Creditors receive notice of the filing of the petition from the clerk or the trustee. Further, chapter 13 contains a special automatic stay provision applicable to creditors. Specifically, after the commencement of a chapter 13 case, unless the Bankruptcy Court authorizes otherwise, a creditor may not seek to collect a "consumer debt" from any individual who

is liable with the debtor, per § 1301(a) of the Bankruptcy Code. Consumer debts are those incurred by an individual primarily for a personal, family, or household purpose, per § 101(8) of the Bankruptcy Code.

By virtue of the automatic stay, an individual debtor faced with a threatened foreclosure of the mortgage on his or her principal residence can prevent an immediate foreclosure by filing a chapter 13 petition. Chapter 13 then affords the debtor a right to cure defaults on long-term home mortgage debts by bringing the payments current over a reasonable period of time. The debtor is permitted to cure a default with respect to a lien on the debtor's principal residence up until the completion of a foreclosure sale under state law, per § 1322(c) of the Bankruptcy Code.

The debtor must file a plan of repayment with the petition or within fifteen days thereafter, unless extended by the Court for cause, per Bankruptcy Rule 3015. The chapter 13 plan must provide for the full payment of all claims entitled to priority under Section 507¹ (unless the holder of a particular claim agrees to different treatment of the claim); if the plan classifies claims, provide the same treatment for each claim within each class; and provide for the submission of such portion of the debtor's future income to the supervision of the trustee as is necessary for the execution of the plan, per § 1322 of the Bankruptcy Code. Other plan provisions are permissive. Plans, which must be approved by the Court, provide for payments of fixed amounts to the trustee on a regular basis, typically biweekly or monthly. The trustee then distributes the funds to creditors according to the terms of the plan, which may offer creditors less than full payment on their claims. If the trustee or a creditor with an unsecured claim² objects to confirmation of the plan, the debtor is obligated to pay the amount of the claim or commit to the proposed plan all projected "disposable income" during the period in which the plan is in effect, per § 1325(b) of the Bankruptcy Code. Disposable income is defined as income not reasonably necessary for the maintenance or support of the debtor or dependents. If the debtor operates a business, disposable income is defined as excluding those amounts which are necessary for the payment of ordinary operating expenses, per § 1325(b)(2)(A) and (B) of the Bankruptcy Code.

A meeting of creditors ("341 meeting") is held in every case, during which the debtor is examined under oath. It is held 25 to 60 days after the bankruptcy is filed, per Bankruptcy Rule 2003(a). The debtor must attend the meeting, at which creditors may appear and ask questions regarding the debtor's financial affairs and the proposed terms of the plan. If a husband and wife have filed a joint petition, they both must attend the creditors' meeting. The trustee will also attend the meeting and question the debtor on the same matters. In order to preserve their independent judgment, bankruptcy judges are prohibited from attending meetings of creditors, per § 341(c) of the Bankruptcy Code. If there are problems with the plan, they are typically resolved during or shortly after the creditors' meeting. Generally, problems may be avoided if the petition and plan are complete and accurate and the trustee has been consulted prior to the meeting.

In a chapter 13 case, unsecured creditors who have claims against the debtor must file their claims with the Court within 90 days after the first date set for the meeting of creditors. Bankruptcy Rule 3002(c). A governmental unit, however, may file a proof of claim until the expiration of 180 days from the date the case is filed, per § 502(b)(9) of the Bankruptcy Code.

After the meeting of creditors is concluded, the bankruptcy judge must determine at a confirmation hearing whether the plan is feasible and meets the standards for confirmation set forth in the Bankruptcy Code §§ 1324, 1325. Creditors receive 25 days' notice of the hearing, which generally is held on the same day as the meeting of creditors, and may object to the confirmation, per Bankruptcy Rule 2002(b).

While a variety of objections may be made, the most frequent ones are that payments offered under the plan are less than creditors would receive if the debtor's assets were liquidated, or that the debtor's plan does not commit all of the debtor's projected disposable income for the three-year period of the plan.

Within thirty days after the filing of the plan, even if the plan has not yet been approved by the Court, the debtor must start making payments to the trustee, per § 1326(a)(1) of the Bankruptcy Code. If the plan is confirmed by the bankruptcy judge, the chapter 13 trustee commences distribution of the funds received in accordance with the plan "as soon as practicable," per § 1326(a)(2) of the Bankruptcy Code. If the plan is not confirmed, the debtor has a right to file a modified plan, per § 1323 of the Bankruptcy Code. The debtor also has a right to convert the case to a liquidation case under chapter 7,⁴ per 11 U.S.C. § 1307(a). If the plan or modified plan is not confirmed and the case is dismissed, the Court may authorize the trustee to retain a specified amount for costs, but all other funds paid to the trustee are returned to the debtor, per § 1326(a)(2) of the Bankruptcy Code.

On occasion, changed circumstances will affect a debtor's ability to make plan payments, a creditor may object or threaten to object to a plan, or a debtor may inadvertently have failed to list all creditors. In such instances, the plan may be modified either before or after confirmation, per §§ 1323, 1329 of the Bankruptcy Code. Modification after confirmation is not limited to an initiative by the debtor, but may be at the request of the trustee or an unsecured creditor, per § 1329(a) of the Bankruptcy Code.

Making the Plan Work

The provisions of a confirmed plan are binding on the debtor and each creditor, per § 1327 of the Bankruptcy Code. Once the Court confirms the plan, it is the responsibility of the debtor to make the plan succeed. The debtor must make regular payments to the trustee, which will require adjustment to living on a fixed budget for a prolonged period. Alternatively, the debtor's employer can withhold the amount of the payment from the debtor's paycheck and transmit it to the chapter 13 trustee.

Furthermore, while confirmation of the plan entitles the debtor to retain property as long as payments are made, the debtor may not incur any significant new credit obligations without consulting the trustee, as such credit obligations may have an impact upon the execution of the plan, per §§ 1305(c), 1322(a)(1), and 1327 of the Bankruptcy Code.

A debtor may consent to the deduction of the plan payments from the debtor's paycheck. Experience has shown that this practice increases the likelihood that payments will be made on time and that the plan will be completed. In any event, failure to make the payments in accordance with the confirmed plan may result in dismissal of the case or its conversion to a liquidation case under chapter 7 of the Bankruptcy Code, per § 1307(c) of the Bankruptcy Code.

The Chapter 13 Discharge

The bankruptcy law regarding the scope of the chapter 13 discharge is complex and has undergone major changes. Therefore, debtors should consult competent legal counsel prior to filing regarding the scope of the chapter 13 discharge.

The chapter 13 debtor is entitled to a discharge upon successful completion of all payments under the chapter 13 plan, per § 1328(a) of the Bankruptcy Code. The discharge has the effect of releasing the debtor from all debts provided for by the plan or disallowed (under section 502), with limited exceptions. Those creditors who were provided for in full or in part under the chapter 13 plan may no longer initiate or continue any legal or other action against the debtor to collect the discharged obligations.

In return for the willingness of the chapter 13 debtor to undergo the discipline of a repayment plan for three years, a broader discharge is available under chapter 13 than in a chapter 7 case. As a general rule, the debtor is discharged from all debts provided for by the plan or disallowed, except certain long term obligations (such as a home mortgage), debts for alimony or child support, debts for most government funded or guaranteed educational loans or benefit overpayments, debts arising from death or personal injury caused by driving while intoxicated or under the influence of drugs, and debts for restitution or a criminal fine included in a sentence on the debtor's conviction of a crime, per § 1328(a) of the Bankruptcy Code. To the extent that these types of debts are not fully paid pursuant to the chapter 13 plan, the debtor will still be responsible for these debts after the bankruptcy case has concluded.

The Chapter 13 Hardship Discharge

After confirmation of a plan, there are limited circumstances under which the debtor may request the Court to grant a "hardship discharge" even though the debtor has failed to complete plan payments, per § 1328(b) of the Bankruptcy Code. Generally, such a discharge is available only to a debtor whose failure to complete plan payments is due to circumstances beyond the debtor's control and through no fault of the debtor, after creditors have received at least as much as they would have received in a chapter

7 liquidation case and when modification of the plan is not possible. Injury or illness that precludes employment sufficient to fund even a modified plan may serve as the basis for a hardship discharge. The hardship discharge is more limited than the discharge described above and does not apply to any debts that are non-dischargeable in a chapter 7 case, per § 523 of the Bankruptcy Code.

NOTES

1. Section 507 sets forth nine categories of unsecured claims which Congress has, for public policy reasons, given priority of distribution over other unsecured claims.
2. Unsecured debts generally may be defined as those for which the extension of credit was based purely upon an evaluation by the creditor of the debtor's ability to pay. In contrast, secured debts are those for which the extension of credit was based upon not only the creditor's evaluation of the debtor's ability to pay, but upon the creditor's right to seize pledged property on default.
3. Bankruptcy Administrators, rather than U.S. trustees, serve in the judicial districts in the states of Alabama and North Carolina.
4. A fee of \$15 is charged for converting a case under chapter 13 to a case under chapter 7.

BANKRUPTCY TERMINOLOGY

Bankruptcy Terminology explains, in layman's terms, many of the legal terms that are used in cases filed under the Bankruptcy Code.

adversary proceeding A lawsuit arising in or related to a bankruptcy case that is commenced by filing a complaint with the court.

assume An agreement to continue performing duties under a contract or lease.

automatic stay An injunction that automatically stops lawsuits, foreclosures, garnishments, and all collection activity against the debtor the moment a bankruptcy petition is filed.

bankruptcy A legal procedure for dealing with debt problems of individuals and businesses; specifically, a case filed under one of the chapters of title 11 of the United States Code (the Bankruptcy Code).

Bankruptcy Administrator An officer of the judiciary serving in the judicial districts of Alabama and North Carolina who, like the United States trustee, is responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties.

Bankruptcy Code The informal name for title 11 of the United States Code (11 U.S.C. §§ 101 - 1330), the federal bankruptcy law.

bankruptcy court The bankruptcy judges in regular active service in each district; a unit of the district court.

bankruptcy estate All legal or equitable interests of the debtor in property at the time of the

bankruptcy filing. (The estate includes all property in which the debtor has an interest, even if it is owned or held by another person.)

bankruptcy judge A judicial officer of the United States district court who is the court official with decision-making power over federal bankruptcy cases.

bankruptcy mill A business not authorized to practice law that provides bankruptcy counseling and prepares bankruptcy petitions.

bankruptcy petition A formal request for the protection of the federal bankruptcy laws. (There is an official form for bankruptcy petitions.)

bankruptcy trustee A private individual or corporation appointed in all chapter 7, chapter 12, and chapter 13 cases to represent the interests of the bankruptcy estate and the debtor's creditors.

business bankruptcy A bankruptcy case in which the debtor is a business or an individual involved in business and the debts are for business purposes.

chapter 7 The chapter of the Bankruptcy Code providing for "liquidation," *i.e.*, the sale of a debtor's nonexempt property and the distribution of the proceeds to creditors.

chapter 7 trustee A person appointed in a chapter 7 case to represent the interests of the bankruptcy estate and the unsecured creditors. (The trustee's responsibilities include reviewing the debtor's petition and schedules, liquidating the property of the estate, and making distributions to creditors. The trustee may also bring actions against creditors or the debtor to recover property of the bankruptcy estate.)

chapter 11 A reorganization bankruptcy, usually involving a corporation or partnership. (A chapter

11 debtor usually proposes a plan of reorganization to keep its business alive and pay creditors over time. People in business or individuals can also seek relief in chapter 11.)

chapter 12 The chapter of the Bankruptcy Code providing for adjustment of debts of a "family farmer," as that term is defined in the Bankruptcy Code.

chapter 13 The chapter of the Bankruptcy Code providing for adjustment of debts of an individual with regular income. (Chapter 13 allows a debtor to keep property and pay debts over time, usually three to five years.)

chapter 13 trustee A person appointed to administer a chapter 13 case. (A chapter 13 trustee's responsibilities are similar to those of a chapter 7 trustee; however, a chapter 13 trustee has the additional responsibilities of overseeing the debtor's plan, receiving payments from debtors, and disbursing plan payments to creditors.)

claim A creditor's assertion of a right to payment from the debtor or the debtor's property.

complaint The first or initiatory document in a lawsuit that notifies the court and the defendant of the grounds claimed by the plaintiff for an award of money or other relief against the defendant.

confirmation Approval of a plan of reorganization by a bankruptcy judge.

consumer bankruptcy A bankruptcy case filed to reduce or eliminate debts that are primarily consumer debts.

consumer debts Debts incurred for personal, as opposed to business, needs.

contingent claim A claim that may be owed by the debtor under certain circumstances, e.g., where the debtor is a cosigner on another person's loan and

that person fails to pay.

creditor A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

debtor A person who has filed a petition for relief under the Bankruptcy Code.

defendant An individual (or business) against whom a lawsuit is filed.

discharge A release of a debtor from personal liability for certain dischargeable debts. (A discharge releases a debtor from personal liability for certain debts known as dischargeable debts (defined below) and prevents the creditors owed those debts from taking any action against the debtor to collect the debts. The discharge also prohibits creditors from communicating with the debtor regarding the debt, including telephone calls, letters, and personal contact.)

dischargeable debt A debt for which the Bankruptcy Code allows the debtor's personal liability to be eliminated.

disclosure statement A written document prepared by the chapter 11 debtor or other plan proponent that is designed to provide "adequate information" to creditors to enable them to evaluate the chapter 11 plan of reorganization.

equity The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$60,000 is subject to a \$30,000 mortgage, there is \$30,000 of equity.)

executory contract or lease Generally includes contracts or leases under which both parties to the agreement have duties remaining to be performed. (If a contract or lease is executory, a debtor may assume it or reject it.)

exempt A description of any property that a debtor may prevent creditors from recovering.

exemption Property that the Bankruptcy Code or applicable state law permits a debtor to keep from creditors.

exempt property Property or value in property that a debtor is allowed to retain, free from the claims of creditors who do not have liens.

face sheet filing A bankruptcy case filed either without schedules or with incomplete schedules listing few creditors and debts. (Face sheet filings are often made for the purpose of delaying an eviction or foreclosure.)

family farmer An individual, individual and spouse, corporation, or partnership engaged in a farming operation that meets certain debt limits and other statutory criteria for filing a petition under chapter 12.

fraudulent transfer A transfer of a debtor's property made with intent to defraud or for which the debtor receives less than the transferred property's value.

fresh start The characterization of a debtor's status after bankruptcy, *i.e.*, free of most debts. (Giving debtors a fresh start is one purpose of the Bankruptcy Code.)

insider (of individual debtor) Any relative of the debtor or of a general partner of the debtor; partnership in which the debtor is a general partner; general partner of the debtor; or corporation of which the debtor is a director, officer, or person in control.

insider (of corporate debtor) A director, officer, or person in control of the debtor; a partnership in which the debtor is a general partner; a general partner of the debtor; or a relative of a general partner, director, officer, or person in control of the

debtor.

joint administration A court-approved mechanism under which two or more cases can be administered together. (Assuming no conflicts of interest, these separate businesses or individuals can pool their resources, hire the same professionals, etc.)

joint petition One bankruptcy petition filed by a husband and wife together.

lien A charge upon specific property designed to secure payment of a debt or performance of an obligation.

liquidation A sale of a debtor's property with the proceeds to be used for the benefit of creditors.

liquidated claim A creditor's claim for a fixed amount of money.

motion to lift the automatic stay A request by a creditor to allow the creditor to take an action against the debtor or the debtor's property that would otherwise be prohibited by the automatic stay.

no-asset case A chapter 7 case where there are no assets available to satisfy any portion of the creditors' unsecured claims.

nondischargeable debt A debt that cannot be eliminated in bankruptcy.

objection to discharge A trustee's or creditor's objection to the debtor being released from personal liability for certain dischargeable debts.

objection to exemptions A trustee's or creditor's objection to the debtor's attempt to claim certain property as exempt, *i.e.*, not liable for any pre-petition debt of the debtor.

party in interest A party who is actually and substantially interested in the subject matter, as distinguished from one who has only a nominal or

[*or*] technical interest in it.

plan A debtor's detailed description of how the debtor proposes to pay creditors' claims over a fixed period of time.

plaintiff A person or business that files a formal complaint with the court.

post-petition transfer A transfer of the debtor's property made after the commencement of the case.

pre-bankruptcy planning The arrangement (or rearrangement) of a debtor's property to allow the debtor to take maximum advantage of exemptions. (Pre-bankruptcy planning typically includes converting nonexempt assets into exempt assets.)

preferential debt payment A debt payment made to a creditor in the 90-day period before a debtor files bankruptcy (or within one year if the creditor was an insider) that gives the creditor more than the creditor would receive in the debtor's chapter 7 case.

priority The Bankruptcy Code's statutory ranking of unsecured claims that determines the order in which unsecured claims will be paid if there is not enough money to pay all unsecured claims in full.

priority claim An unsecured claim that is entitled to be paid ahead of other unsecured claims that are not entitled to priority status. Priority refers to the order in which these unsecured claims are to be paid.

proof of claim A written statement, filed by a creditor, describing the reason the debtor owes the creditor money. (There is an official form for this purpose.)

property of the estate All legal or equitable interests of the debtor in property as of the commencement of the case.

reaffirmation agreement An agreement by a chapter 7 debtor to continue paying a dischargeable

debt after the bankruptcy, usually for the purpose of keeping collateral or mortgaged property that would otherwise be subject to repossession.

secured creditor An individual or business holding a claim against the debtor that is secured by a lien on property of the estate or that is subject to a right of setoff.

secured debt Debt backed by a mortgage, pledge of collateral, or other lien; debt for which the creditor has the right to pursue specific pledged property upon default.

schedules Lists submitted by the debtor along with the petition (or shortly thereafter) showing the debtor's assets, liabilities, and other financial information. (There are official forms a debtor must use.)

statement of financial affairs A series of questions the debtor must answer in writing concerning sources of income, transfers of property, lawsuits by creditors, etc. (There is an official form a debtor must use.)

statement of intention A declaration made by a chapter 7 debtor concerning plans for dealing with consumer debts that are secured by property of the estate.

substantial abuse The characterization of a bankruptcy case filed by an individual whose debts are primarily consumer debts where the court finds that the granting of relief would be an abuse of chapter 7 because, for example, the debtor can pay its debts.

substantive consolidation Putting the assets and liabilities of two or more related debtors into a single pool to pay creditors. (Courts are reluctant to allow substantive consolidation since the action must not only justify the benefit that one set of creditors receives, but also the harm that other creditors suffer as a result.)

341 meeting A meeting of creditors at which the

debtor is questioned under oath by creditors, a trustee, examiner, or the United States trustee about his/her financial affairs.

transfer Any mode or means by which a debtor disposes of or parts with his/her property.

trustee The representative of the bankruptcy estate who exercises statutory powers, principally for the benefit of the unsecured creditors, under the general supervision of the court and the direct supervision of the United States trustee or Bankruptcy Administrator.

typing service A business not authorized to practice law that prepares bankruptcy petitions.

United States trustee An officer of the Justice Department responsible for supervising the administration of bankruptcy cases, estates, and trustees; monitoring plans and disclosure statements; monitoring creditors' committees; monitoring fee applications; and performing other statutory duties.

undersecured claim A debt secured by property that is worth less than the amount of the debt.

unlawful detainer action A lawsuit brought by a landlord against a tenant to evict the tenant from rental property—usually for nonpayment of rent.

unliquidated claim A claim for which a specific value has not been determined.

unscheduled debt A debt that should have been listed by a [the] debtor in the schedules filed with the court but was not. (Depending on the circumstances, an unscheduled debt may or may not be discharged.)

unsecured claim A claim or debt for which a creditor holds no special assurance of payment, such as a mortgage or lien; a debt for which credit was extended based solely upon the creditor's assessment of the debtor's future ability to pay.

voluntary transfer A transfer of a debtor's property with the debtor's consent.

Sources:

Doran, *Personal Bankruptcy and Debt Adjustment* 135-139 (1991);
Giffin, *Personal Bankruptcy: What You Should Know* 145-149 (1994)