

# Chapter 13

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## What is Chapter 13

People occasionally become so burdened with debts that it is impossible for them to repay people they owe (“**Creditors**”) and still pay necessary living expenses. The Congress has enacted the Bankruptcy Laws to provide relief to people in these circumstances (“**Debtors**”). Bankruptcy voids or “**Discharges**” the debts of the Debtor with some exceptions; however, the Debtor may be required to give up some of his property.

There are five types of bankruptcy categorized by the “**Chapter**” of the Bankruptcy Law that authorizes that type of case. “**Chapter 13**” provides for the reorganization of the financial affairs of individuals with modest amounts of debt and is discussed in this publication. This is sometimes called a “**wage earners bankruptcy**” and is a type of “**reorganization bankruptcy**”. This brochure is primarily about Chapter 13.

“**Chapter 7**” provides for the “**liquidation bankruptcy**” of persons or corporations and is sometimes called “**straight bankruptcy**”. “**Chapter 11**” allows for the reorganization of the financial affairs of persons or corporations with large amounts of debt. “**Chapter 12**” deals with the reorganization of the finances of family farmers and “**Chapter 9**” with governmental units.

## Credit Counseling

The new bankruptcy law requires that you attend approved credit counseling shortly before you file for bankruptcy. This is one of many changes designed to make it more difficult and expensive to file bankruptcy advocated by the credit card industry agreed to by President Bush and United States Congress. You must pay the cost of this.

## Means Testing

Another section of the new bankruptcy law requires all debtors to undergo “**Means Testing**”. While very complicated, under Means Testing if you make too much money you cannot file for Chapter 7 and must file Chapter 13. We will perform this Means Testing but you must provide us with full, complete and accurate information about you income and expenses.

Simply if you make more money than the average family of your size, you will likely have to file for Chapter 13. Once we have performed Means Testing we will discuss your options. Means Testing will also determine how long your Chapter 13 Plan must last.

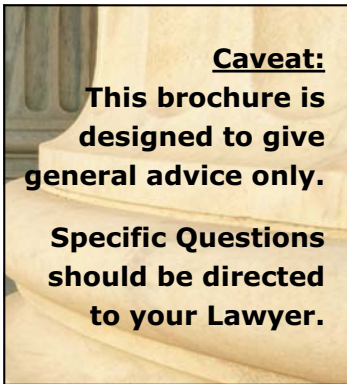
## Filing Chapter 13

The necessary forms listing all your assets and debts as well as other information – the “**Chapter 13 Petition**” and “**Schedules**” – are filed in the proper Federal District Court, normally the Western District Court located in Oklahoma City. While a Chapter 13 can be filed in a few days and later followed by the Schedules, this is not desirable and because of the requirement for credit counseling may not be possible. A rush to file will often result in more errors and should be avoided.

You should take at least a week (or even longer if possible) to file for Chapter 13. This will allow time to ensure that all necessary Creditors are notified, that all required forms are properly completed and your situation is fully reviewed.

Chapter 13 provides for the reorganization of the financial affairs of individuals with modest amounts of debt.

Chapter 7 provides for the “liquidation bankruptcy” of persons or corporations. . .



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## First Meeting of Creditors

Once your Chapter 13 Petition is filed, the Bankruptcy Court will schedule the **First Meeting of Creditors** or simply the **First Meeting** within three to six weeks. This First Meeting is usually held in the United States Bankruptcy Courthouse in Oklahoma City at 215 Dean A. McGee Avenue in Room 119. The exact date, time and location will be shown in the notice you receive shortly after you file for Chapter 13.

The First Meeting is also referred to as the **341 Hearing** because it is required by Section 341 of the Bankruptcy Law. The Chapter 13 Trustee presides over this informal First Meeting and you must be present with your lawyer. Normally 20 to 50 other Debtors who filed Chapter 13 at about the same time will also be at this First Meeting.

During the First Meeting you will testify briefly and your Creditors may ask you questions about your debts and assets. The Chapter 13 Trustee will also have questions for you. ***This is the only court appearance for about 75% of Chapter 13 Debtors.***

## Notice to Creditors

The law requires that all Creditors receive notice that you have filed Chapter 13. Failure to give notice to Creditors is a common problem in Chapter 13. Your lawyer will see that proper notice is given; however, you must provide an accurate name, address and the creditors identifying account number of every person or company that you owe money to. *If a Creditor does not receive adequate notice, that debt may not be discharged and may continue to hassle you.*

## Automatic Stay

Once your Chapter 13 is filed an “**Automatic Stay**” is imposed against nearly all of your Creditors. This Automatic Stay prohibits Creditors from taking any action of any kind to collect their debt — if they receive adequate notice. Creditors should not attempt to call or contact you in any way **after** you file bankruptcy without the Bankruptcy Judge’s permission. The Stay also stops garnishments of your wages and bank accounts.

## Chapter 13 Trustee

Oklahoma City attorney John Hardeman serves as the “**Chapter 13 Trustee**” (or simply “**Trustee**”). The Chapter 13 Trustee is the “manager” of your Chapter 13. He presides over the 341 Hearing, analyzes your Chapter 13 Plan, makes recommendations to the Bankruptcy Judge, collects your Plan Payments and disburses those Plan Payments to Creditors. The Trustee retains ten percent of your Plan Payments to operate the Chapter 13 Office which is a major expense of Chapter 13.

*You must fully cooperate with the Trustee.* The goodwill of the Chapter 13 Trustee and his employees is very important to you in obtaining Confirmation and even after Confirmation should you have difficulty in making your Plan Payments.

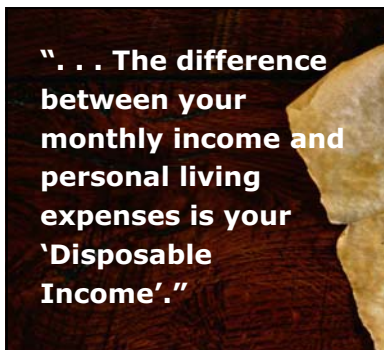
## Chapter 13 Plan

You must work with your lawyer to prepare your “**Chapter 13 Plan**” (or simply the “**Plan**”) at the time you file Chapter 13. The Plan is a detailed list of your monthly income and personal living expenses together with how you propose to pay your debts. Plans may be simple or highly complex depending on your circumstances.

## Disposable Income

The difference between your monthly income and personal living expenses is your “**Disposable Income**”. Your personal living expenses do **not** include payments to any creditor that you owed money to when you filed Chapter 13.

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Car payments, house payments and the like will be paid by the Chapter 13 Trustee. Said another way, your Disposable Income is what you have left each month to pay the Trustee after you pay for necessities like food, rent, clothing, utilities, gas, oil and repairs for your car and the like.

## Plan Payments

Under your Plan you must pay **all** of your Disposable Income to the Chapter 13 Trustee each month; this is called the “**Plan Payment**”.

**Your first Plan Payment is due on or before the 341 Hearing and monthly thereafter.** Failure to make Plan Payments on time will cause the Chapter 13 Trustee to move to dismiss your Chapter 13.

**Your Chapter 13 Plan must pay your Creditors at least as much money as they would receive if you had you filed Chapter 7 Straight Liquidation Bankruptcy.** You must pay all of your Disposable Income to the Trustee for at least three years unless all of your debts will be paid in full sooner. The Plan can extend for five years and may be required to go for five years depending on the Means Testing.

## Plan Feasibility

Your Chapter 13 Plan must be “**Feasible**” to be approved or Confirmed. Simply, the Bankruptcy Judge must believe that **you can do what you say you will do** in your Plan. For example, if your Plan provides that you will pay the Chapter 13 Trustee \$1,000 a month and you are unemployed or have never made \$1,000 in your life, your Plan is **not** Feasible and will not be approved.

## Exempt Assets

You may keep certain property under Chapter 13 called “**Exempt Assets**” normally subject to payment of any specific liens and mortgages on that property:

- ☐ Your personal effects, clothing, furniture and appliances of reasonable value;
- ☐ Your Homestead or a Manufactured or Mobile Home;
- ☐ One Automobile for each Debtor with an equity of no more than \$7,500;
- ☐ Implements to farm a Homestead and Tools of your Trade not to exceed \$10,000;
- ☐ Certain Tax Qualified Pension Plans and IRAs;
- ☐ Child Support;
- ☐ Workers Compensation or personal injury claim not to exceed \$50,000;
- ☐ And several other unique items such as health aids.

## Liquidation Dividend

If you want to keep property that is **not** an Exempt Asset with equity, you must pay the value of that property under your Plan in addition to other required payments. This is called the “**Liquidation Dividend**”.

## Unsecured Creditors' Dividend

The amount of money the Trustee pays to your unsecured Creditors is the “**Unsecured Creditors' Dividend**”. This is normally referred to as a percentage. To illustrate, if your unsecured Creditors receive 25% of what they are owed, your Plan is called a “**25% Plan**”. The higher the Unsecured Creditors' Dividend, the more likely that your Plan will be Confirmed: **100% Plans** are nearly always Confirmed and **0% Plans** are very, very difficult to have Confirmed.

**“Your Chapter 13 Plan must be ‘Feasible’ to be approved or confirmed. Simply, the Bankruptcy Judge must believe that you can do what you say you will do. . . .”**

**“A Creditor that holds collateral or security for their debt has a ‘Secured Claim’. This normally includes things like your home mortgage and automobile loan. Creditors with no collateral or insufficient collateral have ‘Unsecured Claims’. . . .”**

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## The Author

**Larry D. Lahman**, the author of this publication, was born in Carmen, Oklahoma. He attended Northwestern Oklahoma State University receiving a Bachelor of Science in Chemistry, Mathematics and Physics in 1965.

Lahman subsequently attended graduate school at OSU and later received a Juris Doctorate Degree from the OU Law School. He is admitted to practice before all state and local federal courts including the United States Supreme Court.

Lahman served as President of the Garfield County Bar Association and numerous other organizations.

He was a parachute officer with the U.S. Army Special Forces – the Green Berets – in Vietnam and retired as a Lieutenant Colonel in the U.S. Army Reserves.

## Our Law Firm

P.C. Simons, who served as Attorney General of Oklahoma Territory, organized the predecessor to **Mitchell & DeClerck** in the early 1900's.

The Firm has been in continuous existence for nearly a century and is the oldest law firm in Enid, Oklahoma, while also one of the oldest law firms in the state of Oklahoma.

For decades the Firm has held the highest possible "A" rating by the Martindale-Hubbell Legal Directory. The Firm has long been listed in the "Bar Register" of preeminent law firms in the United States and "Best's Directory of Recommended Insurance Attorneys."

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## Good Faith

Your Plan must be proposed in "**Good Faith**" to be Confirmed. This generally means that you are not unfairly attempting to take advantage of the Bankruptcy Laws. For example, if you want to keep three new, very expensive automobiles, and only provide a very small Unsecured Creditors' Dividend, that would be "**Bad Faith**" — the reverse of Good Faith — and your Plan will not be Confirmed.

## Plan Confirmation

The Bankruptcy Judge must approve or "**Confirm**" your Chapter 13 Plan. While the exact rules involving "**Confirmation**" are complex, the Judge will normally Confirm your Plan if it is Feasible, proposed in Good Faith and provides that all of your Creditors receive at least as much under the Plan as though you had filed Chapter 7.

The Notice of First Meeting will provide that your Plan **may** be Confirmed at the 341 Hearing **if** there are no objections and it is Feasible.

If there are unanswered questions or the Trustee or Creditors object, the Chapter 13 Trustee will schedule a "**Confirmation Hearing**" before the Bankruptcy Judge about six weeks in the future. You may have to appear at the Confirmation Hearing unless the objections are resolved. The objections must be overcome if your Plan is to be approved.

## Secured and Unsecured Claims

A Creditor with collateral or security for their debt has a "**Secured Claim**". This includes things like your home mortgage and automobile loan. Creditors with no collateral or insufficient collateral have "**Unsecured Claims**". This normally includes things like credit cards and medical bills.

You may be able to reduce the amount you must pay on some Secured Claims if the collateral is worth less than the amount owed. You may also be able to reduce the required monthly payments on some Secured Claims. This is a technical area that requires analysis of the facts on the specific debt.

## Debts You Must Pay in Full

More debts are discharged in Chapter 13 than Chapter 7; however, certain obligations will not be affected by Chapter 13. These debts must normally be paid in full and include:

- ☐ Most but Not All Taxes;
- ☐ Student Loans with very limited exceptions;
- ☐ Restitution Ordered by a Court;
- ☐ Child Support Ordered by a Court;
- ☐ Alimony for Support Ordered by a Court; and
- ☐ A few others.